Pulsi maiorum loco ? A Reconsideration of the Patriciate 218-49 B.C.

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PARENTIBUS OPTIMIS

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Abstract

The following thesis is an examination of the political and religious role of the patriciate in the Roman state in the period from Hannibalic War to the fall of the Republic (218-49 B.C.). More specifically, of the extent to which the role of the patriciate was maintained or eroded. The first chapter is devoted to a study of the special patrician affinity with the auspices and the unique place the patriciate occupied in the Republican constitution as a consequence. The next three chapters focus on the record of the patriciate in high political office in the period 218-49 B.C.. Chapters II and III discuss patrician representation in the consulship and censorship and explore the causes of the advent and proliferation of all-plebeian consular and censorial colleges in the Second and First Centuries. Chapter IV is an inquiry into the date at which the practice of alternation between the orders in the curule aedileship ceased and an analysis of the ramifications of the end of alternation for the patriciate. Chapter V looks at the patrician monopoly of the post of *princeps senatus* - the significance of the institution and a reassessment of its fate in the First Century. Chapter VI investigates the practice of succession in the three major priestly colleges and the perpetuation of a balance of the orders in the colleges till the end of the Republic.

In Appendix I it is argued, contra Mommsen, that testamentary adoption was never equivalent to posthumous adrogation and that the patrician status of P.Cornelius Scipio Nasica was unaffected by his testamentary adoption by Metellus Pius. Appendix II consists of the *fasti aedilicii* for the years 217-49 and statistical comparisons of the curule and plebeian aedileship. Appendix III is a list of the *principes senatus* of the Republic and a review of the insubstantial evidence for plebeian *principes senatus*. Appendix IV is a reconsideration of Mommsen's identification of the *gentes maiores* and his thesis that the *gentes maiores* enjoyed a monopoly of the post of *princeps senatus*. Appendix V is a refutation of Mommsen's and Willems' contention that patricians were accorded priority on the *album senatorium* and in senatorial debate. Appendix VI concerns the date of the inauguration of Lentulus Niger as *flamen Martialis* which has important implications for the history of the flaminate and the post of *princeps senatus* in the 70's. Appendix VII is a register of the recorded instances of succession in the three major priestly colleges during the Republic and Triumviral period. Plus a survey of conjectural cases of succession and unsuccessful candidates for priestly office in the period.

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Preface

I was first drawn to the study of the patriciate as the result of a seminar undertaken in 1988 on the 'Nobility of the Roman Republic.' I was immediately struck by the tenacity and longevity of the patriciate and I took up this theme in my B.A. thesis The Patriciate in the Late Republic: A Question of Survival, (1989). Therein I attempted to modify the pervasive notion of the decline in patrician numbers in the late Republic by documenting the survival of patrician families both within and outside of the office-holding elite.[1] The present work grew out of that study. My aim in this thesis is a better understanding of the circumstances of the patriciate in the period of increasingly rapid change from the Hannibalic War to the fall of the Republic. To that end I have endeavoured to explore a number of related questions. What was the role of the patriciate in the later Republic ? Did the patriciate still have an important role to play in the *res publica* ? Or was the patriciate simply a fossilized remnant of Rome's archaic social order ? To what extent were the prerogatives of the patriciate under threat ?

The title was suggested to me by a passage in Livy which puts the issue in concentrated form:

> "Patres...negare...liberos tollendos esse, qui pulsi maiorum loco cernentesque alios in possessione dignitatis suae, salii flaminesque nusquam alio quam ad sacrificandum pro populo sine imperiis ac potestatibus relinquantur."[2]

According to Livy, that was the indignant response of the patricians when in 409 plebeian quaestors were elected for the first time. But the complaint of Livy's patricians has even greater relevance to the situation of the patriciate in the later Republic. The patricians are said to have feared they would be reduced to a marginal and impuissant sacerdotal caste.

Preliminary research revealed, much to my surprise, that comparatively little has been written on the subject.[3] Volumes have been written on the patriciate in the Regal period and the early Republic.[4] Much labour has been expended on the *arcana* of the

[1] The long duration of the "primeval aristocracy of Rome" was a theme remarked upon by Syme (Diogenes, 141 (1988) 58).

[2] Livy, IV.54.7-8.

[3] Syme once observed that the importance of the patriciate in the Roman state had been "too often neglected" (Dialoghi di Archaeologia, 4-5 (1970-1) 410).

[4] See for instance: A.Momigliano, JRS, 53 (1963) 93-121, Les origines de la République romaine. Entretiens sur l'antiquité classique, Fondation Hardt, 13 (1967) 199-221; R.E.A.Palmer, The Archaic Community of the Romans, Cambridge, (1970); P.-Ch.Ranouil, Recherches sur le "Patriciat" (509-366 avant J.-C.), Paris, (1975); E.Ferenczy, From the Patrician State to the Patricio-Plebeian State, Amsterdam, (1976); J-C.Richard, Les origines de la plèbe romaine. Essai sur la formation du dualisme patricio-plébéien, Rome, (1978); P.Angelini, Richerche sul patriziato, Milan, (1979) [unavailable to me]; E.S.Staveley, Historia, 32 (1983) 24-57; K.A.Raaflaub (ed.), Social Struggles in Archaic Rome: New Perspectives on the Conflict of the Orders, University of California Press, (1986); R.E.Mitchell, Patricians and Plebeians: The Origin of the Roman State, Cornell University Press, (1990).

ultimate origins and formation of the patriciate.[5] Specialized studies have also been devoted to the patriciate during the Empire.[6] Remarkably little, however, has been written on the patriciate in the intervening period - the middle and late Republic.[7] Yet paradoxically that period encompasses one of the most important phases in the history of the patriciate. The most extensive treatment of the subject is still to be found in Römische Forschungen. Mommsen's classic essay "Die römischen Patriciergeschlechter" when combined with his article "Die patricischen-plebejischen Sonderrechte in den Bürger- und den Rathsversammlungen" constitutes a wide ranging survey of the patriciate spanning the entire history of the Republic.[8] But Mommsen's all too brief contribution was in many respects superseded by research subsequently carried out by Mommsen himself and other scholars. Nevertheless, Mommsen remains the starting-point for all work on the subject.

The patriciate did of course also receive treatment in the works of the foremost 'constitutional' historians, but the preoccupation of the 'juridical school' was the Staatsrecht, not the patriciate.[9] Likewise the patriciate features in the great Nineteenth Century manuals written in the antiquarian tradition, but once again subsumed within larger topics, and too frequently divorced from the history of the society.[10] In addition, various scholars have produced invaluable prosopographical studies of individual patrician families in the later Republic.[11] However, it was not their aim to reflect on the fortunes of the order as a whole.[12] And although the ground-breaking work of Matthias Gelzer generated renewed

[5] For two recent surveys see E.Ferenczy in P.Kneissl and V.Losemann (eds.), Alte Geschichte und Wissenschaftsgeschichte - Festschrift für Karl Christ zum 65 Geburstag, (1988) 158-66; and M.Levi, Parola del Passato, 45 (1990) 431-42.

[6] See H.C.Heiter, De patriciis gentibus quae imperii Romani Saeculis I, II, III fuerint, Diss., Berlin, (1909) and H.H.Pistor, Prinzeps und Patriziat in der Zeit Augustus bis Commodus, Diss., Freiburg im Breisgau, (1965). See also E.Groag, Archäologisch-Epigraphische Mitteilungen aus Osterreich-Ungarn, 19 (1896) 145-6; S.Brassloff, Hermes, 39 (1904) 618-29; E.T.Salmon in A.J.Dunston (ed.), Essays on Roman Culture, Toronto, (1976) 3-35; B.Jones, Athenaeum, 62 (1984) 635-40. Heiter and Pistor were primarily concerned with identifying the new patrician families of the empire and tracing the survival of the original and new patrician families.

[7] An exception is the short and inadequate article by E.T.Salmon, "The Resurgence of the Roman Patricians ca. 100 B.C.", Revue des Études Latines, 47 bis (1969) in Mélanges Marcel Durry, Paris, (1970) 321-39 with precis and discussion in Dialoghi di Archaeologia, 4-5 (1970-1) 371-2, 410-11, 417-21.

[8] First published in Rheinisches Museum, 16 (1861) 321-360 "Die römischen Patriciergeschlechter" later appeared in Römische Forschungen, Berlin, (1864) I.71-127.

[9] Thus there are numerous references to the patriciate scattered throughout the various sections of Mommsen's Römisches Staatsrecht, in Willems' Le Sénat de la République romaine, Darmstadt, (1968), and Herzog's Geschichte und System der römischen Staatsverfassung, Leipzig, (1884-1887). A more recent example of the same approach is J.Jahn, Interregnum und Wahldiktatur, Kallmünz, (1970). Jahn's admirable work is an anatomical study of the institution of the *interregnum* rather than an exploration of its significance for an understanding of the patriciate.

[10] See especially L.Lange, Römische Alterthümer, Berlin, vol.I^3 (1876), II^3 (1879), III^2 (1876) and J.Marquardt, Römische Staatsverwaltung^2, Leipzig, (1881-1885) volume III.

[11] Most notably great scholars like Drumann in Geschichte Roms^2, (1899-1929); Münzer in De gente Valeria, (1891), in RE, and Römische Adelsparteien und Adelsfamilien, Stuttgart, (1963); Groag and Stein in RE and PIR^2; and Syme in The Roman Revolution, Oxford, (1939), The Augustan Aristocracy, Oxford, (1986) and numerous articles.

[12] Münzer did devote the better part of two chapters in Römische Adelsparteien und Adelsfamilien, Stuttgart, (1963) to the patriciate in the later Republic (see chapter three "Alter Adel in neuer Zeit" and

interest in the Roman nobility, research on the nobility in the later Republic tends not to differentiate between the patriciate and the plebeian nobility.[13] What is lacking, is a work devoted to the patriciate with a balanced approach bringing together all the disparate strands of evidence relating to the patriciate's place in the Roman state in the later Republic.

In part, the dearth of scholarship on the patriciate in the later Republic is a reflection of the belief that following the conclusion of the 'Struggle of the Orders' the patriciate and the *principes* of the plebs formed an homogeneous elite. As a consequence, the patriciate ceases to be a subject for independent inquiry after the early Third Century. Thereafter the patriciate is all too often treated as though indistinguishable from the plebeian elite, or patrician status is viewed as an anachronistic reminder of archaic Roman society.[14] That approach is flawed on a number of counts. Although the divide between the orders was no longer a catalyst to mass political demonstrations after the *Lex Hortensia,* the distinction between patrician and plebeian was not suddenly rendered irrelevant. Sallust explicitly states that tension between the orders persisted long after 287.[15] Moreover, the 'Struggle of the Orders' did not eradicate the distinctions between the orders, it institutionalized the gulf between patrician and plebeian. Throughout the Republic, as I shall show, vital distinctions between the orders remained in the sacred[16] and secular spheres.[17] Hence the patriciate in the later Republic is a legitimate and rewarding field for scholarly investigation.

Since a comprehensive treatment of the subject was not practicable within the constraints of the thesis format, it was necessary to focus on selected issues. I therefore elected to analyse the performance of the patriciate in high political and religious office (to wit the consulship, censorship, curule aedileship, and the major priestly colleges) and to observe the continuing role of some of the most significant political prerogatives of the patriciate (namely, the *interregnum*, *auctoritas patrum,* and the post of *princeps senatus*). I have selected these studies so as to illuminate the historical issue as a whole.

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chapter six "Niedergang des alten Adels"), but in substance the chapters are prosopographical histories of selected patrician families (viz. the Aemilii Lepidi, Cornelii Scipiones, Papirii Masones, Quinctii, Servilii Caepiones and Veturii).

[13] Of the few exceptions most notable are: R.Develin, Patterns in Office-Holding 366-49 B.C., Collection Latomus, volume 161, (1970) and The Practice of Politics at Rome 366-167 B.C., Collection Latomus, volume 188, (1985); and E.Badian, Chiron, 20 (1990) 371-413.

[14] See for instance Kübler, RE.XVIII.4.2229: "Im letzten Jahrhundert der Republik war der Unterschied zwischen Patriciern und Plebeiern so gut wie verschwunden." Or T.J.Cornell in E.Gabba (ed.), Tria Corda: Scritti in Onore di Arnaldo Momigliano, Como, (1983) 103 who considers the distinction between patrician and plebeian in the later Republic as "little more than an archaic survival."

[15] Sallust, Historiae, frg.11 M. Note for instance the "vetus certamen" was reignited in 209 when a plebeian declared his candidacy for the position of *curio maximus* - till then an exclusively patrician priesthood (Livy, XXVII.8.1-4).

[16] See Chapter I on the *auspicia publica*. The patriciate also retained some sacerdotal monopolies viz. - the *flamines maiores* (as opposed to the plebeian *flamines minores*), *salii*, *rex sacrorum*, and *curio maximus* (till 209). And the distinctions between the orders continued to be relevant to the disposition of the *decuriae* in the major priestly colleges (see Chapter VI).

[17] Patricians were still excluded from the plebeian magistracies (the tribunate and aedileship of the plebs) and the assembly of the plebs (the *concilium plebis*). Distinctions also persisted in high political office (see Chapter IV on the practice of alternation between the orders in the curule aedileship, and there were continuing disinctions in respect of the consulship and censorship see Chapters II and III). Conversely, plebeians remained ineligible for the post of *princeps senatus* (see Chapters V), could not serve as *interreges*, and played no part in granting the *auctoritas patrum* (see Chapter I).

Chapter I explores the unique patrician affinity with the *auspicia publica* in virtue of which patrician senators enjoyed a monopoly of the *interregnum* and *patrum auctoritas*. Study of these institutions illuminates one of the most striking attributes of the patriciate. The acknowledged basis of the early patrician monopoly of the *auspicia publica* and their enduring monopoly of the *interregnum* and *patrum auctoritas* was the special patrician relationship with the gods. Furthermore, an understanding of the *auspicia publica*, the *interregnum* and *patrum auctoritas* is indispensable to a proper appreciation of the place of the patriciate in the Republican constitution. Yet while earlier scholars have scrutinized the *auspicia publica*, *interregnum,* and *patrum auctoritas* exhaustively in the monarchical period and the early Republic, they have seldom been discussed in the context of the late Republic.[18] We shall look at the modifications these patrician prerogatives underwent in the course of time and assess their practical and theoretical significance in the late Republic.

Chapters II and III analyse the level of patrician representation in the consulship and censorship in the period 218-49 B.C.. The causes of the first all-plebeian consular college in 172 and the first all-plebeian censorship in 131 are considered, as are the extent and reasons for the subsequent proliferation of all-plebeian consular and censorial colleges. It will be argued that the most commonly identified factor, declining patrician numbers, is in itself an inadequate explanation. Attention will be focused on a number of alternative explanations. In Chapter II I will show that the election of the first all-plebeian consular college was the result of increased competition following the increase in the number of praetorships from 197, rather than a dearth of patrician candidates. In attempting to explain the increase in all-plebeian consular colleges from the 130's a number of factors will be addressed, especially two significant structural changes (the introduction of the *Lex Gabinia tabellaria* and the end of alternation in the curule aedileship). In Chapters II and III we shall see that even in the late Republic the patriciate enjoyed a level of representation in the consulship and censorship out of all proportion to their actual numbers.

Chapter IV is an investigation of the practice of alternation between the orders in the curule aedileship. The *fasti* of the curule aedileship in the later Second and early First Centuries is very fragmentary, but the evidence establishes that the practice of alternation ceased at some point between the years 160 and 91. Having re-evaluated all the evidence, I argue that alternation had probably been abandoned by the late 140's. Moreover, as the curule aedileship was an invaluable stepping stone to the praetorship and consulate, it is argued that the end of alternation must inevitably have had a detrimental effect on the level of patrician representation in the consulship.

Chapter V is an inquiry into the patrician monopoly of the post of *princeps senatus*. It will be demonstrated that Mommsen was indubitably correct to argue that the position was restricted to patrician senators. The theoretical basis of the patrician monopoly of the post remains unclear, but it is unquestionably significant that even in the late Republic it was still felt that only a patrician senator could fulfil this role. The chapter also offers a new reconstruction of the fate of the institution in the First Century. It will be shown that, contrary to orthodox opinion, the post was not abolished by Sulla. Rather a *princeps senatus* was appointed in the *lectio senatus* of 70 and the position endured at least until the death of Mam.Aemilius Lepidus Livianus. However, the *auctoritas* of the *princeps senatus* was greatly diminished by a reform of senatorial procedure in the mid-70's.

[18] An exception being the contribution of J.Linderski in W.Eder (ed.), Staat und Staatlichkeit in der frühen römischen Republik, Stuttgart, (1990) 34-48.

The final chapter, Chapter VI, is an examination of the balance of the orders in the pontifical, augural, and decemviral-quindecimviral colleges. Though the evidence is incomplete, one thing is apparent - the patriciate was remarkably successful at maintaining a disproportionate hold on the *decuriae* in the three major priestly colleges throughout the Republic. This fact prompts an obvious question. Why were the patriciate so successful, for so long, in maintaining their hold on the major priestly colleges ? The inquiry should shed light on the patriciate in general, and more particularly, on the role of the patriciate in the state religion. In order to answer the question it will be necessary to investigate the practice of succession in the major priestly colleges.

The seven appendices contain material that substantiates the main arguments.

The status of Metellus Scipio is a matter of pivotal significance, especially in Chapters I and VI. Therefore Appendix I reviews the debate concerning the consequences of the institution known as 'testamentary adoption' in order to demonstrate that the status of Metellus Scipio was unaffected by his testamentary adoption.

Appendix II, which contains the *fasti aedilicii* for the years 217-49, serves a double purpose. Firstly, it proves that none of the known curule aediles in the period 159-92 can be dated so as to definitively fix the end of alternation. Secondly, statistical comparisons of the curule and plebeian aedileship support the argument presented in Chapters II and IV that the curule aedileship was an invaluable stepping stone to the praetorship and consulate.

Appendix III provides the first comprehensive list of the known *principes senatus* of the Republic, including, where possible, the date of their appointment and the length of their tenure. The list constitutes vital evidence for the argument that the post was a patrician monopoly. Appendix III also contains a detailed refutation of the 'evidence' for plebeian *principes senatus*.

Appendices IV and V deal with a number of issues related to the *princeps senatus*. In Appendix IV the question of eligibility is reconsidered. Was the post restricted to patricians of the *gentes maiores*, as Mommsen argued, or were all patricians eligible ? Appendices IV and V also have a bearing on the rationale behind the patrician monopoly. Is the explanation of the patrician monopoly to be found in the alleged precedence of the *gentes maiores* in senatorial debate since the Regal period ? Or in the supposed priority accorded to patricians within each magisterial grade on the *album senatorium* and in senatorial debate ? In addition, the latter survey puts the anomalous prerogatives of the *princeps senatus* (in respect of the *album senatorium* and in senatorial debate) in proper perspective.

Appendix VI concerns the date of the inauguration of Lentulus Niger as *flamen Martialis* which corroborates the argument set out in Chapter V. It will be shown that the banquet in Niger's honour, when correctly dated, proves a crucial piece of evidence for the reconstruction of the history of the post of *princeps senatus* in the First Century.

Appendix VII collects the recorded instances of succession in the three major priestly colleges during the Republic and Triumviral periods. Appendix VII also includes a list of conjectural cases of succession and unsuccessful candidates for priestly office in the period. These lists establish that ordinal succession in the major priestly colleges was the norm throughout the period, the exceptions being few and late. The lists thus reveal the extent to which the patriciate was successful at holding its ground in the priestly colleges.

It is my contention that the gloomy prediction of Livy's patricians was never realized. The patriciate was never reduced to a marginal and impuissant sacerdotal caste. Despite continued plebeian encroachment on the political and religious prerogatives of the

patriciate in the period from the Hannibalic War to the fall of the Republic, the patriciate retained a unique and important role in the Roman state. Even in the last years of the Republic the Romans continued to view the patriciate as essential to the functioning of the Roman state. It was appreciated that the political and religious contribution of the patriciate remained indispensable.[19] Indeed, that perception outlived the Republic. In the revolutionary period following the fall of the Republic, when the state underwent radical transformation, it was still felt that the patriciate could not be permitted to die out and the patriciate retained a prominent place in the regime of Augustus and his successors.[20]

The present study is offered as a contribution toward meeting a long-standing need in scholarship on the Roman Republic.

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[19] See Cicero, De Domo 38 on the *rex sacrorum*, *flamines maiores*, *salii,* and *ex parte dimidia reliquos sacerdotes*, and on the *interregnum* and *auctoritas patrum*, De Legibus, II.20, 29 on the *flamines maiores*, De Legibus, III.9 on the *interregnum*; Polybius, XXI.13.10-11 on the *salii*.

[20] Witness the *Lex Cassia* of 45 B.C. and the *Lex Saenia* of 29 B.C.. See Dio, LII.42.5-6 on the latter.

List of Abbreviations

CIL = Corpus Inscriptionum Latinarum, Berlin, (1863-).

ILLRP = A.Degrassi, Inscriptiones Latinae Liberae Rei Publicae, II vols., Florence, (1957).

ILS = H.Dessau, Inscriptiones Latinae Selectae, III vols., Berlin, (1892-1916).

Inscr.It. = A.Degrassi, Inscriptiones Italiae, XIII.1, Rome, (1947).

Alexander, Trials = M.C.Alexander, Trials in the Late Roman Republic, 149 B.C. to 50 B.C., Toronto, (1990).

Cichorius, RS or Röm.Stud = C.Cichorius, Römische Studien: Historisches Epigraphisches Literargeschichtliches aus Vier Jahrhunderten Roms, Berlin and Leipzig, (1922).

Crawford, RRC = M.H.Crawford, Roman Republican Coinage, II vols., Cambridge, (1975).

Develin, Patterns = R.Develin, Patterns in Office-Holding 366-49 B.C., Collection Latomus, volume 161, (1970).

Develin, Practice = R.Develin, The Practice of Politics at Rome 366-167 B.C., Collection Latomus, volume 188, (1985).

GR^2 = W.Drumann and P.Groebe, Geschichte Roms in seinem Übergange von der republikanischen zur monarchischen Verfassung^2, vols.I-VI, Berlin and Leipzig, (1899-1929).

Gruen, LGRR = E.Gruen, The Last Generation of the Roman Republic, University of California Press, (1974).

Linderski, Staat = J.Linderski in W.Eder (ed.), Staat und Staatlichkeit in der frühen römischen Republik, Stuttgart, (1990) 34-48.

Marquardt, StV^2 = J.Marquardt, Römische Staatsverwaltung^2, vols.I-III, Leipzig, (1881-1885).

Mommsen, RF = Th.Mommsen, Römische Forschungen, vols.I-II, Berlin, (1864-79).

Mommsen, StR = Th.Mommsen, Römisches Staatsrecht, Leipzig, vol.I^3 (1877), II^3 (1887), III (1887-8).

MRR = T.R.S.Broughton, The Magistrates of the Roman Republic, vols.I-III, American Philological Association, 15 (1952-1986).

Münzer, RAA = F.Münzer, Römische Adelsparteien und Adelsfamilien, Stuttgart, (1963).

PIR^1 = E.Klebs, H.Dessau, P. von Rohden, Prosopographia imperii Romani saec.I, II, III, vols.I-III, Berlin, (1897-8).

PIR^2 = E.Groag, A.Stein, L.Petersen, Prosopographia imperii Romani saec.I, II, III^2, vols.I-V, Berlin, (1933-1970).

RDGE = R.K.Sherk, Roman Documents from the Greek East: *Senatus Consulta* and *Epistulae* to the Age of Augustus, Johns Hopkins Press, (1969).

RE = G.Wissowa et al (eds.), Real-Encyclopädie der classischen Altertumswissenchaft^2, Stuttgart and Munich, (1894-).

Seidel, FA = J.Seidel, Fasti Aedilicii von der Einrichtung der plebeischen Aedilität bis zum Tode Caesars, Dissertation, Breslau, (1908).

Shackleton, Two Studies = D.R.Shackleton Bailey, Two Studies in Roman Nomenclature, American Classical Studies No.3, The American Philological Association, (1976).

Sumner, Orators = G.V.Sumner, The Orators in Cicero's *Brutus*: Prosopography and Chronology, Toronto, (1973).

Suolahti, Censors = J.Suolahti, The Roman Censors: A Study on Social Structure, Helsinki, (1963).

Syme, RR = R.Syme, The Roman Revolution, Oxford, (1939).

Syme, AA = R.Syme, The Augustan Aristocracy, Oxford, (1986).

Taylor, VDRR = L.R.Taylor, The Voting Districts of the Roman Republic: The Thirty-Five Urban and Rural Tribes, Papers and Monographs of the American Academy in Rome, 20 (1960).

Willems, Le Sénat = P.Willems, Le Sénat de la République romaine: sa composition et ses attributions, vols.I-II, Darmstadt, (1968).

Wiseman, NMRS = T.P.Wiseman, New Men in the Roman Senate 139 B.C. - A.D.14, Oxford, (1971).

Wissowa, RKR = G.Wissowa, Religion und Kultus der Römer, Munich, (1902).

I

AUSPICIA, *INTERREGNUM* AND *AUCTORITAS PATRUM*: THE PATRICIATE AND THE REPUBLICAN CONSTITUTION[1]

The patrician monopoly of office in the early Republic was legitimized by a divine mandate. The patriciate laid claim to a special relationship with the gods - made manifest in their exclusive possession of the *auspicia publica populi Romani*. Initially, the patrician monopoly of the *auspicia publica* served as an effective barrier to plebeian demands for political, religious and social equality but in the Fifth and Fourth Centuries the plebeians were admitted to high office and to the employment of the *auspicia publica*. Though the patriciate was forced to concede its monopoly on the *auspicia publica,* the distinction between the orders was never entirely eradicated. However, the plebeians gradually circumvented or neutralized the practical effects of the proprietorial claim of the patriciate on the *auspicia publica,* so that by the late Republic the distinction was only recognizable in the vestigial forms of the *interregnum* and the *auctoritas patrum*. Nevertheless, by virtue of their unique affinity with the *auspicia publica* the patriciate continued to occupy a special place in the Republican constitution.

The Roman state was held to have been founded on the auspices and to have prospered through scrupulous observance of them.[2] Consulting the will of Juppiter via the auspices was a necessary precondition to every major private and public action - the two spheres were delineated by the *auspicia privata* and the *auspicia publica populi Romani*.[3] The latter were a central feature of the life of the Roman state. The first official act of the newly elected magistrate was to take the *auspicia impetrativa*.[4] The *auspicia publica* were inextricably linked with a magistrate's *imperium* - the former were the essential validation of the latter.[5] The magistrate intending to preside over an assembly of the whole people was required to consult the auspices prior to convening the people.[6] The same duty was incumbent on the magistrate departing the city for the

[1] I make no apologies for using the term constitution, for despite some misleading modern connotations it is an appropriate and necessary shorthand description of the accumulated body of law and custom which governed the political life of the Roman state.

[2] See Ennius apud Cicero, De Div., I.107, Ennius apud Varro, De Re Rustica, III.1.2; Cicero, De Rep., II.5, 16-17, 51, De Div., I.28, De Nat.Deor., III.5; Livy, I.7.1, 12.4, VI.41; Val.Max., II.1.1.

[3] On the auspices in general and for detailed treatment of what follows see Mommsen, StR^3.I.76-116; I.M.J.Valeton, Mnemosyne, 18 (1890) 208-263, 406-56; A.H.J.Greenidge, Roman Public Life, London (1901) 162-7; G.W.Botsford, The Roman Assemblies from their Origin to the end of the Republic, New York, (1909) 100-118; P.Catalano, Contributi allo studio del diritto augurale, Turin, (1960); J.Bleicken, Abhandlungen der Göttingen Akademie der philologisch-historischen Klasse, 9 (1981) 255-300; and J.Linderski, ANRW, II.16.3 (1986) 2146-2312, and in W.Eder (ed.), Staat und Staatlichkeit in der frühen römischen Republik, Stuttgart, (1990) 34-48.

[4] See Mommsen, StR^3.I.97f; Valeton, Ibid., 219-221; Linderski, ANRW, II.16.3 (1986) 2169. On the distinction between *auspicia impetrativa* and *oblativa* see Mommsen, StR^3.I.77f; Botsford, Ibid., 103f; Greenidge, op cit., 38f, 162f.

[5] See Mommsen, StR^3.I.76.

[6] See Mommsen, StR^3.I.98f; Valeton, op cit., 234-5. See further below.

provinces and the commander going on campaign.[7] Those who failed to observe the proper formalities risked incurring the wrath of the senate and the gods.[8] In short, the influence of the *auspicia publica* on the official conduct of affairs was pervasive.

Initially, therefore, the auspices constituted an insurmountable impediment to the progress of the plebs, for the patriciate claimed and were acknowledged to enjoy nothing less than a total monopoly of the *auspicia publica populi Romani*.[9] The practical consequences of this plebeian disability were profound. It was used to justify their disqualification from the highest political offices until 367 as it was claimed only patrician magistrates were elected *auspicato* and consequently only they had *iustum imperium*, only they could ascertain the will of Juppiter through the auspices.[10] It was adduced as an impediment to the admission of plebeians to the pontifical and augural colleges.[11] And the threat of *perturbatio auspiciorum* is said to have been behind the Decemviral ban on intermarriage between the orders and the patrician resistance to its repeal by the *Lex Canuleia*.[12] Thus the patrician monopoly provided both a means of legitimating patrician rule and of perpetuating it through the obstruction of every major plebeian advance.

Unwilling or unable to challenge the patrician monopoly directly, the plebeians set about subverting the practical implications of the monopoly on their order. In the Fifth and Fourth Centuries a compromise was reached that enabled the plebeian demand for a greater share in public administration to be satisfied. The solution was a simple yet elegant legal fiction. Plebeians elected to 'patrician magistracies' (i.e. the dictatorship, magister equitum, consulship, censorship, praetorship, curule aedileship, quaestorship) were permitted to employ, though they did not possess, the auspices, as though they were themselves patrician.[13] Thenceforth for all practical purposes plebeians occupying

[7] Mommsen, StR³.I.63f, 99f; Valeton, op cit., 221-34; Bleicken, op cit., 268f.

[8] Thus when C.Flaminius left Rome in 217 without having consulted the auspices, it was declared that he had neither *iustum imperium* nor *auspicium* and the senate is said to have attempted to recall Flaminius in order to force him to take the auspices in Rome (see Livy, XXI.63.1-15, XXII.1.5-8; Mommsen, StR³.I.63f).

[9] The patrician claim was unambiguous. Livy, IV.6.2-3 has the consul Curtius reject the possibility of a plebeian consul "quod nemo plebeius auspicia haberet." The fullest exposition of the principle occurs in Livy, VI.41.4-10 (cf. Livy, VII.6.7-11, X.8.9; and Zonaras, VII.19). The patricians probably accepted the plebeians had *auspicia privata* though they sneered at them (see Botsford, op cit., 102f; Greenidge, op cit., 38f; Catalano, Contributi allo studio del diritto augurale, (1960) 198f, 450f; and Linderski, Staat, 35f, 47). The speeches in Livy in which the claim is presented are sometimes dismissed as classic First Century rhetorical set pieces (as by Willems, Le Sénat de la République romaine, Darmstadt, (1968) II.29f and E.Friezer, Mnemosyne, 12 (1959) 317; cf. K.von Fritz, Historia, 1 (1950) 12. Badian, *Imperium Sine Fine*, (1996) 197-8 questioned the extent to which Livy understood the doctrine he was relating). This does not, however, mean that the arguments presented therein are without foundation or that they might not reflect those actually advanced.

[10] Livy, IV.3.9 (445), VI.41.4-10 (368), VII.6.10-12 (362). Intially, it was decried as an offence against heaven to elect even one plebeian consul.

[11] See Linderski, Staat, 35f, 46f.

[12] Livy, IV.2.5, 6.2-3; see Linderski, Staat, 34f.

[13] See Mommsen, StR³.I.90-1; Greenidge, op cit., 39-40; Linderski, Staat, 41f. This concession to the plebs must have been hammered out in the Fifth Century when the plebeians were first admitted to 'patrician magistracies' invested with the *auspicia publica* (namely the quaestorship and the consular tribunate - the quaestors and consular tribunes were invested with *auspicia minora* see Linderski, ANRW, II.16.3 (1986) 2180-1 and Staat, 45) and was extended in the Fourth Century when the plebeians were

'patrician magistracies' were the equal of their patrician counterparts. Thus plebeian consuls were elected *auspicato*, were conceded full use of the auspices, presided *auspicato* over the assemblies of the people, had full *imperium domi militiaeque*, and could perform the *dictio* necessary to appoint a dictator according to the traditional auspicial ritual.[14]

However, the admission of plebeians to the highest offices did not eliminate this distinction between the orders. It was in virtue of this distinction that patrician senators continued to exercise a monopoly of two significant and enduring constitutional prerogatives:- the *interregnum* and the *auctoritas patrum*.

One of the most important duties of the consuls was to secure the election of their successors. In this way the auspices which Juppiter granted to Romulus and later to the magistrates of the Republic were maintained without interruption.[15] However, in the event that both consuls died, were required to abdicate, or their term of office expired prior to the appointment of their successors, the continuity of transmission was interrupted and the Republic went into a state of 'suspended animation' until the *auspicia* were restored.[16] In these circumstances the interregnal procedure was activated. The 'patrician magistrates' (i.e. all those imbued with *auspicia publica*), if their term of office had not already expired, resigned.[17] Whereupon the *auspicia publica* returned not to the senate as a whole but to the patrician senators - a process encapsulated in the formula *auspicia ad patres redeunt*.[18] The patrician senators then met and appointed one of themselves

granted access to 'patrician magistracies' invested with *auspicia maxima* (the dictatorship, consulship, censorship, magister equitum, praetorship. The plebeians first came into contact with the *auspicia maxima* with the appointment of the first plebeian magister equitum in 368 and then regularly through admission to the consulship in the following year).

[14] See Linderski, Staat, 42. For the *dictio dictatoris* see Cic., De Leg., III.9; Livy, VIII.23.15; Mommsen, StR^3.II.151f.

[15] See Mommsen, StR^3.I.90-1; Linderski, Staat, 37, 43. A.Magdelain in M.Renard and R.Schilling (eds.), Hommages à J.Bayet, Collection Latomus volume 70 (1964) 429f argued that the auspices were not granted to Romulus and thence transmitted from hand to hand by his regal and Republican successors, rather the pact with Juppiter was renewed and the *auspicia publica* conceded anew with each new election. According to Magdelain, the *auspicia publica* were continuous in the sense that each year the magistrates of the Republic were supposed to succeed one another without a break. Technically the *interregnum* achieved the renewal of the auspices (*renovatio auspiciorum*) though the sources sometimes speak less accurately of their 'return' (cf. Staveley, Historia, 32 (1983) 39 n.46 and further below).

[16] This was the apt description of Greenidge, op cit., 147. For the details of interregnal procedure see Mommsen, RF.I.218-33, StR^3.I.650-61; Lange, Röm.Alt.^{3}, I.284-98; Willems, Le Sénat, II.7-31; E.Herzog, Geschichte und System der römischen Staatsverfassung, Leipzig, (1884) I.53-9, 86, 125f, 614f, 731, 873f, 931 and Philologus, 34 (1876) 497-515; Liebenam, RE.IX.2.1713-20; Greenidge, Ibid., 147ff; E.S.Staveley, Historia, 3 (1954) 193-211; E.Friezer, Mnemosyne, 12 (1959) 301-20; H.J.Wolff, BIDR, 64 (1961) 1-14; A.Magdelain, Hommages à J.Bayet, Collection Latomus volume 70 (1964) 427-50; J.Jahn, Interregnum und Wahldiktatur, Kallmünz, (1970) 12-32; Bleicken, op cit., 261-4, 276.

[17] Cic., Ad Brut., I.5.4, De Leg., III.9; Dion.Hal., VIII.90.4; Livy, IV.7.7, cf Livy, IV.43.10; Dio, XL.46.3. *Interregna* could occur after the term of office of all the 'patrician magistrates' had expired (as in 77, 55, 53 and 52), or when the consulship became vacant during the term of office of the lesser 'patrician magistrates' (as in 162 and 82) who were then required to resign temporarily until the *interregnum* was over. For although the praetors were elected under the same auspices as the consuls, were invested with *auspicia maxima* and were considered colleagues of the consuls, they could not properly preside over the election of the consuls as their *imperium* was *minor* and that of the consuls *maior* (see Livy, VII.1; Messalla apud Gellius, NA.XIII.15.4; Cic., Ad Att., IX.9.3; Bleicken op cit., 264f; Linderski, ANRW, II.16.3 (1986) 2178f and J.-C.Richard, Rev.Phil., 56 (1982) 19-32).

[18] For the formula see Cic., Ad Brut., I.5.4, cf. De leg., III.9; Livy, I.31.1. That the *auspicia* reverted to the patrician senators and hence they were solely responsible for the appointment of the first *interrex* is explicitly stated in the sources (see Cic., De Domo 38; Livy, III.40.7, IV.7.7, 43.8, VI.41.6;

interrex.[19] The first *interrex* was not empowered to conduct the elections and having

Asconius, 31 C). That this was the case has been accepted by the overwhelming majority of scholars (see P.E.Huschke, Die Verfassung des Königs Servius Tullius, (1838) 405f; J.Rubino, Untersuchungen über römische Verfassung und Geschichte, (1839) 84f; L.O.Bröcker, Untersuchungen über die Glaubwürdigkeit der altrömischen Verfassungsgeschichte, (1858) 60-3; Mommsen, RF.I.218-33, StR^3.I.653-4; H.Christensen, Hermes, 9 (1875) 209-214; Herzog, loc.cit.; Madvig, Die Verfassung und Verwaltung des römischen Staates, (1881) I.495-7; A.Wagener, Revue de l'Instruction publique en Belgique, 30 (1887) 137-50, 217-28 [unavailable to me]; F.Zühlke, Mommsen und Willems in ihrer der Sonderstellung der Patricier in dem Senat, Insterburg, (1891) 32f; J.Binder, Die Plebs, (1909) 385ff; Catalano, Contributi allo studio del diritto augurale, (1960) 454f; Wolff, BIDR, 64 (1961) 1f; Magdelain, op cit., 427f, 452f; Jahn, op cit., 14-15; Linderski, Staat, 36f; Konrad, *Imperium Sine Fine*, (1996) 129f. Mommsen, RF.I.225f showed contrary to the claims of some earlier scholars that the patrician senators, not the patriciate in general, designated the first *interrex*. cf. Willems, Le Sénat, II.22-3; Badian, *Imperium Sine Fine*, (1996) 198 n.16. Note that Appius Claudius' declaration in Livy, VI.41.6 that the patricians "ipsi sine suffragio populi auspicato interregem prodamus et privatim auspicia habeamus, quae isti [the plebeians] ne in magistratibus quidem habent" is often misinterpreted. The intended contrast is not between patricians in a private capacity and plebeian magistrates but between patrician senators who were technically *privati*, as opposed to *magistratus*, and the plebeian magistrates see Botsford, op cit., 102 and Linderski, Staat, 36-7). However, Willems whilst accepting that only patricians could serve as *interreges* (Le Sénat, II.9-14) argued the *patres* referred to in the formula *auspicia ad patres redeunt* were all senators patrician and plebeian and that the first *interrex* was nominated by the senate as a whole (Le Sénat, II.19-31; cf. the confused and confusing treatment of Friezer, op cit., 318-20, 329; and A.Guarino, Index, 3 (1972) 284-303). Willems' argument was based on the dual but antithetical meanings of the term *patres*. The word is used, often ambiguously or inconsistently, to designate the patrician senators alone and alternatively the entire senate including the plebeian senators (note with regard to the *interregnum* Livy, XXII.33-4; Cic., De Leg., III.9. See Mommsen, RF.I.224, 226f; Christensen, Ibid.; Magdelain, op cit., 450f; Gruen, CSCA, 11 (1978) 67, 72 n.41). However, as Cicero, De Domo 38, Livy, III.40.7, IV.7.7, 43.8, VI.41.6, and Asconius, 31 C specifically refer to *patricii,* Willems was forced to repudiate their testimony. He denied the authenticity and accuracy of the De Domo - said to be the product of an imperial rhetorician ignorant of constitutional matters (Le Sénat, 22, 25). But that is a pointless exercise for Livy and Asconius also make clear that only the patrician senators were involved and Willems' attempts to get around their evidence is unconvincing. Moreover, the return of the auspices, the nomination of the *interrex*, and eligibility to serve as *interreges* are all part of the one process. It is because the auspices revert to the patrician senators that they alone nominate the *interrex* and they alone can serve as *interreges*. If it were otherwise, there could have been no objection to the full participation of plebeian senators in the interregnal procedure.

[19] That only patricians were eligible for service as *interreges* is made clear both by the sources (Cic., De Domo 38; Zonaras, VII.9; cf. Dion.Hal., II.57; Livy, VII.17.10) and the list of known *interreges* (see Willems, Le Sénat, II.10-12; Broughton, MRR; and Jahn. On Metellus Scipio see below). However, not all patrician senators appear to have been eligible to serve as *interrex*. Though the requirement is not expressly attested in the sources the recorded *interreges* suggest that only patrician senators of curule rank might be *interrex* (see Willems, Ibid., II.9-14; Greenidge, op cit., 148-9). Magdelain, Ibid., 427ff argued that initially only patricians who had held the highest auspices and *imperium* (i.e. ex-consuls, consular tribunes, *dictatorii*, or masters of horse) were appointed but that this policy was relaxed at the end of the Republic (Metellus Scipio (99) cos.52 was *interrex* in 53, and M.Aemilius Lepidus (73) pr.49, cos.46 and Ser.Sulpicius Rufus (95) pr.65, cos.51 served as *interreges* in 52. The Ap.Claudius Pulcher, *interrex* in 77, was probably the consul of 79 not his homonymous son). But though the *interreges* on record demonstrate it was customary to delegate this task to the most senior patrician senators available, it is doubtful whether this was a formal requirement. By virtue of their appointment the second and successive *interreges* were invested with *auspicia maxima* (Messalla in Gell., NA.XIII.15.4) and *imperium maius* (Varro, De Ling.Lat., VI.93; Sall., Hist., I.77.22 M; Livy, I.17.5 - that the *imperium* of the *interrex* was *maius* is clear from the fact that *interreges* could preside over the election of the consuls whose *imperium* was *maius* and a magistrate with lesser *imperium* could not preside over the election of another with greater *imperium* see above). As a consequence what offices they had held previously were irrelevant to the performance of their present duties and there could be no objection to the service of patrician senators of lesser rank as *interreges*. And if any such rule existed, it had already been breached at least once in the Fourth Century when L.Cornelius Scipio (322) cos.350 served as *interrex* in 352 (he was not the magister equitum of 362 as Willems, Le Sénat, I.90 n.4, II.11 and Magdelain, op cit., 429 n.4 believed; see Broughton, MRR.I.118). Moreover, as Badian, *Imperium Sine Fine*, (1996) 198 remarked it is difficult to see how "ex-magistrates could have either retained or regained their *auspicia* after they had duly passed them on to their successors." It seems probable therefore that whereas senators of consular status were preferred when practicable, this was not a formal prerequisite and curule senators of lesser rank were eligible for service before the late

restored the *auspicia* and appointed a successor, thereby putting in place the mechanism required to conduct the consular *comitia* and re-animate the Republic, he resigned.[20] Each *interrex* served for a period of only five days and the *interregnum* continued until such time as the election of the consuls was effected.[21] Once the consuls were in office the *interregnum* lapsed and normal government resumed. In 57 Cicero could emphatically state before the assembled pontifical and augural colleges, half of whom were plebeians, that should the patriciate die out the *auspicia populi Romani* must also perish as the responsibility for maintaining the continuity of the *auspicia publica* in the event of an *interregnum* devolved upon the patrician senators alone.[22] It was the patrician senators who guaranteed the continuity of *auspicium imperiumque* by accomplishing the *renovatio auspiciorum* during the *interregnum*.[23] Plebeians were ineligible for service as *interreges* because even as magistrates they were incapable of possessing, as opposed to using, the *auspicia publica*[24] and the patrician monopoly of the *interregnum* remained intact to the end of the Republic.[25] In the Third and Second Centuries the interregnal procedure was

Republic (see Jahn, op cit., 14, 19f).

The method used in the selection of *interreges* is disputed. Jahn, op cit., 17-21 argued the lot was used (accepted by Konrad, *Imperium Sine Fine*, (1996) 129f). This is denied by most scholars (see Mommsen, StR^3.I.656-9; Willems, Le Sénat, II.14-19; Briscoe, op cit., 188; Magdelain, op cit., 448f). Willems, Le Sénat, II.14-19 conjectured the *interreges* were appointed in ascending order of seniority according to a predetermined list but this runs counter to the sequence of *interreges* appointed in 396, 391, 387, 355, 298 and 216.

[20] See Asc., 43 C; Schol.Bob., p.116 St; Mommsen, StR^3.I.98 n.2, 654-5, 661. Magdelain, op cit., 437f argued that the first *interrex* could not preside over the consular *comitia*, not only because he had been appointed *inauspicato*, but because unlike the succeeding *interreges* he did not possess the *imperium* necessary to do so.

[21] Exactly how the *interrex* carried out the appointment of the consuls is disputed. Some scholars have argued the *interrex* did not conduct an election in the normal manner. Staveley, op cit., reviving a theory advanced by Schwegler, contended the *interrex* simply presented the *comitia* with two names which might be accepted or rejected. This has been rightly repudiated by most scholars (see Jahn, op cit., 50-2, 169-71; Linderski, Phoenix, 25 (1971) 394; J.Briscoe, JRS, 62 (1972) 188; Develin in K.A.Raaflaub (ed.), Social Struggles in Archaic Rome: New Perspectives on the Conflict of the Orders, (1986) 335; Gruen, CSCA, 11 (1978) 70 n.5; B.L.Twyman, CP, 79 (1984) 189). Jahn, op cit., 26, 111, 124 argued the *interrex* saw to the election of one consul and resigned - the consul being responsible for the election of his colleague. This scenario has not found favour either (see Briscoe, Ibid., 188; Gruen, Ibid., 73 n.55; Twyman, Ibid., 189. The exception is R.Rilinger, Der Einfluss des Wahlleiters bei den römischen Konsulwahlen von 366 bis 50 v.Chr., Munich, (1976) 17-18). But the matter is not relevant for present purposes.

[22] Cic., De Domo 38.

[23] For the *renovatio auspiciorum* as the goal of the *interregnum* see Livy, V.31.8, 52.9, VI.5.6. See also P.Voci, Studi in memoria di Emilio Albertario, Milan, (1953) II.71f, 90f; Develin, op cit., 340f.

[24] See Livy, VI.41.5-7. On this distinction see further below.

[25] The patrician monopoly is generally accepted but is often qualified to the extent that it is argued Metellus Scipio was a plebeian when he served as *interrex* in June 53 (see Münzer, Hermes, 71 (1936) 222f; Broughton, MRR.II.229 - but see MRR.III.41; Magdelain, op cit., 428; L.R.Taylor, Party Politics in the Age of Caesar, (1968) 214 n.26; Palmer, The Archaic Community of the Romans, (1970) 301; Jahn, op cit., 14; A.Guarino, Index, 3 (1972) 295f; von Ungern-Sternberg, Gnomon, 45 (1973) 684; Badian, Chiron, 20 (1990) 407-8; F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 130 n.67, 172, Athenaeum, 82 (1994) 517-8. The usual explanation for this unparalleled anomaly is the dwindling number of patrician senators of curule rank in 53. But that argument does not hold up. Since nothing precluded the continual rotation of *interreges,* a mere handful of curule patrician senators could sustain an *interregnum* indefinitely (see Ryan, Athenaeum, 82 (1994) 518 n.85; Konrad, *Imperium Sine Fine*, (1996) 128f). Hence there was no need to resort to a plebeian in 53. Moreover, Metellus Scipio was not a plebeian. It is still often stated that Scipio, a patrician by birth, became a plebeian as a result of his

seldom resorted to, but after a lengthy hiatus, the *interregnum* enjoyed renewed currency in the disturbed political conditions of the First Century.[26]

The *auctoritas patrum* was originally an equally potent patrician privilege.[27] As

testamentary adoption by Q.Metellus Pius. However, it has been demonstrated that testamentary adoption was not an adoption at all, but merely the institution of an heir entailing a *condicio nominis ferendi* and was incapable of altering the status of the 'adoptee' (see Appendix I). This invalid argument is sometimes 'corroborated' by Scipio's purported service as tribune of the plebs. But the suggestion that Scipio was tribune has no basis in fact as is now generally recognized (see Appendix II). Finally, it is sometimes asserted that Scipio entered the pontifical college as successor to his plebeian 'adoptive' father and hence occupied a plebeian *decuria* and must therefore have been plebeian (see Chapter VI and Appendix VII. That he was succeeded by a patrician is seldom mentioned). In fact, it is unknown whom Scipio succeeded. And as Scipio entered the college after interordinal succession had become possible, the status of his predecessor and successor can tell us nothing of his status (see Chapter VI). In short, all the evidence, especially Scipio's service as *interrex*, favours the conclusion that he remained a patrician in 53 (as rightly Linderski, Staat, 39 n.15, *Imperium Sine Fine*, (1996) 148f; Konrad, *Imperium Sine Fine*, (1996) 124f).

[26] All known *interregna* are listed and discussed by Jahn, op cit., 55-188. Only three are attested in the Third Century (in 298, 222, 216. However, Jahn, op cit., 100-1, 115-6, 135-6 argues *interregna* also occurred in the years 291, 220, and perhaps 208). The Second Century certainly witnessed one *interregnum* (in 162) and probably one other (in 176 see Linderski, ANRW, II.16.3 (1986) 2181f. Jahn, op cit., 155-9 argues there were also *interregna* in 152, possibly in 109, and in 106). Another was proposed in 193 but did not eventuate (Livy, XXXV.6). Then after a long interval five *interregna* occurred in the space of thirty years in the First Century (in 82, 77, 55, 53, 52). In the First Century the *interrex* thrice played an unusual role. In 82 the *interrex* passed a law in the *comitia centuriata* to make Sulla dictator (on this unparalleled procedure see Jahn, op cit., 162f; C.Castello, Studi in onore di P.de Francisci, (1956) III.37-60, esp.42-58; and Linderski, Ibid., 2181-4). In 77 and 52 as the *interrex* was one of the few available magistrates possessing *imperium* he was directed in the *s.c.u.* to assist in preserving the Republic from harm (Sall., Hist., I.77.22 M; Asc., 34 C).

[27] On the *auctoritas patrum* see Mommsen, RF.I.233-49, StR.III.1037f; L.Lange, De patrum auctoritate commentatio, (1876), Commentatio altera, (1877) [unavailable to me], Lange, Röm.Alt.[3], I.300-10, II.48-51; Willems, Le Sénat, II.33-106; Leist, RE.II.2275; A.Biscardi, Auctoritas Patrum: Problemi di storia del diritto pubblico romano, (1987); E.Friezer, Mnemosyne, 12 (1959) 320-9; H.J.Wolff, BIDR, 64 (1961) 1-14; G.Branca, Iura, 20 (1969) 49-51; Bleicken, Lex Publica: Gesetz und Recht in der römischen Republik, (1975) 296-304; Magdelain, Iura, 33 (1982) 25-45; A.Giovannini, Museum Helveticum, 42 (1985) 28-36. V.Mannino, L'auctoritas patrum, (1979) is fundamentally unreliable (see A.Romano, Labeo, 27 (1981) 382-8 and R.Wittmann, ZRG, 100 (1983) 573-7). Huschke, op cit., 403ff argued the *auctoritas patrum* was a prerogative exclusive to the patrician senators. He has rightly been followed by the majority of scholars (thus also Bröcker, op cit., 64-100; Mommsen, loc.cit.; H.Christensen, Hermes, 9 (1875) 209f; Madvig, op cit., I.88, 233-4; Herzog, op cit., I.87, 256-7, 876-8; Zühlke, Mommsen und Willems in ihrer der Sonderstellung der Patricier in dem Senat, (1891) 39f; Binder, Die Plebs, (1909) 385ff; Wolff; Branca; and Bleicken, loc.cit.; Biscardi, op cit., 20ff, 60ff; Magdelain, Hommages à J.Bayet, 452-4, Iura, 33 (1982) 25-45; and Linderski, Staat, 24. It was not a right of the patriciate in general as argued by some early scholars, notably Niebuhr and Lange, see Mommsen loc.cit.; Bröcker, op cit., 70ff; Christensen, Neue Jahrbücher für Philologie und Paedagogik, 113 (1876) 521-32; Herzog, Neue Jahrbücher für Philologie und Paedagogik, 115 (1877) 565-70; Willems, Le Sénat, II.50f. The identification of the *auctoritas patrum* and the *lex curiata* advocated by Lange among others has been thoroughly demolished see Mommsen, RF.I.247f; Willems, Ibid., II.50f). Willems, Le Sénat, II.34-57, on the other hand, argued it was exercised by the entire senate (followed by Friezer, loc.cit.; Mannino, Ibid., 129ff). However, Willems was clearly in error. As in the case of the *interregnum* confusion has arisen largely from terminological complications. Not only as a result of the use of the term *patres* to denote all senators, patrician and plebeian, indiscriminately but also from the conflation of the terms *auctoritas patrum* and *auctoritas senatus* (on which see Mommsen, StR.III.997-8; Zühlke, op cit, 20f; Magdelain, op cit., 40ff; H.Siber, Festschrift für Gustav Boehmer, Bonn, (1954) 22-33; Bleicken, Ibid., 294-5, 304-24). However, a number of texts expressly assign the *auctoritas patrum* to the patrician senators alone (see Cicero, Domo 38; Sallust, Hist., III.48.15M = McGushin, III.34.15; Livy, VI.42.10; Gaius, Inst., I.3). Giovannini rejected both Mommsen and Willems arguing that "l'*auctoritas patrum*, l'*auctoritas* des augures et le *ius auspicii* des magistrats, *c'est tout un*." (p.35) And that as a consequence when the plebeians were admitted to high office and to the augural college they too came to share in the exercise of the *auctoritas patrum*. Giovannini fails to account for the fact that Cicero specifically attributed the *patrum auctoritas* to the patrician members of the senate even in the late Republic, glosses over the fact that the admission of the plebeians to high office and to the augural college did not entirely eradicate the distinctions between the orders with regard to the auspices, and

a consequence of their unique affinity with the *auspicia publica,* the patrician senators claimed the right to exercise a supervisory jurisdiction over legislation and elections involving the whole people.[28] From the early days of the Republic it was customary for legislation and elections conducted in the *comitia curiata* and *centuriata* to be submitted for approval to the patrician senators.[29] Those elections which received the imprimatur of the patrician senators were thereby validated and the designated officials were considered duly elected. Similarly, measures enacted by the assembly which were granted the *auctoritas patrum* passed into law. Conversely, by withholding their consent the patrician senators could exercise an effective veto over legislation and elections originating in these assemblies.[30] And the *patrum auctoritas* remained a prerogative of the patrician senators throughout the Republic.[31]

Furthermore, even after plebeians were admitted to the consulship it was open to patricians to deny that plebeian consuls exercised *iustum imperium et auspicium domi militaeque*.[32] Declarations of this kind are all too often dismissed as the ravings of reactionary patricians, but this fundamental distinction between the orders continued to be relevant when the 'Struggle of the Orders' was a faded memory.[33] Even in the late Third Century the patriciate was still recognized as having a unique relationship with the *auspicia publica* as is demonstrated by the consular elections for 215. In the consular

ignores the distinctions between the powers of the magistrates and augurs in respect of the auspices (on which see Linderski, Staat, 46f with further references) and between the capabilities of the magistrates, augurs and the *auctoritas patrum*.

[28] On the relationship of the *auctoritas patrum* to the auspices see Cic., De Domo 38; Livy, VI.41.10; Mommsen, RF.I.241f, StR.III.1041; Herzog, op cit., I.87, 876-8; Biscardi, op cit., 65f; Bleicken, Ibid., 299f; Catalano, op cit., 504; and Magdelain, Iura, 33 (1982) 29f.

[29] According to the sources the *auctoritas patrum* was already in existence in the regal period. That the *comitia curiata* (Cic., De Domo 38; Livy, VI.41.10) and *comitia centuriata* (Cic., De Domo 38; Livy, VI.41.10, VIII.12.15) were subject to the *patrum auctoritas* is clearly stated. Whether the *comitia tributa populi* was also subject to the *auctoritas patrum* is debated (see Willems, Le Sénat, II.86-92; Mommsen, RF.I.238f, StR.III.1039f; O'Brien Moore, RE Suppl.VI.677-8; Mannino, op cit., 86f; Biscardi, op cit., 72f. Mommsen thought so, but Willems argued only the legislative enactments of the *comitia tributa populi* were subject to the *auctoritas patrum* and only until the Fourth Century). Likewise its application to the *concilium plebis* is disputed (see Gaius, Inst., I.3; Pomponius, Digest, I.2.2.12; Willems, Le Sénat, II.74-86; Mommsen, loc.cit. and RF.I.199; O'Brien Moore, loc.cit.; Bleicken, Lex Publica, 95 n.23, 296; Magdelain, Iura, 33 (1982) 36-40).

[30] See Cic., De Rep., II.56 and Pro Plancio 8. Mommsen, RF.I.241-4 reckoned the ability to invalidate proceedings only extended to cases where the decision of the assemblies could be considered unconstitutional or injurious to the auspices.

[31] Cicero, De Domo 38 and Livy, I.17.9 attest that the *auctoritas patrum* was still in existence in the late Republic. See also Mommsen, The History of Rome, trans. W.P.Dickson, (1894) I.384, StR.III.1042-3; Greenidge, op cit., 131; G.Branca, Iura, 20 (1969) 49-51; Bleicken, Lex Publica, 296). However, the *patrum auctoritas* was effectively eviscerated by the *Leges Publilia* and *Maenia* (see infra).

[32] The defeat of L.Genucius in 362 was said by Appius Claudius to be signal proof that only patricians had *iustum imperium* (Livy, VII.6.10-11). The same idea resurfaced in 300 (Livy, X.8.9).

[33] Linderski, Staat, 41f and Badian, *Imperium Sine Fine*, (1996) 209 have emphasized that such claims should be treated seriously. Badian commented: "Our (ultimately) late Republican sources, from the point of view of an age that no longer took the state religion seriously, constantly convey the impression that argument about the *auspicia* was used as a mere pretext for clinging to power....Those who thought the defeat of L.Genucius, the first Plebeian consul to lead a Roman army, a divine warning and mark of displeasure appear in Livy as plain hypocrites, using a rhetorical lie to make political capital on a sad public occasion. We can be sure that many of them were very serious about it, and that the scarcity of Plebeian consuls in the first years of the new *res publica* was not entirely due to manipulation."

elections for 215 the patrician L.Postumius Albinus was returned (for the third time) with the plebeian Ti.Sempronius Gracchus as colleague. However, Postumius was killed in Gaul while still consul designate and in the subsequent election of a suffect the plebeian M.Claudius Marcellus was chosen in his stead.[34] When Marcellus was entering upon office thunder was heard and the augural college was summoned to interpret the *prodigium*.[35] They declared Marcellus *vitio creatus*. The *vitium*, it was stated, arose from the election of two plebeian consuls which was displeasing to the gods.[36] The dogma underlying the *vitium* is patent. If two plebeians were elected consul, neither of whom could properly possess the auspices, the continuity of transmission of the auspices would falter and the *auspicia publica* fail.[37] Marcellus promptly resigned and the patrician Q.Fabius Maximus was elected in his place.

Modern scholars have inevitably advanced political explanations of the episode - with various individuals or factions manipulating events in the quest for primacy.[38] The *bona fides* of the augurs has also been questioned, since the college contained amongst others Fabius and Marcellus, who were both capable of remarkable doctrinal pragmatism when occasion required.[39] But none of the factional interpretations offered are convincing. Marcellus' resignation was clearly not politically inspired. Had there been serious objections to his person or strategy, he could hardly have been elected consul for the following year.[40]

Moreover, to focus on the cause of the *prodigium*, be it legitimate or otherwise, is to miss the point. What is most instructive about this episode is the explanation of the *prodigium* offered by the augural college and the reaction of the people to their verdict. Despite the passage of the *Lex Genucia* and the plebeian presence in the pontifical and augural colleges since 300, the belief in the unique religious aura of the patriciate and the sacral deficiencies of the plebs, was so well ingrained that it was still possible as late as 215 to assert to the general satisfaction that the election of two plebeian consuls was offensive to the gods. The verdict of the college was not queried. There was no suspicion of fraud on the part of competing factions, or of a conspiracy by a cabal of patrician senators. The existence of the *prodigium* and the explanation proffered were accepted as

[34] Livy, XXIII.31.13-14; Plut., Marc.12.1.

[35] For detailed consideration of the augural aspects of the event see Linderski, ANRW, II.16.3 (1986) 2168-2172 and Staat, 42f.

[36] Livy, XXIII.31.13-14 - "quod tum primum duo plebeii consules facti essent, id deis cordi non esse." Livy says the *patres* made known this explanation of the prodigy. They were undoubtedly proclaiming the opinion of the augural college, not venturing their own interpretation. Develin, JRH, 10 (1978) 15 translates *patres* as patricians but the senate as a whole must be understood. Livy gives no indication of dissension within the senate concerning the meaning of the prodigy which could hardly have been the case had the patrician senators attempted to foist on the plebeian senators and the general public an interpretation of the prodigy not accepted by the plebeian members of the senate.

[37] Livy, VI.41.7-8 has Appius Claudius anticipate the election of two plebeian consuls in 368 and the religious implications of this innovation. Appius is made to declare: "Quid igitur aliud quam tollit ex civitate auspicia qui plebeios consules creando a patribus, qui soli ea habere possunt, aufert." See further Linderski, ANRW, II.16.3 (1986) 2168-72 and Staat, 42f.

[38] On the various scenarios advanced see Linderski and Develin.

[39] Fabius - Cic., De Sen.11. Marcellus - Cic., De Div., II.77. Linderski considered the precise timing of the thunder so fortuitous as to suggest possible manipulation (op cit., 2171).

[40] Noted by Linderski.

legitimate without contention. That both orders approved of the decision is demonstrable not only from the lack of protest but also from the fact that the response of the augurs was brought down by a college consisting of a majority of plebeian members, including Marcellus himself.[41] That Marcellus' ineligibility and the disapproval of the gods were taken seriously is proven by the willingness to put the correction of the *vitium* above vital strategic considerations and from the fact that, even after the hypersensitivity to religion subsided with Rome's victory over Carthage, the election of two plebeian consuls was not effected for a further thirty years.[42] The significance of the event ought not to be downplayed. All the advances the plebeians had made since the Fourth Century, including the legally constituted privilege to sue for both consulates every year, could not negate the religious taint of the plebs - a stigma which continued to have political repercussions.

This defining characteristic of the two orders was likewise embodied in other facets of the constitution. On the one hand, there existed the institutions of the *populus Romanus* which consisted of the patriciate and the plebs.[43] These were the assemblies of the *populus Romanus* (the *comitia curiata*, *centuriata* and *tributa populi*) and their elected representatives - the *magistratus populi* (the dictator, magister equitum, consul, censor, praetor, curule aedile and quaestor).[44] The assemblies of the *populus Romanus* were conducted after due observance of the *auspicia publica*, thus its officials were elected *auspicato*, and its decrees (*leges*) bore the imprimatur of the auspices.[45] On the other hand, there were the institutions exclusive to the plebs.[46] The plebeians had their own assembly (the *concilium plebis*), their own elected officials (the tribunes and aediles of the plebs), and were capable of producing their own resolutions (*plebiscita*) which after a long and bitter struggle were accepted as binding on the *universus populus*. But the assembly of the plebs was conducted without reference to the *auspicia publica*, hence the representatives of the plebs appointed in it were elected without the sanction

[41] The membership of the augural college in 215 is imperfectly known. The only certain patrician member was Q.Fabius Maximus. It is also practically certain that P.Furius Philus was a member of the college at this time, although he is only first attested on his death in 213. The other two patrician members are unknown. M.Aemilius Lepidus died in 216 and his successor is not reported. Broughton's assertion that Cn.Cornelius Lentulus was already an *augur* in 217 (MRR.I.283; cf. C.Bardt, Die Priester der vier grossen Collegien aus römisch-republikanischer Zeit, (1871) 21) is questionable. Lentulus is first mentioned on his death in 183, and given that Livy's record of the membership of the priestly colleges is careless and not infrequently faulty, Lentulus may have been appointed at any time prior to 184. The certain plebeian members of the college in 215 were M.Claudius Marcellus and C.Atilius Serranus. Their probable colleagues were Sp.Carvilius Ruga and T.Otacilius Crassus augurs by 211 and M.Pomponius Matho *augur* by 204.

[42] Note that even after the election of all-plebeian consular colleges became acceptable, it remained normal practice for suffect consuls to be chosen from the same order as their predecessor. Only two exceptions are recorded under the Republic - in 154 and 86. The supplementary election of 154 is the only instance where a deceased patrician consul was replaced by a plebeian suffect (see Chapter II).

[43] Gaius, Inst., I.3; Ateius Capito apud Gellius, NA.X.20.5-6. On the term *populus Romanus* and its connotations see Mommsen, StR.III.3f, 145f.

[44] On the *comitia tributa populi* as an assembly distinct from the *concilium plebis tributim* see Mommsen, RF.I.151-66 and StR.III.149f, 321f (Mommsen has been followed by the majority of scholars but for the arguments against see Develin, Athenaeum, 53 (1975) 302-337, Athenaeum, 55 (1977) 425-6 with further bibliography).

[45] See Mommsen, StR^3.I.98-9, III.364f, 385-6; Valeton, Mnemosyne, 18 (1890) 219ff; Linderski, ANRW, II.16.3 (1986) 2189.

[46] On *plebs* versus *populus* and *lex* versus *plebiscitum* see Ateius Capito apud Gellius, NA.X.20; cf. Festus, 264, 442 L.

of the auspices, and the *plebiscitum* enacted therein was derided as the *lex inauspicata*.[47] In addition, long after the plebeians were admitted to the highest offices a conceptual distinction between the magistracies was retained. The higher magistracies continued to be designated *magistratus patricii*.[48] And they stood in stark contrast to the *magistratus plebeii*, the tribunes and aediles of the plebs, which were neither invested with the auspices nor considered magistracies of the people - *magistratus populi*.[49]

The plebeians therefore took additional steps to minimize the residual effects of the unique patrician affinity with the *auspicia publica*.

The need to modify the interregnal procedure was not pressing since the *interregnum* was an extraordinary device; but it was modified nonetheless. In the early Republic, when the need for an *interregnum* arose, once the 'patrician magistrates' had resigned from office, the senate could not be convoked due to the lack of magistrates possessing the *ius consulendi senatus*.[50] As a consequence the patrician senators met on their own authority to institute proceedings without reference to a decree of the people or the senate.[51] The patrician senators could boast that they appointed the *interrex* "sine suffragio populi."[52] Eventually this practice was superseded by a new procedure whereby it became customary for the initiation of an *interregnum* to be preceded by a *senatus consultum*.[53] According to the procedure followed in the later Republic, when the state was bereft of magistrates with consular *imperium*, the senate was presented with a *relatio ad senatum*

[47] Livy, VI.41.5-6: "plebeius quidem magistratus nullus auspicato creatur." See also Livy, VI.41.9-10; Dion.Hal., IX.49.5. For the *plebiscitum* as the *lex inauspicata* see Livy, VII.6.11. See further Mommsen, RF.I.195f and StR^3.I.98-9, II.282-5; L.R.Taylor, Roman Voting Assemblies from the Hannibalic War to the Dictatorship of Caesar, (1990) 3-8, 62-3; and Linderski, ANRW, II.16.3 (1986) 2197, Staat, 41f. On Cicero's claim (Asc., 76 C) that the first tribunes of the plebs were elected *auspicato* see Mommsen, StR.III.151 nn.2, 3; R.M.Ogilvie, A Commentary on Livy Books 1-5, Oxford, (1965) 381; and Linderski, Staat, 41 n.22. Zonaras, VII.19 erroneously claimed the tribunes of the plebs were given the right to take the auspices for assemblies (see Mommsen, RF.I.165, StR^3.II.283; Botsford, op cit., 104 n.7). Badian, *Imperium Sine Fine*, (1996) 199f argues the tribunes "by a slow and painless appropriation of Patrician augural techniques" gradually "developed some form of auspication." But if this was so, it is difficult to see how Dionysius of Halicarnassus, who had firsthand experience, could have categorically stated that even in his day tribunes and aediles of the plebs were elected "without auspices or any other religious observances."

[48] See Cic., De leg.ag., II.26; Ad Brut., I.5.4; Sall., Hist., III.39.15M (= III.34.15 McGushin); Messalla apud Gell., NA.XV.13.4; Livy, IV.8.5, 43.10, VI.38.7; cf. Festus, 442 L; Dio, XLVI.45.3-4. See Mommsen, StR^3.I.16, 18; Willems, op cit., I.128; G.Lobrano, SDHI, 41 (1977) 245-77; Develin, Antichthon, 15 (1981) 113-4; Social Struggles in Archaic Rome, (1986) 341; Linderski, Staat, 40-41. Not to be confused with instances where the expression means magistrates of patrician birth (as Cic., Domo 38; Livy, VI.41.6, IX.33.3).

[49] See Plut., QR.81; Livy, II.56.11-13, cf. II.35.3; Mommsen, StR^3.II.281f.

[50] In the Fifth and early Fourth Centuries before the creation of the praetorship and before the tribunes of the plebs acquired the *ius consulendi senatus* in default of consuls, consular tribunes or a dictator the senate could not be convened and the patrician senators had no alternative but to take matters into their own hands.

[51] See Mommsen, RF.I.231-3, and StR^3.I.655-6; Lange, Röm.Alt.^{3}, I.288, II.386; Liebenam, RE.IX.2.1716-17; Greenidge, op cit., 147-8, 273; Magdelain, Hommages à J.Bayet, 447-8.

[52] Livy, VI.41.6.

[53] See Asconius, 31 C and Dio, XL.49.5 on the year 52 (see Mommsen, RF.I.231-3, StR^3.I.655-6; O'Brien Moore, RE Suppl.VI.676-7; Lange, Röm.Alt.^{3}, I.288, II.386; Herzog, op cit., I.615-6, 931-2; Willems, op cit., II.25-28; Liebenam, RE.IX.2.1716-17; Greenidge, op cit., 147-8, 273; Magdelain, Hommages à J.Bayet, 447-8). The date at which this procedure was adopted is disputed (see next note).

de patriciis convocandis qui interregem proderent by a tribune of the plebs.[54] Senatorial deliberation ensued and barring objections a *senatus consultum* was issued instructing the patrician senators to assemble and appoint an *interrex*. Technically the patrician prerogative remained untrammelled as the *senatus consultum* was not a formal legal requirement - nothing prevented the patrician senators from assembling of their own volition as before and they continued to appoint the first *interrex* 'sine suffragio populi.'[55] Yet it is clear that in practice the purely customary requirement of a preliminary *senatus consultum* was considered binding.[56] Evidently, it was no longer felt appropriate that the patrician senators act without the consent of the senate as a whole. The new procedure effectively circumscribed the former freedom of the patrician senators and brought the interregnal procedure within the realms of senatorial competence. Whereas formerly the initiative for the resort to an *interregnum* lay solely with the patrician senators, henceforth the initiation of an *interregnum* was dependent on the approval of the whole senate, including the plebeian senators, and subject to the sanction of the plebs in the person of their representatives - the tribunes.[57] There could no longer be a question of the patrician senators engineering an *interregnum* to advance the interests of the patriciate and frustrate the designs of the plebs.[58]

The changes to the *patrum auctoritas* were more far reaching. In 339 the plebeian dictator Q.Publilius Philo carried a series of laws advantageous to the plebs. The second

[54] Asconius, 31 C. When the new procedure was adopted is unknown. Mommsen merely stated the tribunician acquisition of the *ius consulendi senatus* about the time of the *Lex Hortensia* provided a *terminus post quem* (StR³.I.655-6, II.316). Livy thought a *senatus consultum* had always been customary (see III.40, IV.43, V.17.4; cf. Dion.Hal., VIII.90.4) but Mommsen, StR³.I.655 n.2 dismissed these early *senatus consulta* as fictive. Unfortunately, from the Third Century onward *interregna* were very rare and the sources on those that occurred are miserably inadequate. Only two *interregna* are treated at any length in the surviving sources - those of 216 (Livy, XXII.33.9-35.4) and 82 (Appian, BC.I.98). Livy's account of the former is problematic (see Gruen, CSCA, 11 (1978) 61-74), and Appian's account is highly compressed and imprecise (see Gabba, Appiani Bellorum Civilium Liber Primus², (1967) 341; Linderski, ANRW, II.16.3 (1986) 2183). Some scholars have nonetheless interpreted Sulla's direction to the senate to choose an *interrex* to mean that he instructed the senate to pass a *senatus consultum de patriciis convocandis* and so initiate an *interregnum* (see Willems, op cit., II.20 n.5). There is some merit in that suggestion, for if the *senatus consultum* was not already an accepted part of the interregnal procedure by 82, it should not have been necessary for Sulla to issue any instructions - the patrician senators could have begun proceedings without any formal direction. Bleicken, Das Volkstribunat der klassischen Republik. Studien zu seiner Entwicklung zwischen 287 und 133 v. Chr., (1955) 90 n.2 tentatively suggested that this procedure, which is not attested before Cicero's time, was an innovation of the Ciceronian epoch. But given the lamentable state of the sources, arguments from silence are especially vulnerable. Jahn, op cit., 16 considered the procedure was in place by the Second Century.

[55] This is stressed by Mommsen, StR³.I.655-6; Herzog, op cit., I.615-6; O'Brien Moore, RE Suppl.VI.677; and Liebenam, RE.IX.2.1716-17.

[56] Thus in 53 and 52 anarchy was permitted to continue until the tribunes gave up their opposition and allowed the *senatus consultum* to be passed. If it had been permissible for the patrician senators to meet and initiate the *interregnum* without the *senatus consultum* surely they would have done so.

[57] The tribunes could, if they so desired, obstruct the initiation of an *interregnum* as they did in 53 and 52 (Dio, XL.45; Asc., 31 C). Though this was of course not done as a result of a dispute between patricians and plebeians. Livy, IV.43.7 retrojects the intervention of tribunes of the plebs into the early Republic. Estimates of the limits of the tribunician right of intercession in an *interregnum* vary (see Mommsen, RF.I.231-3, StR³.I.261, 655-6; Herzog, op cit., I.732).

[58] Whether the *interregnum* could ever in fact have been used to this end is disputed. It is a common allegation concerning *interregna* in the early Republic (see for instance Livy, IV.51.1, VII.22.2, 28.10, VIII.23.14-17, XXII.34.9). The answer is dependent on the extent of the influence credited to the *interrex* in conducting elections (see above and especially Staveley, op cit., 200f, 208f).

of these, the *Lex Publilia de patrum auctoritate*, provided that the patrician senators must give their consent to legislation presented to the *comitia centuriata* before the commencement of voting.[59] Subsequently, the principle was extended to elections by the *Lex Maenia de patrum auctoritate*.[60] The two laws combined effectively reduced the *auctoritas patrum* to a formality.[61] Other constitutional developments further circumscribed the role of the *patrum auctoritas* in the legislative process. By the Hannibalic War most legislation was presented to the *concilium plebis*.[62] As this assembly was not subject to the *auctoritas patrum*, by the later Third Century the bulk of legislation will have been passed without reference to the sanction of the patrician senators.[63]

The last major consequence of the distinction was removed when two plebeian consuls were elected for the first time in 172. In 215 religious impediments had carried the day and thwarted this plebeian advance, but the incident was also, paradoxically, illustrative of the progress of the plebs. It is significant that there was no pre-emptive attempt to block Marcellus' *petitio*.[64] There was no debate as to the legitimacy of his candidacy - the matter was not referred to the augurs to establish whether the election of two plebeian consuls would constitute a *religio*.[65] There was no attempt by the consul presiding over the *comitia* to refuse the candidacy of a plebeian. In the consular elections for 172, conducted by the patrician consul of 173, two plebeians were returned once more.[66] The significance of the event was lost on Livy who failed to remark on the innovation.[67] Others were more alert.[68] Whereas in 215 the observance of a *prodigium*

[59] Livy, VIII.12.16. See Mommsen, RF.I.241f, and StR.III.1037 n.2, 1042-3.

[60] Cic., Brutus 55; De vir.ill., 33. The date of the *Lex Maenia* is disputed. Willems, Le Sénat, II.69-73 argued for 338 (followed by Greenidge, op cit., 125; Staveley, op cit., 201; Twyman, op cit., 292-3). Mommsen, StR.III.1042 placed it shortly after 292 (followed by Lange, Röm.Alt., II.116; Botsford, op cit., 230; Broughton, MRR.I.193, 237; and Bleicken, Lex Publica, 296). The latter date seems most probable. It is said the concessions obtained by the *Leges Publilia* and *Maenia* were forced on the patricians on occasion before the passage of these laws (see Cicero, loc.cit.; Livy, IV.6.3, VI.41.14).

In an attempt to explain Livy's account of the consular elections for 216 Twyman argued the *Lex Maenia* did not apply during an *interregnum*.

[61] Livy, I.17.9, in clear reference to the *Leges Publilia* and *Maenia*, states that the *patrum auctoritas* had been robbed of significance by being placed "priusquam populus suffragium ineat." Scholars differ as to precisely how this change rendered the *auctoritas patrum* ineffectual (see Mommsen, RF.I.242f, StR.III.1040f; Herzog, op cit., I.256-7; Biscardi, Auctoritas Patrum, (1987) part II 39ff; Bleicken, Lex Publica, 300f; and Magdelain, op cit., 40f).

[62] See Botsford, op cit., 236f; Taylor, Roman Voting Assemblies, (1990) 5f, 74, 100f.

[63] It is sometimes argued on the basis of Appian, BC., I.59 that Sulla in 88 contemplated restoring the *patrum auctoritas* to its pristine form. But the reform to which Appian refers was a measure designed to reassert the principle that legislation should not be presented to the people without the consent of the senate (see Mommsen, StR^3.II.312, III.158; Botsford, op cit., 405f; Willems, Le Sénat, II.104-6; Gabba, Appiani Bellorum Civilium Liber Primus^2, Florence, (1967) 171f; Salmon, REL, bis (1969) 335; A.Keaveney, Eirene, 20 (1983) 71f; and Biscardi, Revue Historique, 29 (1951) 153f, Auctoritas Patrum, Naples, (1987) part V.

[64] There was initially some disquiet when Marcellus was dispatched to Campania as some suspected he was being deliberately removed from competition, but the consul Ti.Gracchus was quick to allay these suspicions by declaring the election would not be conducted until Marcellus' return (Livy, XXIII.31.7-10).

[65] As Linderski pointed out, ANRW, II.16.3 (1986) 2171.

[66] Namely - L.Postumius Albinus (Livy, XLII.9.7-8).

[67] Livy, XLII.9.8 reports the result of the election without comment.

had brought the election of Marcellus undone, in 172 no *prodigium* materialized and it was thereby tacitly established that the election of two plebeian consuls was no longer displeasing to the gods.[69] Evidently, the religious climate of the early Second Century was far removed from the milieu that had prevailed in 215.[70] As the gods gave no sign of their displeasure at the result, and the augural college was unperturbed, the plebeians were thereby implicitly granted *de facto* parity with patriciate in the administration of the *auspicia publica populi Romani*.[71] As a result the doctrinal considerations which had guaranteed the patrician claim on one consulship *per annum* were swept away and the plebeians gained unfettered access to both consulships every year.[72]

After 172 the distinction was only recognizable in certain fossilized constitutional relics that were neither a threat, nor of interest to the plebs. Plebeian senators still had no say in granting the *patrum auctoritas,* but its application was now much restricted and the grant had become a purely formal process. Nor did plebeian senators play an active part in the interregnal procedure subsequent to the passage of the *senatus consultum de patriciis convocandis,* but the mechanism of the *interregnum* was an extraordinary resort and the time had passed (if it ever existed) when it might be manipulated for patrician ends. And the magistrates of the plebs and the *concilium plebis* still lacked the sanction of the auspices, but their resolutions were no less binding.

Yet even in the late Republic the patriciate occupied a unique place in the Republican constitution.[73] The proper functioning of the Roman state was predicated on the perpetual transmission of the auspices and when the continuity of transmission was interrupted only the patrician senators could restore the auspices and resuscitate the Republic by securing the *renovatio auspiciorum* through the *interregnum*. Likewise only patrician senators could rule on the validity of legislative and electoral proceedings in the assemblies of the whole people in the form of the *auctoritas patrum.*[74] By the late Republic the interregnal procedure and the *auctoritas patrum* had been modified to render them compatible with the reality of plebeian partnership in the governance of the state. Nevertheless, the patrician senators were the ultimate guarantors of the Republic,

[68] The occasion was noted in the *Fasti Capitolini* (see Degrassi, Inscriptiones Italiae, XIII.1, 50-51, 458-9).

[69] Livy, XLII.20.1-6 does record a number of prodigies in 172, but there is no suggestion that they were thought to be linked with the outcome of the elections. As Linderski, Staat, 42 remarked, the results of the election must have gone unchallenged. If the results had been the subject of dispute, Livy, and the annalists on which he relied, would not have passed over the event in silence.

[70] This is no doubt partly due to the fact that the religious hysteria evident during the Hannibalic War subsided after the successful conclusion of the conflict (see the comments of Linderski, Staat, 42).

[71] Linderski, Staat, 43 and Badian, *Imperium Sine Fine*, (1996) 212 n.42 suggest that the augural college in 172 came up with some ingenious sacral solution to the religious obstacles to an all-plebeian consular college.

[72] The result was the proliferation of all-plebeian consular colleges see Chapter II.

[73] Noted by Develin, Social Struggles in Archaic Rome, (1986) 340.

[74] It was not without reason, therefore, that consideration of these two institutions prompted Greenidge, op cit., 147 to declare the "first fundamental element" in the theory of the Roman constitution was that "ultimate sovereignty" rested with the patrician members of the senate (cf. Staveley, Historia, 32 (1983) 39 n.46). But "sovereignty" is a malapropism as the unique role accorded to patrician senators was based on their special affinity with the *auspicia publica*, and Juppiter, not the patriciate, was the source of the auspices.

inasmuch as, when normal government lapsed it was the patrician senators that restored the *auspicia publica* and reforged the pact with Juppiter which formed the foundation of the Republican system of government. It was recognized that whilst the *auspicia publica*, the *interregnum* and the *auctoritas patrum* endured, the patriciate remained in a very real sense indispensable to the continuity of the Roman state.[75]

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[75] Cicero, De Domo 38; cf. Dio, LII.42.5-6. After the fall of the Republic traditionalists thought the *interregnum* should be retained (Cic., De Leg., III.9), but resort to the interregnal procedure was deliberately evaded in 49, in 43, and in the early Principate (see Mommsen, StR^3.I.648-9; Jahn, op cit., 181-6, 188-90; Linderski, ANRW, II.16.3 (1986) 2181-4).

II

THE PATRICIATE AND POLITICAL OFFICE: THE CONSULSHIP

In the mid-Fourth Century after years of agitation the patriciate was finally forced to yield to the demands of the plebeians for greater parity. The resulting settlement, hammered out over a generation, entailed a radical redistribution of power. The patrician monopoly of high office was irrevocably shattered and a comprehensive demarcation of political responsibility between the orders took its place.[1] As before the plebeians were to continue to have exclusive responsibility for the tribunate and aedileship of the plebs, as well as, unrestricted access to the quaestorship. In addition, they were now to have equal access to all the regular curule magistracies - the consulship (from 366), the curule aedileship (from 364), the censorship (from 351) and the praetorship (from 336). Furthermore, plebeians were to enjoy, at least in principle, equal access to the dictatorship (from 356) and the office of magister equitum (from 368).[2] After more than one and a half centuries in operation, signs of a strain in the division of political responsibility between the orders emerged during the Hannibalic War, but despite considerable pressures the *status quo* was maintained. Yet in the course of the Second Century the settlement collapsed. The principle of equal representation of the orders in high office was abandoned and the plebeian share of the offices of state gradually increased at the expense of the patriciate.

The settlement reached in the Fourth Century did not take root overnight. For the overwhelming majority of the predominantly plebeian electorate accession to high office was neither in prospect nor even an ambition and having propelled their leaders into the consulate they were content to return to matters of more immediate concern. Moreover, among the patricians there were those who continued to hanker after their former prerogatives. The combination of these two factors sufficed to enable the patricians to flout the provisions of the *Leges Liciniae Sextiae* regarding the consulate on no less than seven occasions in the 350's and 340's[3], and only determined plebeian opposition prevented all-patrician colleges in 352 and 350.[4] The *principes* of the plebs, dismayed by the diffidence of the majority of their own order, and stung by the intransigence of the patriciate, were finally compelled to act. In 342 the *Lex Genucia* not only reaffirmed the plebeian claim on the consulship - it went further allowing for the contingency that both consuls might be plebeian.[5] The threat of open competition had the desired result, and barring one occasion

[1] The plebeians had already achieved some successes in the Fifth Century. Access to the quaestorship was conceded to the plebeians in 421, though the first plebeians were elected in 409 (Livy, IV.43.3-12, 54.2-9). And according to Livy, V.12.11-12, VI.37.8 the first plebeian consular tribune was elected in 400 (though the *fasti* seem to indicate plebeians had been elected earlier see MRR.I.84-5).

[2] In practice plebeian access to these offices remained contentious into the early Third Century as the *fasti* demonstrate. During the Hannibalic War these offices were no longer a bone of contention between the orders (the dispute between Fabius and Minucius being a strategic one). After the War the office was not in use during the Republic except for the years 82-80.

[3] In 355, 354, 353, 351, 349, 345, and 343 on which see Münzer, RAA, 21-34.

[4] Livy, VII.21.1-4, VII.22.10-11.

[5] Livy, VII.42.2. Livy's account of the *Leges Licinia Sextia* and *Genucia* has been queried (see most recently J.-C.Richard, Historia, 28 (1979) 65-78; R.Billows, Phoenix, 43 (1989) 112-33; T.J.Cornell,

during the First Civil War, the *Lex Licinia Sextia* was thereafter duly observed whilst the Republic endured.[6] After 342 the plebeian elite continued to abide by the terms of the power sharing agreement enshrined in the *Leges Licinia Sextia,* irrespective of their entitlements under the *Lex Genucia*, enabling the patriciate to maintain a *de facto* monopoly on one consular place *per annum* until 172.[7] There are indications that into the early Third Century there remained in some quarters residual disaffection with the new lot of the patriciate but it was not successfully translated into action for the plebeian claim on the consulate was already too well entrenched.[8]

In the late Third Century, due to the pressure of domestic events, the equal representation of the orders in the consulship became the subject of renewed scrutiny. With the outbreak of the Second Punic War attention was once more focused on the consulship. There was intense pressure to chose the right candidates - men capable of rising to the military challenge - particularly after the debacles early in the War and it was in this context that the necessity to have mixed consular colleges was challenged.[9] On two separate occasions during the War strategic considerations prompted a reassessment of the principle of equal representation of the orders in the consulate.

In the consular elections for 215 a mixed college was returned consisting of the patrician L.Postumius Albinus (for the third time) and the plebeian Ti.Sempronius Gracchus. Albinus was subsequently killed in Gaul before taking up office. In the election of a suffect the plebeian M.Claudius Marcellus (cos.222) won a landslide victory.[10] But following

The Beginnings of Rome: Italy and Rome from the Bronze Age to the Punic Wars (1000-264 B.C.), Routledge, (1995) 334f). Some scholars argue the *Lex Licinia Sextia* had only provided for the possibility that one plebeian consul might be elected and that it was only the *Lex Genucia* that made the election of one plebeian consul mandatory (thus K.von Fritz, Historia, 1 (1950) 8, 25f, Richard, Billows, and Cornell). Most objections centre on the fact the *Lex Genucia* is said to have made it possible to elect two plebeian consuls in 342 but that this did not happen until 172. Yet this is readily explicable, for although the *Lex Genucia* made it legally permissable to elect two plebeian consuls, as late as 215, there remained religious objections which prevented this eventuality (see Chapter I and further below).

[6] The occasion was the year 86 (vide infra).

[7] That is not as surprising as it may seem for even in the late Third Century the patrician claim on one consulship was guaranteed by religious sensibilities (see Chapter I and further below).

[8] Appius Claudius Caecus, who had led the patrician opposition to the admission of the plebeians to the pontifical and augural colleges in 300, continued to resist the limitations imposed on the patriciate by the *Leges Licinia Sextia* and *Genucia*. As *interrex* in the 290's Appius is said to have refused to accept the names of plebeian candidates for the consulship, but his obstructionism was ultimately unsuccessful (Cic., Brut.55; De vir.ill., 33 and 34). Caecus is also credited with further agitation when a candidate for the consulship of 296. When the *centuria praerogativa* unanimously named the presiding consul Q.Fabius Maximus Rullianus, Caecus, intent, we are told, on obtaining the consulate for himself and on restoring the patrician claim to both consulships, intrigued to have himself elected as Fabius' colleague (Livy, X.15.7-12). Caecus reportedly had significant support among the "nobilitas" but his attempts to turn back the clock were thwarted by Fabius, not it is said, because he was averse to declaring two patrician consuls elected, but because he refused to put forward his own name. Caecus succeeded in getting himself elected, but with the plebeian L.Volumnius Flamma Violens as his colleague. Though the details of these episodes are problematic (see Broughton, MRR.I.175 n.2, III.78-9, T.A.Ph.Soc., 81 (1991) 25; Develin, Practice, 149ff), and the portrait of Caecus as the arch-patrician reactionary must be modified (see Mommsen, Römische Forschungen, (1864) I.285-318; G.C.Fiske, HSCP, 13 (1902) 1-59; and T.P.Wiseman, Clio's Cosmetics: Three Studies in Greco-Roman Literature, (1979) 57-139), some patrician discontent may be credited. Sallust, Historiae, frg.11 M indicates that friction between the orders continued until the Second Punic War.

[9] On the conduct of the elections during the War see M.Patterson, TAPA, 73 (1942) 319-40; and Develin, Patterns, passim and Practice, 82f, 118f, 153f.

[10] Marcellus was elected "ingenti consensu" (Livy, XXIII.31.13).

the observance of a *prodigium,* and consultation of the augural college, Marcellus was declared a *vitiosus consul* due to his plebeian status, whereupon he promptly resigned and was replaced by the patrician Q.Fabius Maximus.[11] These events made an indelible impression on the voters as may be seen in the consular elections for 214 and 210 which were also unusual.[12] In both years the *centuria praerogativa* voted for a mixed college.[13] In both cases they were dissuaded from their initial choice on strategic grounds.[14] In both instances they heeded the advice offered and chose two different mixed colleges.[15] In these years and for the remainder of the War the *comitia centuriata* never even entertained the prospect of electing anything other than mixed colleges of consuls.

The senate, on the other hand, was moved to question the wisdom of the *Lex Licinia Sextia* in the run up to the consular elections of 208. In that year the senate considered the patrician C.Claudius Nero deserving of the consulate. The difficulty lay in the selection of his colleague. The senate desired a candidate who would moderate Nero's exuberance but was prevented from nominating any of the natural choices (Q.Fabius Maximus, M.Valerius Laevinus, or T.Manlius Torquatus) because the *Lex Licinia Sextia* prohibited the election of two patricians.[16] Eventually the impasse was resolved via the expedient of iteration. The senate settled on a veteran plebeian colleague for C.Nero, M.Livius Salinator (cos.219), but the choice was clearly not the optimum solution as Nero and Salinator were personal enemies.[17] Nevertheless, the people concurred in the senate's choice and C.Nero and M.Salinator were elected. Ap.Claudius Crassus must have been revolving in his grave seeing that in a dire emergency the best candidates were being passed over simply because they were patrician. According to Livy, this very contingency had been one of his principal objections to the Licinian law.[18] Not that Salinator was second rate, his ability as a general had been established in his first consulate, but he had not been the senate's first choice and the decision to foster his candidacy was predicated on the ineligibility of the preferred patrician candidates. The elections of 208 are the last reported instance during the War when the patrician or plebeian status of consular candidates was an issue and the customary division of consular places endured for a generation to come.

Thus during the Hannibalic War the principle of equal representation of the orders in the consulate which had prevailed since the Fourth Century was tested from opposite perspectives in 215 and 208. In both cases, though for different reasons, the *status quo* was

[11] The doctrinal basis of the verdict of the augural college was treated in the previous chapter.

[12] See Livy, XXIV.7.11-9.4, XXVI.22.2-13.

[13] In 214 the patrician M.Aemilius Regillus and the plebeian T.Otacilius Crassus. In 210 the patrician T.Manlius Torquatus and the plebeian T.Otacilius Crassus again.

[14] M.Aemilius Regillus was *flamen Martialis* (or *Quirinalis*), and if elected, would have had to neglect either his sacral or military responsibilities. Torquatus declared himself unfit for service due to his physical infirmity. And Crassus was dismissed as unequal to the task.

[15] For 214 Q.Fabius Maximus and M.Marcellus. For 210 M.Marcellus and M.Valerius Laevinus.

[16] Livy, XXVII.34.9-10: "quia duos patricios creari non liceret." Torquatus was also no longer willing to serve (see above).

[17] For the enduring personal antagonism of Nero and Salinator see Livy, XXVII.35.6-9, XXIX.37.8-17. As the Romans had discovered to their cost in 216, personal animosity between consuls was potentially disastrous militarily.

[18] Livy, VI.40.17-41.3.

preserved. As late as 215 the *de facto* patrician monopoly of one consulate *per annum* was protected by religious considerations. Even at this late stage the proposition that the election of two plebeian consuls was an offence in the eyes of the gods was accepted by all strata of Roman society with equanimity. Indeed, the religious impediment to the election of an all-plebeian consular college was considered binding to the extent that it unquestionably took precedence over the contrary expression of the otherwise sacrosanct popular will and any strategic imperative. The events of 215 reinforced the patrician claim to a unique relationship with the gods and in consequence the special place they enjoyed in the Roman state. In 208 it was the plebeian claim on one consulship *per annum* that came under review. Whereas the objection to the election of two plebeian consuls had been religious, the impediment to the election of two patrician consuls was solely legal, yet the senate evidently thought it unwise to challenge the prevailing statutes. In view of the recognized priority of strategic considerations during the War, it is particularly significant that the senate and people of Rome did not abandon the restrictions on their choice of candidates and appoint the best men irrespective of their order. Though some concessions were made in the religious sphere during the War, neither the senate nor the people were willing in 215, or afterward, to risk the wrath of the gods by electing two plebeian consuls.[19] Equally, despite a willingness to relax some of the legal constraints imposed upon their choice of candidates, the senate did not even consider the temporary abrogation of the *Lex Licinia Sextia* in order to permit, if desirable, the election of two patrician consuls.[20]

Following the successful conclusion of the Hannibalic War, the traditional disposition of consular places came under threat once more. This time the eventuality that had been narrowly averted by the intervention of the 'gods' in 215 came to pass in the consular elections of 172 when two plebeians were elected for the first time for the year 172. Our understanding of the events that led to this development is hampered by the quantity and quality of the source material. Unfortunately, we are totally reliant on Livy. That is a serious handicap at the best of times, but Livy's political narrative at this juncture is conspicuously barren. We do not hear of any attempt to elect two plebeian consuls between 214 and 173 and when two plebeian consuls were elected for the first time in 172 the result is reported by Livy without comment.[21] The break-through was, however, duly recorded in the *Fasti Capitolini* with the notice *ambo primi de plebe*.[22] For those conscious

[19] Thus for example the first non-curule *pontifex maximus* in one hundred and twenty years was elected in 212 (see Livy, XXV.5.1-4; MRR.I.142, 271) and the first plebeian *curio maximus* was elected in 209 despite patrician opposition (see Livy, XXVII.8.1-3; MRR.I.289).

[20] A number of laws and customs which restricted the choice of magistrates were rescinded or relaxed. Thus the desire to appoint men of proven ability led to a dramatic surge in the level of iteration. This necessity was recognized and provided for by a special statute passed in 217 allowing for the election of ex-consuls as long as there was war in Italy (Livy, XXVII.6.7). Further, contrary to custom, non-praetorian consuls and non-consular censors were elected, and abnormally accelerated careers were tolerated. Note also when in the consular elections for 214 Fabius presided over his own election, Livy remarks that due to the exigencies of the situation no attempt was made to find a satisfactory precedent for that event (XXIV.9.9-10).

The militarily undesirable limitations the law and religion placed on the choice of consuls were partly alleviated by the allocation of pro-magisterial commands.

[21] Livy's silence is deafening. Livy, XLII.9.8 merely records the names of the consuls without further comment: - "Consules C.Popillium Laenatem P.Aelium Ligurem creavit." For what it is worth, Livy makes no mention of any statute additional to the *Lex Genucia* to facilitate the change (a possibility canvassed by Develin, Practice, 283 and Badian, Chiron, 20 (1990) 411).

[22] See Degrassi, Inscriptiones Italiae, XIII.1, 50-51, 458-9.

of the development the innovation must have seemed a dire portent for the patriciate.[23] The significance of the election of the first all-plebeian consular college was far reaching. It served as incontestable evidence that the election of two plebeian consuls was acceptable in the eyes of the gods and so removed the religious scruple which had been the last remaining guarantee of the patrician hold on one consulate *per annum*. Consequently, the precedent established in 172 damaged the prospects of all future patrician consular candidates, for thereafter the predominantly plebeian electorate was free to dispose of both consular places as they saw fit, irrespective of the number of patrician candidates. The innovation also facilitated the erosion of other patrician sinecures - most notably the patrician claim on one censorship each year (in as much as censors had to be ex-consuls), which in turn potentially threatened the patrician monopoly of the post of *princeps senatus* (since the *princeps* was traditionally chosen from among the patrician *censorii*).[24]

Initially all-plebeian consular colleges were elected relatively infrequently. The first all-plebeian college in 172 was followed by two more in successive years (171, 170), but the next two decades produced only four all-plebeian colleges (167, 163, 154, 153). And of this modest total, the all-plebeian college of 154 was the product of a suffect election. Originally a mixed college was elected consisting of the patrician L.Postumius Albinus and the plebeian Q.Opimius, but when Postumius died he was replaced by a plebeian suffect - M'.Acilius Glabrio. Thus the year 154 witnessed both a mixed and an all-plebeian consular college and the election of Glabrio is noteworthy as the only instance under the Republic where a plebeian suffect superseded a patrician consul.[25] The 140's witnessed the election of only one all-plebeian college (in 149). But the respite the patriciate enjoyed down to the 140's evaporated in the 130's - a decade which ushered in an era of dramatic increases in the number of all-plebeian colleges. Four were elected in the 130's (139, 135, 133, 132). The number increased to six in the 120's (129, 128, 125, 124, 122, 120), at which level it held steady in the next decade (119, 118, 117, 114, 113, 112).[26] The

[23] The elections were conducted by the patrician consul of 173 - L.Postumius Albinus (Livy, XLII.9.7-8).

[24] See Chapters III and V.

[25] The election of M.Marcellus in 215 of course proved abortive (on M.Aemilius Lepidus consul suffect in 221 see MRR.I.234-5. P.Decius Mus cannot have been consul suffect after the death of Q.Fabius Maximus Gurges in 265 as in MRR.I.201-2 see Develin, Practice, 74). After 172 ten suffect consuls were elected (two in 162, two in 65 to replace the convicted *designati*, and one each in 154, 130, 108, 87, 86 and 68). In only two cases (154 and 86) was the suffect of a different order to his predecessor. In 154 a plebeian replaced a patrician, in 86 a patrician replaced a plebeian, producing the first all-patrician consular college since 343 (vide infra). In all other known instances under the Republic the suffect consul belonged to the same order as his predecessor (the suffect of 68 has been doubted see Badian, PBSR, 52 (1984) 67f, Chiron, 20 (1990) 393. If accepted, he was a plebeian like his predecessor L.Metellus whether he was a (Servilius?) Vatia see Badian, loc.cit., or a (Cornelius Lentulus?) Vatia see Sumner, CP, 73 (1978) 162-3). That this should have been the case even after 172 is somewhat surprising. After 172 the order to which *suffecti* belonged ought to have been a matter of indifference, but it appears normally *suffecti* continued to be chosen from the same order as their predecessor. The number of cases is too large to be a statistical anomaly, perhaps the conservatism of the Roman electorate is the explanation. After 49 when the number of *suffecti* increased dramatically they were often appointed irrespective of their order (thus in 45 the plebeian Caninius succeeded the patrician Q.Fabius Maximus. And in 44 Caesar was succeeded by the now plebeian P.Dolabella (see also the years 43, 35, 34, 33, 32, 31 etc). But then after 49 all-patrician consular colleges were also frequently tolerated (see below).

[26] The number of all-plebeian colleges in these years is affected by the status of the Marcii Reges. The Marcii Reges were accounted patricians by A.Afzelius, Class. et Med., 7 (1945) 151, 158 and Badian, Chiron, 20 (1990) 402 n.13. If so, the year 118 was a mixed college. But the Marcii Reges were plebeian.

last decade of the Second Century saw a further increase in the number of all-plebeian colleges, with seven elected in all, including five successive colleges between 105 and 101 (109, 107, 105, 104, 103, 102, 101). The beginning of the First Century coincided with an improvement in the fortunes of the patriciate. In the 90's the patricians enjoyed a substantial recovery with the number of all-plebeian colleges declining to four (98, 96, 95, 94). The 80's saw a further reduction in the number of all-plebeian colleges. Only two were elected (89, 82) - a level not witnessed for decades. But the aberrant success of the patriciate in these years could not endure. The 70's saw the number of all-plebeian colleges elected rise to five (76, 75, 74, 73, 70).[27] The incidence rose again in the 60's to six (69, 68, 67, 63, 62, 60) - a figure equal to the numbers elected in the 120's and 110's and only surpassed by the era of C.Marius.[28] But in the 50's there was a sudden and dramatic decline in the number of all-plebeian colleges. Only two were elected (58, 55) - a return to the level of the 160's, 150's and 80's.

The cause of the advent of all-plebeian consular colleges and the fluctuation in patrician representation in the consulate between 172 and 49 warrants some consideration.

It is undeniable that the number of patrician *gentes* producing magistrates of the highest rank was in decline from the early Fifth Century.[29] A casual glance at the *fasti* for the consulship and the consular tribunate confirms this.[30] Between 509 and 445, 44 patrician

Contra Afzelius and Badian, the Marcii Reges derived the *cognomen* from Ancus Marcius (see Plut., Coriol.1, Numa 21; Suet., Iul., VI.1; cf. Pliny, NH.XXXI.41; Frontin., Aq., I.7), not from the *rex sacrorum* 'M.Marcius' (20) who died in 210 (Livy, XXVII.6.16, 36.5). The Reges were surely related to the other *stirpes* of the plebeian Marcii who also claimed descent from Ancus (see Plut., Coriol.1; Ovid, Fasti, VI.803; and Crawford, RRC nos.346, 425 on the Marcii Philippi and Censorini). If the *rex* was a patrician Marcius and ancestor of the Marcii Reges (as per Afzelius and Badian) the experience of the family is entirely unique. For while some patrician families held office in the early Republic only to subsequently fade away, and yet others managed to maintain themselves in high office albeit often with diminishing frequency, the *rex* Marcius and the Marcii Reges must be presumed the descendants of a patrician family not attested in office between the inception of the Republic and the appointment of the *rex sacrorum* and only coming to prominence in the last century of the Republic. If that were so, it is contrary to the experience of any known patrician *gens* (as Afzelius, Ibid., 151 confessed). And pace Badian, the fact that no Marcius Rex is known to have held plebeian office, and both of the family's consuls (in 118 and 68) had plebeian colleagues, is hardly compelling evidence of their supposed patrician status. Only four, possibly five, Marcii Reges are on record and their early careers are poorly documented, hence we cannot know whether any of them held plebeian magistracies. It is worth considering the possibility that Q.Marcius (31) tr.pl c.68 was a Rex. Clearly, the *rex sacrorum* 'M.Marcius' was a patrician (Livy, VI.41.9; Cic., De Domo 38). But perhaps he was a M.Manlius not a M.Marcius. The patrician Manlii are said to have eschewed the *praenomen* Marcus, but a Manlius M.f. Acidinus was military tribune in 171 (Livy, XLII.49.9). Plus there is an interesting parallel. The patrician Claudii supposedly avoided the *praenomen* Lucius, but witness L.Claudius (21) *rex sacrorum* in 57. I suggest knowledge of the ban on the *praenomen* Marcus in the Manlii led someone to 'correct' the *gentilicium* Manlius to Marcius.

[27] The consular elections for 77 might also have produced an all-plebeian college, but for the decision of C.Curio to stand aside, so as not to threaten the chances of Mam.Aemilius Lepidus Livianus (see below).

[28] The year 68, like 118, was not an all-plebeian college, if the Marcii Reges are considered patrician.

[29] The numerical decline of the patriciate is a common theme. See the treatments of Mommsen, RF.I.107-127; Münzer, RAA, 283-327; A.Afzelius, Class. et Med., 7 (1945) 188-196; Develin, Patterns, 31-57; cf. H.C.Heiter, De patriciis gentibus quae imperii Romani Saeculis I, II, III fuerint, Diss., Berlin, (1909) and H.H.Pistor, Prinzeps und Patriziat in der Zeit Augustus bis Commodus, Diss., (1965).

[30] This method is of course imperfect, since questions remain as to the reliability of the early *fasti* in general and on the problem of the appearance of plebeian names in particular. In addition, the records of the consulship and consular tribunate only reveal the most successful families, whereas when we possess records for the praetorship and lower offices they establish the existence of a larger number of patrician

gentes provided consuls.[31] Between 444 and 401, despite the increased number of places available due to the institution of the consular tribunate, the number of patrician *gentes* in high office dropped to 27.[32] In the period 400-367 the number declined further to 20.[33] Whereas in the years 366 to 286 only 14 patrician *gentes* produced consuls.[34] The number remained static at 14 between 285-155.[35] While in the final epoch of the Republic 154-49 the number of patrician *gentes* producing consuls shrank to 12.[36]

It is equally true that the number of patrician praetors being elected was in decline in the period 218-166. We may conveniently refer to Develin's analysis of the praetorship in the period 218-167.[37] Develin divided the years 218-167, when we have full information on the praetorship, into three periods: 218-198, 197-180, 179-167. Between 218 and 198 four praetors were elected annually, whereas between 197 and 167 six praetors were elected *per annum,* except for the years 179, 177 and possibly 175, when as a result of the *Lex Baebia* of 181 there were only four.[38] In the period 218-198 Develin calculated that the patricians obtained 41.2% of the available praetorships, as against the plebeians who

families which provided magistrates but were unable to reach the consulship. Consequently, this method only provides a rough order of magnitude as to the number of politically viable patrician *gentes*. Needless to say this method should not be used as a measure of the size of the patriciate *per se,* since the number of patrician *gentes* providing magistrates is not a reliable indicator of the number of patrician *gentes* then in existence. Patrician and plebeian families alike often endured periods of obscurity and some families continued to exist long after they produced their last known magistrate (see further below). Causal references and lists of priests often betray the existence of patrician families that for various reasons had fallen out of the political elite. Thus although as early as 366-286 only 14 patrician *gentes* were producing consuls, 19 patrician *gentes* can still be identified in the period 227-166 (A.Afzelius, Class. et Med., 7 (1945) 188-196 counted 20 as he included the Marcii Reges who were plebeian). Here, however, we are only concerned to gauge the number of patrician families capable of producing the highest level magistrates.

[31] Namely the Aebutii, Aemilii, Aternii, Aquillii, Cassii, Claudii, Cloelii, Cominii, Cornelii, Curiatii, Curtii, Fabii, Furii, Geganii, Genucii, Herminii, Horatii, Iulii, Iunii, Larcii, Lucretii, Manlii, Menenii, Minucii, Nautii, Numicii, Pinarii, Postumii, Quinctii, Quinctilii, Romilii, Sempronii, Sergii, Servilii, Sestii, Sicinii, Sulpicii, Tarquinii, Tarpeii, Tullii, Valerii, Verginii, Veturii, and Volumnii.

[32] Namely the Aebutii, Aemilii, Atilii?, Claudii, Cloelii, Cornelii, Fabii, Folii, Furii, Geganii, Horatii, Iulii, Lucretii, Manlii, Menenii, Nautii, Papirii, Pinarii, Postumii, Quinctii, Sempronii, Sergii, Servilii, Sulpicii, Valerii, Verginii, and Veturii.

[33] The Aemilii, Cloelii, Cornelii, Fabii, Furii, Geganii, Horatii, Iulii, Lucretii, Manlii, Menenii, Papirii, Postumii, Quinctii, Sergii, Servilii, Sulpicii, Valerii, Verginii, and Veturii.

[34] Viz. the Aemilii, Claudii, Cornelii, Fabii, Folii, Furii, Manlii, Nautii, Papirii, Postumii, Quinctii, Servilii, Sulpicii, and Valerii.

[35] The Aemilii, Claudii, Cornelii, Fabii, Furii, Iulii, Manlii, Papirii, Postumii, Quinctii, Servilii, Sulpicii, Valerii, and Veturii.

[36] The Aemilii, Claudii, Cornelii, Fabii, Furii, Iulii, Manlii, Postumii, Quinctii, Servilii, Sulpicii, and Valerii.

[37] Develin, Patterns, 46ff, 92, Practice, 277ff. Develin did not to include the praetors of 166 in the last period though they are preserved in Livy (XLV.44.2), but their exclusion does not materially affect the results obtained (see below).

[38] The increase to six praetors is noted by Livy, XXXII.27.6, Per.XXXII. The *Lex Baebia* provided that there should be only four praetorships in alternate years (see Livy, XL.44.2; Mommsen, StR^3.II.198f; T.Corey Brennan, The Praetorship in the Roman Republic down to 81 B.C., Diss., Harvard, (1990) 219f). The statute affected the years 179 and 177, when only four praetors were elected, and possibly the praetorian elections for 175, though it seems, it had already been set aside in that year (see MRR.I.403 n.3; Develin, Patterns, 136, 282). The law had certainly been set aside by 173 when six praetors were elected.

took 58.8%.[39] In the period 197-180 Develin calculated the patrician share of the praetorship fell to 39.1% and the plebeian share rose to 60.9%.[40] Whilst in the period 179-167 Develin reckoned the patrician share declined to 27.5% and the plebeian share climbed to 72.5%.[41]

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[39] That is the patricians obtained 35 out of a total of 85 praetorships. The plebeians taking the remaining 50. According to my own calculations the patricians took 40% and the plebeians 60% i.e. the patricians gained 34 of the 85 available praetorships and the plebeians 51. The single discrepancy between Develin's figures and my own in this period stems from the fact that Develin counted Q.Claudius Flamen, praetor in 208, as a patrician and I have counted him as a plebeian. There is no decisive evidence as to his status. He is sometimes identified with the author of the tribunician *Lex Claudia* of 218 (Münzer, RE.III.2721). But this implies an inordinately delayed *cursus* (the identification was rejected by Badian, JRS, 61 (1971) 102 and E.Rawson, Historia 26 (1977) 349). The *praenomen* Quintus cannot disprove membership of the patrician Claudii (as Badian, loc.cit. see E.Rawson, Ibid., 349-50). On the other hand, the *cognomen* cannot establish patrician status (as Broughton, MRR.I.294 n.1; cf. Rawson, Ibid., 350). Claudius may himself have been, or have been descended from, one of the twelve plebeian *flamines minores* and not necessarily one of the three patrician *flamines maiores*. Rawson's claim that no one would bother to distinguish themselves by a *cognomen* had they only held a minor flaminate is vulnerable. The *cognomen* of the Popillii Laenates was derived from the distinctive cloak worn by one of their earliest luminaries who was *flamen Carmentalis*. Given the uncertainty I consider it better to err on the side of caution and account Claudius plebeian.

As Develin realized, C.Sergius Plautus (36) pr.200 was a patrician, though not marked as such by Broughton (see Syme, Historia, 4 (1955) 66, AJP, 103 (1982) 62-85 and Badian, ZPE, 55 (1984) 101f).

[40] Develin calculated patricians took 43 and plebeians 67 of the available 110 praetorships. I would calculate the patrician share at 41 or 37.27% and the plebeian share as 69 or 62.73%. The discrepancy centres on P.Manlius (31) pr.195, 182. Mommsen, RF.I.91 n.41 declared this man plebeian because Livy never equips him with any of the *cognomina* borne by members of the patrician *gens*, and because he was a *triumvir epulonis* (Livy, XL.42.6-7) and Mommsen considered this priesthood exclusive to the plebs. Klose, Römische Priesterfasten, (1910) 2-3 and Münzer, RAA, 49, 202f, RE.XIV.1.1159-61, on the other hand, reckoned Manlius a patrician Vulso (tentatively followed by Broughton, MRR.I.338, 340, 382; and Develin, Patterns, 48 table XV. The *praenomen* rules out an Acidinus or Torquatus). Mommsen's arguments are not impregnable. That the praetor is lacking a *cognomen* is suggestive but not decisive. Livy does regularly accord the patrician Manlii their *cognomina*, excepting instances where their identity was clear and this was redundant, but despite multiple references L.Manlius Vulso pr.218 is only once credited with the *cognomen* (XXII.35.2). And Mommsen's claim that plebeians exercised a monopoly of the epulonate is a *petitio principii*. There were definitely patrician *epulones* in the First Century and some scholars have argued patricians were always eligible (see Bardt, Die Priester der vier grossen Collegien aus römisch-republikanischer Zeit, (1871) 31-2, 37; Klose, Römische Priesterfasten, (1910) 1ff; and Chapter VI and Appendix VII infra). Nevertheless, Manlius was probably a plebeian. His successor as *IIIvir* was a plebeian, and as the principle of ordinal succession was applied without exception in the priestly colleges at this time, Manlius ought to be a plebeian. In addition, Manlius is not easily accommodated in the *stemma* of the Vulsones (as Klose, Ibid., 3 acknowledged).

I have conceded patrician status to L.Postumius Tempsanus (62) pr.185, as did Develin (see Patterns, 48 table XV), though this is far from certain. Mommsen, RF.I.116 registered the praetor and L.Postumius Tympanus (65) quaestor in 194 as 'Postumii Tympani' and considered both were probably plebeian. Livy equips neither with the *cognomen* Albinus normally accorded to members of the patrician house, but if Tympanus and Tempsanus were *agnomina*, it is possible Livy omitted the *cognomen* (note XLV.17.2 where A.Postumius Albinus Luscus (cos.180) is simply styled A.Postumius Luscus). Münzer considered both patrician (on Tympanus see RE.XXII.1.915-6, 949; for Tempsanus see RAA, 204, but note RE.XXII.1.944-5 where Münzer questioned his very existence). Broughton, MRR.I.344, 372 tentatively followed Münzer. If Tempsanus is accurate, it might be taken as an honorific *agnomen*, i.e. the praetor was L.Postumius (Albinus) Tempsanus - though he is not known for any feat connected with Tempsa. But it is possible it was intended to declare his origins, i.e. he hailed from Tempsa in Bruttium, and so distinguish him from the patrician Postumii (cf. M.Postumius Pyrgensis, or C.Fabius Hadrianus).

T.Corey Brennan, The Praetorship in the Roman Republic down to 81 B.C., (1990) 102 without sufficient warrant rejected the praetorships of P.Cornelius Cethegus and M.Claudius Marcellus in 185.

[41] In the period 179-167 there were 74 praetorships (Cn.Cornelius Scipio and C.Valerius Laevinus listed by Livy as praetors in 177 should be disregarded see MRR.I.399 n.1 and 2; Develin, Practice, 281; T.Corey Brennan, The Praetorship in the Roman Republic down to 81 B.C., (1990) 102). It is probable that 6 praetors, not 4, were elected in 175 (the praetorships of the plebeians Q.Baebius Sulca and Cn.Lutatius Cerco are not certain, but were accepted by Broughton; Develin, Practice, 284 n.28 and T.Corey Brennan).

Moreover, a number of structural changes put in place in the first quarter of the Second Century made the effects of the decline in the number of patrician praetors more acute.

When the Hannibalic War ended so to did the abnormal electoral practices it had engendered with two important consequences:- there was an immediate decline in the high level of iteration tolerated during the War; and there was an end to the election of non-praetorian consuls. During the War following the passage of a special law in 217 the existing statutes against iteration of office were abrogated 'so long as there was war in Italy' in order that the people might choose as often as required the most competent men to prosecute the War.[42] When the War ended this dispensation was eliminated and thereafter iteration was only permitted in exceptional circumstances.[43] At the same time changes were taking place in the *cursus honorum*. By the latter years of the Hannibalic War it was already customary for consular candidates to have held the praetorship.[44] During the course of the War a significant number of exceptions were made due to the emergency.[45] However, following the War the principle was reinstated and in, or shortly after, 197 the expectation that consular candidates be ex-praetors passed into law.[46] These changes were

Of the seven praetors listed by Broughton for the year 170 Develin, Practice, 288 rejected Domitius Ahenobarbus. Broughton considered T.Aebutius Parrus, pr.178, a plebeian although he reckoned M.Aebutius Helva, pr.168, who bears the *cognomen* of the Fifth Century Aebutii, a patrician (MRR.I.428; as did Afzelius, Class. et Med., 7 (1945) 188). Develin considered the existence of patrician Aebutii in the Second Century "highly doubtful" and reckoned Parrus and presumably Helva plebeian (see Practice, 280 n.14, 348). But a number of other decayed patrician families appear during and after the Hannibalic War, like the Cloelii, Pinarii, Quinctilii and Sergii, so patrician Aebutii would not be unique. Even so, I have counted the Aebutii as plebeians to avoid any possibility of inflating the figures for the patriciate. The Lucretii praetors in 172 and 171 were plebeians - probably sons of Sp.Lucretius aed.pl.206, pr.205. Both Develin and Broughton were aware that L.Claudius, pr.174, was a patrician (note the homonymous *rex sacrorum*).

Develin's figures for this period do not add up. He must have calculated the total number of praetorships in this period as 74. He also stated that the plebeians took 57 of the praetorships in the period, which leaves only 17 for the patricians. Yet patricians occupied at least 21 praetorships and the plebeians not more than 53. Moreover, he says the patricians got 27.5% of the praetorships from which it follows he calculated the plebeians took 72.5%. But 17/74 is 22.97% and 57/74 is 77.03%. My figures indicate the patrician share of praetorships in the period 179-167 was 21/74 or 28.38% and the plebeian 53/74 or 71.62%. If the year 166, which Develin omitted, is included patricians got 23/80 or 28.75% of the praetorships and plebeians 57/80 or 71.25% in the period 179-166.

[42] Livy, XXVII.6.7.

[43] See Develin, Patterns, 93f, Practice, 117f, 280, 287.

[44] Most of the consuls elected during the War, especially those elected for the first time, had held the praetorship. The number is probably even higher than it appears since the record of the praetorship prior to 218 is practically non-existent. Consequently, it is unknown whether men like P.Cornelius Scipio (cos.218); Ti.Sempronius Longus (cos.218); or Cn.Servilius Geminus (cos.217) had done so. The trend perhaps began following the increase from two to four praetorships *per annum* about 227 (see Develin, Patterns, 23f, 81f and Practice, 89f; T.Corey Brennan, Athenaeum, 67 (1989) 476, 484).

[45] During the War a number of consuls did not hold the praetorship. Those who certainly did not are: Ti.Sempronius Gracchus (cos.215, 213); P.Sulpicius Galba (cos.211, 200) who had held no curule office prior to his election to the consulate (Livy, XXXV.41.11); Q.Caecilus Metellus (cos.206); P.Cornelius Scipio Africanus (cos.205); M.Servilius Pulex Geminus (cos.202); and Cn.Cornelius Lentulus (cos.201).

[46] After the War apart from P.Galba (cos.211) and Scipio Africanus (cos.205), who were re-elected to the consulate in 200 and 194 respectively, only three patricians were elected consul who had not been praetor: L.Cornelius Lentulus (cos.199); T.Quinctius Flamininus (cos.198), who like Galba had not previously held any curule office (Livy, XXXII.7.8-12); and C.Cornelius Cethegus (cos.197). The phenomenon was even less common amongst plebeians - the only case being Sex.Aelius Paetus Catus (cos.198). The only other exceptions to the rule under the Republic were P.Scipio Aemilianus and C.Marius (cos.82), but the former was exempted from the law, and the latter was self-appointed not elected. On the existence of the

compounded by the passage of the *Lex Villia Annalis* in 180. The *Lex Villia* put into effect age requirements and made the observance of a *biennium* between the praetorship and the consulate obligatory.[47] The combined effect of these measures was to increase the burden on the patriciate. For the re-enactment of the provisions against iteration meant that there was a greater number of consular places for the patriciate to fill.[48] While the prohibition on iteration, together with the exclusion of non-praetorian consular candidates, and the tabling of a statutory *biennium* and age requirements, meant that should any shortage of qualified patrician consular candidates arise, the deficiency could not be remedied by the election of men who were under age, had not been praetor, or had only recently laid down another office.[49]

To these factors may be added a pre-existing structural anomaly. The praetorship was the only regular curule magistracy for which open competition between the orders was permitted.[50] Originally a patrician preserve, the praetorship was thrown open to the plebs in 336.[51] From 336 until 242, when there was only one praetorship per year, the

statute of c.197 which established the obligatory status of the praetorship see Astin, Latomus, 16 (1957) 602f, especially 609f; and Corey Brennan, Athenaeum, 67 (1989) 476. Develin, Patterns, 20, 81, 84f contended there was no such law, but agreed the praetorship was in practice an obligatory prerequisite for the consulship.

[47] On the provisions of the *Lex Villia Annalis* see A.E.Astin, Latomus, 16 (1957) 588-613, Latomus 17 (1958) 49-64; Badian, JRS, 49 (1959) 81-89; Sumner, Orators, 6ff; and T.Corey Brennan, The Praetorship in the Roman Republic down to 81 B.C., (1990) 219f. Develin, Patterns, 86f, 97 disputed Astin's conclusion that the *Lex Villia* enforced a statutory *biennium* between the praetorship and the consulship, but accepted that an effective *biennium* was produced by the age regulations put in place by the *Lex Villia* and by the force of custom.

[48] Of the eighteen consulships that went to patricians between 218 and 202 six were taken by ex-consuls (see Broughton under the years 216, 215, 214, 210, and 209).

[49] During the War the high level of iteration in the consulship coupled with the ability to promote non-praetorian individuals would have enabled any shortfall of patrician consular candidates to be made up. Thus the election of non-praetorian patrician consuls in the years 205, 201, 200, and 199 may be linked to the election of all-plebeian praetorian colleges in 207, 206 and 202. That a shortage of patricians manifested itself during the War is possible. The level of mortality was quite extraordinary, as may be judged from the *lectio* necessary in 216 to fill 177 vacancies in the senate (Livy, XXIII.22f). Indeed, the election of all-plebeian praetorian colleges, and the highly anomalous election of P.Sulpicius Galba and P.Cornelius Scipio to the consulship for 211 and 205, might be construed as evidence for a dearth of patricians. However, the level of iteration in the consulship during the War was not precipitated by a shortage of patricians, it was dictated by strategic considerations. Thus the abortive election of M.Claudius Marcellus as suffect consul in 215 to replace the deceased patrician consul designate was a decision based on considerations of merit and strategy and not conditioned by the lack of patricians. And in some years the election of ex-consuls actually displaced other patrician candidates. In 216 the election of L.Aemilius Paullus, for the second time, displaced the patricians P.Cornelius Merenda, L.Manlius Vulso, and M.Aemilius Lepidus (none of whom was ever consul), and the election of Q.Fabius Maximus, for the fourth time, in 214 displaced M.Aemilius Regillus.

[50] The regular curule magistracies being the consulship, censorship, praetorship, and curule aedileship. There was no stipulated division of the dictatorship, or master of horse, but these offices, though curule, were not regular magistracies.

[51] Livy, VI.42.11-12, VII.1-6, VIII.15.9, X.8.8-9; Lydus, De Magistratibus Populi Romani, I.38. Q.Publilius Philo was the first plebeian praetor (MRR.I.139 n.2). Mommsen, StR^3.II.240 doubted the praetorship was ever an exclusively patrician office, arguing Livy falsely concluded this from the fact that no plebeian was elected until thirty years had elapsed. His suspicions were rejected by F.Stella Maranca, Atti della Reale Accademia Nazionale dei Lincei. Memorie della Classe di scienze morali, storiche e filologiche, 6.2 (1927) 279-80 n.1 and T.Corey Brennan, The Praetorship in the Roman Republic down to 81 B.C., (1990) 28.

office was not shared between the two orders in alternate years (like the curule aedileship).[52] Nor is any other system of regulation discernible. Evidently, both orders were free to compete for the praetorship every year. Nor does it seem likely that any formal regulation was introduced to govern the allocation of places when the number of praetorships was increased to two (from 241) and then four (from 227).[53] During the Hannibalic War the four available praetorships were often shared equally by the patrician and plebeian orders but this was clearly not mandatory.[54] And all-plebeian praetorian colleges were permissible as early as 207 B.C..[55] Once the praetorship became a necessary prerequisite for the consulate, a trend already observable by the Hannibalic War, and a legal requirement from about 197, this anomalous situation posed potential problems for the patriciate. Despite the implicit ramifications for the supply of patrician consular candidates, there was nothing to prevent patricians from being squeezed out of most, or all, of the available praetorian places in any given year.[56] The lack of restrictions on competition permitted the election of predominantly, or entirely, plebeian praetorian colleges, and so potentially threatened the ability of the patriciate to produce one consul each year.

The decline in patrician numbers is not, however, an adequate explanation of the election of the first all-plebeian consular college in 172. There was a substantial decline in the number of patrician *gentes* reaching high office in the early Republic. But the decline witnessed in the period 509-367 stands in stark contrast to the results for the period 366-49. After 366 the number of patrician *gentes* producing consuls remained remarkably stable. Minor fluctuations due to the sporadic success of marginal *gentes* and the temporary

[52] Niebuhr, The History of Rome, W.Smith and L.Schmitz trans., (1842) III.30, 154-5 conjectured the praetorship had alternated between the orders, but as Mommsen, RF.I.96-7 pointed out, this was demonstrably not the case. Though the number of securely dated praetorships between 336 and 242 is small, they suffice to establish that there was no systematic alternation of the praetorship between the orders in the period. Patricians and plebeians are attested in odd and even years: Q.Publilius Philo in 336; L.Papirius in 332; L.Plautius in 322; L.Furius in 318; P.Sempronius in 296; M.Atilius in 293; L.Papirius Cursor in 292; L.Postumius Megellus in 253; and Q.Valerius Falto in 242.

[53] So Mommsen, RF.I.96-7 and T.Corey Brennan, Ibid., 35. Owing to the wretched state of the *fasti praetorii* in the period this cannot be conclusively proven (between 241 and 219 we do not have a single complete praetorian college). However, it is unlikely that laws were enacted in 241 and 227 to regulate the distribution of places, only to be repealed at some date before 213 (when plebeians were elected to three of the four praetorships). Moreover, it is not very credible that the plebeians, having enjoyed unrestricted access to the praetorship between 336 and 242, would have supported the introduction of restrictions on competition which ran counter to their interests.

[54] In thirteen of the twenty-one years between 218-198 the praetorship was divided equally between the patrician and plebeian orders (218-214, 212, 210-209, 205, 203, 201-199). However, the plebeians took three of the four praetorships in 213, 208, 204, and 198 and all four places in 207, 206, and 202. Conversely, patricians took three of the four praetorships in 211.

[55] The first attested all-plebeian praetorian college was elected in 207. Given the lacunose state of the *fasti praetorii* prior to 218, it is possible all-plebeian praetorian colleges had already been elected in the period 241-219. The college of 207 was followed by four more in 206, 202, 192 and 172. The year 168 was also possibly an all-plebeian college, if M.Aebutius Helva was a plebeian, as some commentators believe.

[56] The freedom of competition on occasion worked in favour of the patriciate, as in the years 211, 183, 181 and 174, when the patricians took more than half the available praetorian places. More often, however, it was to the advantage of the plebeians, particularly after 197, when the plebeians more commonly got four praetorian places to the patricians' two. An indication of the level of competition at praetorian elections in the early Second Century is provided by the suffect election of 184 which attracted four candidates, three plebeians, and one patrician (see Livy, XXXIX.39.2-15).

elipse of otherwise successful families cannot disguise this fact.[57] Throughout the period 366-49 12 patrician *gentes* (the Aemilii, Claudii, Cornelii, Fabii, Furii, Iulii, Manlii, Postumii, Quinctii, Servilii, Sulpicii, and Valerii) consistently produced the vast majority of patrician consuls.[58] And despite a possible sharp increase in the level of mortality at the beginning of our period due to the Hannibalic War, there is no evidence for a sudden dramatic decline in patrician numbers capable of explaining the abrupt advent of the all-plebeian consular college of 172.[59]

Similarly, although the figures testify to a decline in the number of patrician praetors elected in the years leading up to 172, the decline was not so marked that it can explain the results of the elections of 172. Develin acknowledged that the decline in the percentage of praetorships going to patricians in the years 197-180 is negligible.[60] What is more, this result gives a totally distorted impression of patrician representation in the praetorship in these years. The marginal decline in the percentage of praetorships going to patricians in the period 197-180, as compared with the period 218-198, is quite illusory in real terms. The decline in percentile terms is the result of the increase in the number of praetorships from four to six from 197. In reality when the number of praetorships available increased, so too did the number of patrician praetors.[61] While the proportion of patrician praetors in the expanded college remained virtually static, in real terms the number increased substantially.[62] The drop in the period 179-167 is undoubtedly more significant (over 11% on the previous period based on Develin's calculations).[63] And unlike the decline registered for the previous period, the decline in the percentage of praetorships going to patricians in

[57] Thus in the period 366-286 two marginal *gentes*, the Folii and Nautii, produced consuls whilst the otherwise successful Iulii 366-286 did not.

[58] The one significant omission from the consular *fasti* in the Second and First Centuries is the patrician Papirii. The last patrician Papirius was consul in 231. But the record of the Papirii in the late Fourth and early Third Centuries was inflated by the careers of three exceptional individuals (L.Papirius Crassus (45) cos.336, 332, 330; L.Papirius Cursor (52) cos.326, 320, 319, 315, 313; and L.Papirius Cursor (53) cos.293, 272). However, the Papirii did not die out with their last consul (see below).

[59] Thus although cavalry mortality at Cannae may have hit the patriciate hard there is no sign of the sudden extinction of patrician families in the period which might be put down to the War. A number of patrician families produced their last consul during, or just prior to the Hannibalic War, but as we shall see many demonstrably survived long after their last consul.

[60] Patterns, 47, Practice, 124.

[61] The number of patrician praetors increased due to the expansion of the praetorship and the decline in the level of iteration in the praetorship after the War. Between 218-198 3 of the 34 praetorships that went to patricians were taken by ex-consuls (P.Furius Philus (80) cos.223, pr.216; L.Postumius Albinus (40) cos.234, 229, pr.216; M.Valerius Laevinus (211) cos.220, pr.215) and a further 1, possibly 2, were taken by an ex-praetor or ex-praetors (a M.Aemilius see RE nos.2, 19, 67 is recorded as praetor in 218, 216, and 213, and it is disputed whether this was one man, or two, or three men see MRR.I.238, 240 n.2, 249, 253 n.2, 263, 266 nn.1, 2, III.6-7; Sumner, Orators, 66; T.Corey Brennan, Athenaeum, 67 (1989) 474-5, The Praetorship in the Roman Republic down to 81 B.C., (1990) 525f). Whereas in the period 197-166 only 1 of the praetorships that went to patricians was taken by an individual who was iterating (M.Furius Crassipes pr.187, 173). Thus in addition to the increased number of praetorian places available to patricians after 197, fewer places were taken by individuals who were iterating.

[62] On Develin's reckoning from 35 between 218-198, to 43 between 197-180. On my calculations from 34 between 218-198, to 41 between 197-180. That is, an increase of 20.59% [7/34] or 22.86% [8/35].

[63] The drop is somewhat less than 9% on my figures (i.e. from 37.27% to 28.38%).

the period 179-167 amounted to a substantial decline in real terms.[64] However, the decline is not as drastic as it may seem. The drop represents a return to the level of praetorships the patricians obtained in the 190's - a level which should have enabled the patriciate to continue to provide one consul *per annum* in the 170's. [65]

Furthermore, if a shortage of patrician praetors was the cause of the advent of the all-plebeian consular college of 172, we ought to observe a steady decline in the number of patrician praetors who were never consul in the years preceding 172, until it reached the stage that the few patrician praetors elected were virtually assured of a consulship. Whereas in fact, in the years running up to 172, a significant number of the patrician praetors elected were never consul. Of the 34 patrician praetors elected between 218 and 198 17, 18, or 19 (50%, 52.94% or 55.88%) were never consul.[66] Between 197 and 180, 24 of the 41 patrician praetors elected (58.54%) were never consul.[67] While 16 of the 21 patrician praetors elected between 179 and 167 had the opportunity to seek the consulship, but 12 (75%) were never consul.[68] The increase in the number of patrician praetors never consul in the period 197-180, as against 218-198, was to be expected, given the increase in the number of praetorships available and the number of patrician praetors elected after 197. That the increase was not greater still is due to the fact that during the Hannibalic War the number of patrician praetors never consul will have been abnormally high as a result of the dramatic upsurge in the level of iteration in the consulship, and the election of non-praetorian consuls. The continued increase in the number of patrician praetors never consul in the period 179-167 is more significant. Though the number of patrician praetors elected in the years 179-167 was nearly half the number elected in the period 198-180, a significantly greater proportion were never consul. That is, fewer patrician praetors were being elected,

[64] The number of patrician praetors elected in the years 179-167 (i.e. 21 - the total is 23 if the 2 patrician praetors of 166 are included) was nearly half the number elected in the period 197-180 (i.e. 41). But it must be remembered the period 197-180 encompassed 18 years and the period 179-167 only 13 years.

[65] If the years 219-170 are divided into ten year periods: between 219-210 there were at least 18 patrician praetors elected, possibly as many as 20 (the praetors of 219 are not recorded. L.Furius Bibaculus may, or may not, have been praetor in 219 see MRR.I.237); between 209-200 there were 11; between 199-190 there were 17; between 189-180 there were 25; and between 179-170 there were 17. Thus the number of patrician praetors elected in the 170's was not abnormally low, rather it appears the 180's was the aberrant decade.

[66] The discrepancy depends on whether M.Aemilius (see RE nos.2, 19, 67) pr.218, 216, 213 is considered one man, or two, or three men (see above). Of the three patrician ex-consuls who held praetorships in 216 and 215 only one was not subsequently re-elected to the consulship (P.Furius Philus (80) cos.223, pr.216. L.Postumius Albinus (40) cos.234, 229, pr.216 was consul designate for 215; and M.Valerius Laevinus (211) cos.220, pr.215 was consul in 210).

[67] It is possible that M.Sergius Silus (40) pr.197, presuming he survived long enough, was effectively excluded from the consulship by the crippling injuries he had received during the Hannibalic War (see Pliny, NH.VII.104-6; cf. Dion.Hal., V.25.3-4; Suet., Galba III.3-4).

[68] Of the 21, 5 had no opportunity to seek the consulship due to various mishaps: M.Cornelius Scipio Maluginensis (348) pr.176 and L.Cornelius Scipio (325) pr.174 were expelled from the senate by the censors of 174 (Livy, XLI.27.2); P.Furius Philus (82) pr.174 was prosecuted for peculation and convicted on returning from his province in 171 (Livy, XLIII.2.8-11); N.Fabius Buteo (56) pr.173 died on the way to his province (Livy, XLII.4.2); and L.Furius Philus (77) pr.171 died in 170 (Livy, XLIII.11.13).

If the figures for the year 166 are included 14 of the 18 patrician praetors elected in the period 197-166 who had the opportunity were never consul i.e. 77.78%. If L.Iulius (Caesar) (28, 127) pr.166, is the praetor Caesar who died suddenly in office (see MRR.I.437), he had no opportunity to seek the consulship in which case the figures for the period 197-166 would be 13/17 or 76.47%.

but proportionately more of them would never be consul. If a dearth of patrician praetors was the explanation of the advent of the first all-plebeian consular colleges, we would expect to see fewer patrician praetors elected and proportionately more of them becoming consul due to the lack of competition. The truth of the situation is apparent in the consular elections of 172. Even only taking into account the praetors elected in the three years between 178 and 175 (the praetors of 175 being the last eligible for the consulate of 172), there were five patrician praetors who might have competed for the consulship of 172, but none of them was ever consul.[69] Clearly, there was no absolute dearth of patrician praetors in the lead up to the year 172, rather there remained a significant pool of potential patrician consular candidates.

That there was a drastic shortage of patrician candidates in the period is also belied by the level of competition evident at consular elections. In recounting the elections for 192, 191 and 184, Livy departed from his normal practice and recorded the names of the candidates.[70] He repeatedly emphasizes that the number and distinction of the patrician candidates, produced hotly contested elections.[71] Though less sensational, there was also competition between a number of patrician candidates at the consular elections for 189, 188 and 185.[72] The evidence is sufficient to demonstrate that at least down to the 180's

[69] The five patrician praetorians are: Ti.Claudius Nero (251) pr.178; C.Quinctius Flamininus (40) pr.177; L.Papirius Maso (62) pr.176; Ap.Claudius Centho (103) pr.175; and Ser.Cornelius Sulla (2, 388). The praetorships of Centho and Sulla are not directly attested due to a lacuna in the text of Livy which has swallowed the results of the elections for 175 (Livy, XLI.18.15f). They are revealed by the commands Centho and Sulla held in 174 (see Münzer, RAA, 218f; MRR.I.402; T.Corey Brennan, The Praetorship in the Roman Republic down to 81 B.C., (1990) 186, 223). On Centho see further below. M.Cornelius Scipio Maluginesis (348) pr.176 was eliminated from contention (see the preceding note).

[70] In 192 there were three patrician candidates: P.Cornelius Scipio Nasica; L.Quinctius Flamininus, Cn.Manlius Vulso (see Livy, XXXV.10.1-11). In 191 there were again three patrician candidates: Nasica, Vulso and L.Scipio, the brother of Africanus (see Livy, XXXV.24.4-6). In 184 there were four patrician candidates: L.Aemilius Paullus, Q.Fabius Labeo and Ser.Sulpicius Galba, all of whom were "veteres candidati", and P.Claudius Pulcher who was competing for the first time (see Livy, XXXIX.32.6-7).

[71] Livy, XXXV.10.4 on 192: "Omnium oculi in Quinctium Corneliumque coniecti; nam et in unum locum petebant ambo patricii, et rei militaris gloria recens utrumque commendabat." Livy, XXXV.24.4 on 191: "Eo quoque anno magna ambitio fuit, quod patricii tres in unum locum petierunt." Livy, XXIX.32.7-8 on 184: "Etiam quia plus quam unum ex patriciis creari non licebat, artior petitio quattuor pententibus erat." In spite of Livy's insistence at this time the patrician candidates were in fact no worse off than their plebeian counterparts for though the plebeians were legally eligible for both consulships the religious impediments that prevented the election of two plebeians in 215 continued as yet to rule out all-plebeian consular colleges. Livy's remarks are reminiscent of the complaints he had Ap.Claudius Crassus voice in 368 (VI.40.17-41.3). That is, despite a surfeit of highly distinguished patrician candidates the *Lex Licinia Sextia* made the election of one plebeian consul compulsory. One wonders whether this was Livy's own reaction, or reflects the complaints of the patrician candidates in the period.

[72] In 189 there were at least three patrician candidates: M.Aemilius Lepidus (running for the first time); Cn.Manlius Vulso (who had competed without success for the consulships of 192 and 191); and M.Valerius Messalla (Messalla was praetor in 193 and though no previous candidacies are recorded it is unlikely this was his first attempt). Lepidus' candidacy was widely opposed because he left his province early and without permission in order to compete. Messalla received little support, and Vulso was elected. In the elections for 188 only two patrician candidates are known, both of whom had tried unsuccessfully in the previous year: namely M.Messalla and M.Lepidus. Messalla was elected (see Broughton, T.A.Ph.Soc., 81 (1991) 5-6). Though not named by Livy, Ser.Galba must have run unsuccessfully against Ap.Claudius Pulcher in the consular elections for 185 (see Broughton, Ibid., 18 and Develin, Practice, 95). Q.Fabius Labeo suffered at least one other *repulsa* in the elections for 187, 186, or 185, in addition to his failure in 184 (see Broughton, Ibid., 11). Livy makes clear L.Aemilius Paullus' unsuccessful attempt for 184 was not his first (XXXIX.32.5). He must, therefore, have made at least one previous attempt after his return from Asia in 187 and before his failed attempt on the consulship of 184 (see Broughton, Ibid., 6-7). As Paullus returned to Rome after the elections for 187 (see Livy, XXXVIII.44.7-11; not in 188 as in MRR.I.367), this

there was still no shortage of credible patrician consular candidates. Rather the level of competition caused even talented patricians delays.[73] The sources also indicate competition remained fierce into the late 170's, but the names of the competitors are not recorded and hence their status is unknown.[74]

That there was no absolute dearth of potential patrician candidates in the 170's is of course no guarantee that in 172 any of the potential patrician candidates actually competed. It is probable, however, that at least one patrician candidate did contest the consular elections for 172. Ap.Claudius Centho was praetor in 175 and was still among the living in 168, perhaps as late as 154, but was never consul.[75] The elections of 172 would have been Centho's first opportunity to stand for the consulship. Moreover, Centho will have wanted to capitalize as soon as possible on the *ovatio* he celebrated on the *Kalends* of March 173.[76] Consequently, it is most unlikely Centho refrained from competing in 172. That being the case, there are two alternative explanations of the results of the elections for 172. Either, Centho, despite good prospects, was a victim of the unpredictable temper of the Roman electorate.[77] That is, the defeat of Centho, and any other patrician candidates there may have been, in favour of the election of two plebeians, was an unpremeditated innovation. Or else, the election of two plebeians was a conscious and premeditated decision, doubtless incited, or encouraged by the plebeian candidates. The arguments they might have advanced are obvious and difficult to gainsay. First, it was the sovereign right

was presumably in 186, or 185, or perhaps in both years as Valerius Maximus, VII.5.3 suggests he failed more than once. Valerius may, however, have been taking into account Paullus' initial unsuccessful attempt for a second consulate sometime after 182 (Plut., Aem.6.8 - missed by Broughton).

[73] Thus P.Cornelius Scipio Nasica (cos.191), M.Aemilius Lepidus (cos.187, 175), and L.Aemilius Paullus (cos.182, 168) all suffered delays in reaching the consulship in the period. Of the failed patrician consular candidates recorded by Livy in the 190's and 180's all were eventually consul except Ser.Galba. However, Livy had little interest in recording consular candidates except when the contest involved famous men. Undoubtedly, there were others who tried and failed but were not mentioned.

[74] Livy, XLI.28.4 states the elections for 173 were conducted "magna contentione" due to the number of candidates, but he neglected to name them (see further below). Likewise Plutarch, Paullus 10 claims there were a number of candidates for 168, but does not specify their number, identity or status, and Obsequens, 12 says the elections of 166 were conducted "cum ambitiosissime." Livy also more often than not omits the names of failed candidates (see infra), and it is difficult to believe men like L.Manlius Acidinus Fulvianus (pr.188, cos.179), or A.Manlius Vulso (pr.189, cos.178) were elected at the first attempt.

[75] Centho's survival beyond 172 is well attested. He was one of the three legates sent to Perseus in 172 (MRR.I.413-4). He was also legate in Greece and Macedonia in 170-168 (MRR.I.422, 425, 428). It is not certain whether Centho is to be identified with the Ap.Claudius who was legate in 154 (MRR.I.450, 452).

[76] In a single battle Centho is said to have killed, or captured 15, 000 of the Celtiberi and put an end to their rebellion (Livy, XLI.26.2-5; Obsequens, 10). Degrassi, Inscriptiones Italiae, XIII.1.81, 338-9, 556 and Broughton, MRR.I.404 erroneously date Centho's *ovatio* in 174 (Münzer, RE.III.2694 did not venture a precise date). Livy, XLI.28.1 states that the senate decreed a one day *supplicatio* on account of Centho's victory "exitu prope anni." That may mean at the end of the calendar year 174 (i.e. December 174), or at the end of the consular year 174 (i.e. sometime before the 14th of March 173). But whenever the *supplicatio* occurred, it was only later that Centho returned to Rome and was awarded an *ovatio* (Livy, XLI.28.3), and Livy says the *ovatio* was celebrated after the consular and praetorian elections for 173 (Livy, XLI.28.6). Now at this time the consular year began on the 15th of March and the elections were usually conducted in January (see Mommsen, StR^3.I.583-4; MRR.II.638-9). Hence the consular and praetorian elections for 173 will have been conducted in January 173 and Centho's *ovatio* which post-dated the elections must have been celebrated early in 173 not in 174. The day is certified by a fragment of the *fasti Urbisalviensis* as the *Kalends* of March.

[77] On which see Cicero, Pro Murena 35f, Pro Plancio 7f, 51f.

of the Roman people to elect whoever they chose without let or hindrance.[78] Second, the *de facto* patrician monopoly of one consulship every year was increasingly insupportable in view of the greater number of eligible plebeians. Third, the innovation was merely a logical extension of the practice already employed in the praetorian elections where the patricians were not guaranteed any of the available places.[79] It will be remembered that Livy states the consular elections for 173 were conducted "magna contentione."[80] Livy fails to name any but the successful candidates, but as the list of potential patrician candidates was not long, the suspicion is legitimate that the struggle was mainly between the plebeian candidates.[81] The manifest inequity of this situation may have been a springboard to the events of the following year. And when it is recalled that in 172, for the first time in the history of the Republic, not only the consuls, but all the curule magistrates elected were plebeian (both consuls, all six praetors and both curule aediles), it begins to look as though the results were an emphatic statement, not a chance occurrence.[82]

Of course there is no mention of any of this in Livy. But as Livy only exceptionally records the names of the unsuccessful candidates for the consulship, provides next to nothing in the way of political narrative in these years, and patently was unaware of the significance of the consular elections for 172, his silence cannot count against the reconstructions advanced here. But that the annalists on whom Livy relied also neglected to embroider the elections of 172 with tales of strife between the orders suggests either that the break-through was an unpremeditated event, or, if it was the result of a premeditated decision, that the plebeian complaints emerged very suddenly and were rapidly satisfied, leaving little trace on the record.[83] Whether the *petitio* and defeat of Centho is accepted, the election of a significant number of patrician praetors who were never consul in the years preceding 172 demonstrates that the first all-plebeian consular college was not the product of an absolute dearth of patrician candidates.

Indeed, there is other evidence which suggests the events of 172 were occasioned by a plebeian push and not by a dearth of patricians. As a result of the increase in the number of praetorships after 197, competition for the consulship became increasingly intense. In the 190's, 180's, and 170's we are occasionally in a position to observe the ferocity of the mêlée. We are told the consular elections for 192, 191, 189, 188, 184 and 173 all attracted large numbers of contestants.[84] And due to the nature of the evidence the

[78] This argument was used more than once in order to justify departures from the law, or precedent in the selection of magistrates (see for instance the consular elections for 205 198, 148).

[79] Unfettered competition of this kind was also soon to become established practice in the curule aedileship as the practice of alternation of the orders was probably abandoned in the 140's (see Chapter IV).

[80] Livy, XLI.28.4-5.

[81] So Develin, Practice, 281.

[82] This was duly noted by Münzer, RAA, 220. That the curule aediles were plebeian is of less significance since the practice of alternation in the curule aedileship persisted at this period and 172 was a 'plebeian' year (see Chapter IV).

[83] In his narrative of the events of the 170's Livy claimed to have consulted a number of sources see for instance XLII.11.1-2 where Valerius Antias is mentioned among other unnamed annalists.

[84] In 192 there were three patrician candidates (P.Cornelius Scipio Nasica; L.Quinctius Flamininus, Cn.Manlius Vulso) and four plebeians (C.Laelius, Cn.Domitius Ahenobarbus, C.Livius Salinator, M'.Acilius Glabrio) see Livy, XXXV.10.1-11. In 191 there were again three patrician candidates (Nasica, Vulso, and L.Scipio). The only plebeian named was the successful candidate M'.Glabrio who had also competed in 192

level of competition in the period was undoubtedly even fiercer than we know.[85] Other evidence also bears out the congestion at elections in the period.[86] Since after 197 the number of plebeian praetors was on the increase, the fiercest competition will have been among the plebeian consular candidates[87] and the inequity involved in reserving half the available consular places for the patriciate will have become ever more apparent as the number of patrician praetors diminished. An attempt was made to ameliorate the worsening bottle-neck by means of the *Lex Baebia* of 181, but the demands of empire made this a short-lived experiment. As the number of praetors could not be restricted, something had to give, and the indefensibly inequitable patrician hold on one consulship each year was most vulnerable. Not surprisingly, the consular *fasti* for the period reveal the intensity of the struggle between plebeian competitors. During the Hannibalic War the plebeian nobility had dominated the consular places available to the plebs at the expense of new men.[88] However, in normal circumstances a steady trickle of new men were admitted to the consulship, and after the War the consulship was once more within the reach of new men.[89] Indeed, as after 197 new men now found it that much easier to obtain the praetorship,

see Livy, XXXV.24.4-6. In 189 there were at least three patrician candidates (M.Aemilius Lepidus, Cn.Manlius Vulso, and M.Valerius Messalla). The only plebeian named was the victor M.Fulvius Nobilior see Livy, XXXVII.47.6-8. In the elections for 188 two patrician candidates are known (M.Messalla and M.Lepidus), but again only the successful plebeian candidate is recorded see Livy, XXXVIII.35.1; Broughton, T.A.Ph.Soc., 81 (1991) 5-6. In 184 there were four patrician candidates (three seasoned campaigners - L.Aemilius Paullus, Q.Fabius Labeo and Ser.Sulpicius Galba, and P.Claudius Pulcher who was making his first attempt) as well as three plebeians (L.Porcius Licinus, Q.Terentius Culleo, Cn.Baebius Tamphilus all experienced campaigners) see Livy, XXXIX.32.6-7. On the elections for 173 see Livy, XLI.28.4, and the comments made above.

[85] Livy only shows interest in competition at the consular elections in exceptional years and as a result the candidacy of many hopefuls has gone unreported. Thus for instance Q.Fulvius Flaccus (pr.187) suffered a *repulsa* when campaigning for the consulship of 180. When the successful candidate (C.Piso - Flaccus' step-father) died early in his year of office, Flaccus was elected suffect. Livy records in passing that Flaccus' initial failure was his third *repulsa,* but nowhere records his first and second candidacies (Livy, XL.37.4-7). Similarly, it is likely that M.Iunius Brutus (pr.191, cos.178) made earlier unrecorded failed attempts.

[86] In 181 the consuls passed the first law *de ambitu* since 358 (Livy, XL.19.11), and in 182 and 179 the senate moved to curb excessive expenditure by the aediles on games (Livy, XL.44.10). There is also evidence of intense competition in the election of other magistrates in the early Second Century. The election of a suffect praetor in 184 attracted four candidates - three plebeians, and one patrician (see Livy, XXXIX.39.2-15). And when L.Aemilius Paullus campaigned for the curule aedileship of 193, he is said to have had twelve rivals (Plut., Aem., 3.1).

[87] However, Livy's erratic reporting mostly leaves us in ignorance of the identity and number of plebeian consular candidates in these years (see above). As we have seen, the number of patrician competitors in these years was also significant.

[88] The term nobility is here used in the Gelzerian sense, while the term new men is used to connote individuals of non-consular family. The only *novi homines* elected to the consulship during the War were C.Flaminius (cos.223, 217); C.Terentius Varro (cos.216) and perhaps P.Sempronius Tuditanus (cos.204). The latter though of a consular *stirps* may not have been directly descended from a consul (see Afzelius, Class. et Med., 7 (1945) 166-7; Brunt, JRS, 72 (1982) 2). Ti.Sempronius C.f. C.n. Longus (cos.218) was probably a descendant of C.Sempronius Sophus (85) cos.304 (see Afzelius, Class. et Med., 7 (1945) 166-7; Brunt, JRS, 72 (1982) 2). P.Licinius Crassus Dives (cos.205) was probably descended from the C.Licinius Calvus cos.364, or C.Licinius Stolo cos.361 (see Afzelius, Class. et Med., 7 (1945) 155-6; Brunt, JRS, 72 (1982) 4; Badian, Chiron, 20 (1990) 398). And the plebeian Servilii Gemini consuls in 203 and 202 were grandsons of P.Servilius Geminus (67) the patrician consul of 252, 248 (see Münzer, RAA, 136f; Badian, PBSR, 52 (1984) 49f; L.Vones, Historisches Jahrbuch, 97-98 (1978) 1f).

[89] Between the 190's and the 170's the following new men reached the consulship: P.Villius Tappulus (cos.199), M.Porcius Cato (cos.195), M'.Acilius Glabrio (cos.191), C.Laelius (cos.190), L.Porcius

the plebeian nobility had to contend with greater competition in the scramble for the limited number of consular places. In addition, the *fasti consulares* attest a new plebeian assertiveness that boded ill for the patrician hold on the consulship. Between 182 and 168 a number of plebeian dynasties, noble and new, not satisfied with just the one consulship, displayed their *potentia* in a manner imitative of the greater patrician families by advancing pairs of brothers to the consulship in rapid succession.[90] This naturally only exacerbated the pressure on the limited consulships available to the plebs. The competition between plebeian consular candidates in the 190's, 180's and 170's was evidently becoming intolerable and made the change to a more equitable division of consular places between the orders inevitable. The facts suggest it was this pressure, and not an absolute dearth of patricians, that was the determining factor in the results of the consular elections of 172.

The reasons for the periodic fluctuation in patrician representation in the consulship after 172 are more difficult to divine.

The obvious explanation is declining patrician numbers. Unfortunately, in the absence of Livy we have no way of measuring patrician representation in the praetorship in the years 165-49.[91] But there are some apparent indicators of a continued decline in patrician numbers.

Adoption was a favourite strategy for houses of the high nobility verging on extinction. The *remedium fortunae*, adoption had, in the estimation of the Elder Seneca, preserved the patriciate from extinction.[92] That stricture seems unduly excessive. Yet partial confirmation comes from another source. The emperor Claudius proudly advertised

Licinus (cos.184), Cn.Baebius Tamphilus (cos.182), M.Baebius Tamphilus (cos.181), C.Calpurnius Piso (cos.180), Q.Petillius Spurinus (cos.176), C.Cassius Longinus (cos.171), and A.Hostilius Mancinus (cos.170). Cn.Domitius Ahenobarbus (cos.192) was also a new man unless the Ahenobarbi descended from the Calvini (see Afzelius, Class. et Med., 7 (1945) 162; Brunt, JRS, 72 (1982) 3). As was P.Aelius Ligus (cos.172) unless descended from the Paeti (see Afzelius, Class. et Med., 7 (1945) 159-60; Brunt, JRS, 72 (1982) 7; Badian, Chiron, 20 (1990) 375). The brothers Publius and Gaius Licinius Crassus (coss.171, 168) and A.Atilius Serranus (cos.170) were probably *nobiles*. The Licinii Crassi probably descended from the Calvi-Stolones (see Afzelius, Class. et Med., 7 (1945) 155-6; Brunt, JRS, 72 (1982) 4; Badian, Chiron, 20 (1990) 375) and A.Atilius C.f. C.n. Serranus (cos.170), praetor in 192 and 173, was the son of C.Serranus pr.218 and probably the grandson of C.Regulus (47) cos.257, 250 (see Afzelius, Class. et Med., 1 (1938) 57, Class. et Med., 7 (1945) 160-1; Brunt, JRS, 72 (1982) 2 n.9, 5, 7; Badian, Chiron, 20 (1990) 375 suggested Serranus might be a grandson of C.Atilius Bulbus cos.245). On the regularity with which new men were elected to the consulship in normal periods before and after the Hannibalic War see Develin, Patterns, 49f, Practice, passim; Brunt, JRS, 72 (1982) 6f; and Badian, Chiron, 20 (1990) 371-413.

[90] Witness: Cn.Baebius Tamphilus (cos.182), M.Baebius Tamphilus (cos.181), P.Mucius Scaevola (cos.175), Q.Mucius Scaevola (cos.174), M.Popillius Laenas (cos.173), C.Popillius Laenas (cos.172, 158), P.Licinius Crassus (cos.171), C.Licinius Crassus (cos.168). Q.Fulvius Flaccus (cos.179) also served with his brother who had been adopted into patrician Manlii - L.Manlius Acidinus Fulvianus). For earlier and later examples see Develin, Patterns, 54-5 and M.J.Slagter, Transitio ad Plebem, Dissertation, Bryn Mawr College (1993) 241-8. In addition, Q.Marcius Philippus (79) was consul for the second time in 169. In approximately the same period the patrician Quinctii and Manlii produced T. and L.Quinctius Flamininus consuls in 198 and 192; and Cn. and A.Manlius Vulso consuls in 189 and 178. While the patrician Claudii Pulchri and Postumii went one better viz.: A., Sp., and L.Postumius Albinus consuls in 180, 174 and 173; and Ap., P., and C.Claudius Pulcher consuls in 185, 184 and 177.

[91] The vast majority of patrician praetorships listed by Broughton between 165 and 49 are inferred from consulships held by patricians. Very few patrician praetors are known who were never consul, but given the nature of the record this cannot be construed as evidence for a dearth of patrician praetors in the period.

[92] Seneca, Controversiae, II.1.17 has Porcius Latro declare: "...etiam abolita saeculis nomina per successores novos fulgent. Sic illa patriciorum nobilitas fundamentis urbis habet usque in haec tempora constitit: adoptio fortunae remedium est."

it as a signal distinction that the line of the patrician Claudii had been maintained without recourse to adoption from the arrival of Attus Clausus until his own day.[93] It follows that few patrician *gentes* could match this claim. And it is undeniable that as early as the Second Century B.C. some *stirpes* of the greatest patrician *gentes* had been forced to resort to adoption to perpetuate their lines. The most celebrated instance, the adoption of Scipio Aemilianus, was particularly poignant for Aemilianus' adoption postponed the eclipse of the line of Africanus for only one generation whilst inadvertently contributing to the extinction of the Aemilii Paulli.[94] Other examples are readily available. The posterity of Q.Fabius Maximus Cunctator was also assured by sons taken from the Aemilii Paulli and Servilii Caepiones.[95] Even members of comparatively plentiful *stirpes,* like the Cornelii Lentuli and Aemilii Lepidi, at times secured their heredity via the medium of adoption.[96] And the *Lex Cassia* of 45 and the *Lex Saenia* of 29 are also testimony to shrinking patrician numbers.[97]

However, anecdotal evidence is apt to be misleading and we must be wary of making precipitate assumptions. It will be noted that P.Scipio Africani f. and the grandson of the Cunctator selected sons from other patrician houses and not from the plebs. That decision was not unique.[98] Nor was the traffic entirely one sided as the Spanish rhetorician

[93] Suet., Claudius 39; Tac., Ann.XII.25.11. Claudius made the observation when preparing to adopt the last of the Domitii Ahenobarbi. The patrician Claudii did produce at least one case of internal adoption - Ap.Pulcher (299) was a son of C.Pulcher pr.56 adopted by Ap.Pulcher cos.54.

[94] The marriage of Scipio Aemilianus and Sempronia was childless. In addition, the line of Scipio Africanus' younger son, the reprobate Lucius Scipio, also faltered as is shown by a remark of C.Gracchus. Gaius Gracchus stated in 122 that he and his son were the last of the line of Tiberius Gracchus senior and of Scipio Africanus (see Schol.Bob., p.81, 18 Stangl; Malcovati, ORF, II.190f no.47). Gaius was not counting females (his mother Cornelia and his sister Sempronia were then still alive), nor the other descendants of Africanus in the female line (i.e. the progeny of Africanus' elder daughter and P.Cornelius Scipio Nasica Corculum), but he clearly cannot have made this declaration if the younger son of Scipio Africanus had produced male heirs. Evidently, both the direct lines of male descent from Africanus had failed by 122. It is impossible, therefore, to argue that the Caesarian Scipio Salvitto descended from L.Scipio as did R.A.Billows, AJAH, 7 (1982) 61-2.

It is curious that neither L.Aemilius Paullus, nor Scipio Aemilianus adopted sons in order to save their lines from extinction.

[95] Q.Fabius Maximus Aemilianus (109) cos.145 and Q.Fabius Maximus Servilianus (115) cos.142.

[96] Thus the Lentuli Marcellini and Mam.Aemilius Lepidus Livianus. For the evidence see the registers of adoption compiled by M.-H.Prévost, Les Adoptions politiques à Rome sous la République et le Principat, Paris, (1949) and Shackleton Bailey, Two Studies in Roman Nomenclature, (1976) 81-135. The other known cases of patricians adopting plebeians in the Second and First Centuries are: L.Manlius Acidinus Fulvianus cos.179; Q.Servilius Caepio Brutus; D.Iunius Brutus Albinus; C.Iulius Caesar Octavianus; Cornelius Scipio Pomponianus; and C.Valerius Flaccus Tanur[ianus] (186). The adoptions of Octavian, Scipio and perhaps M.Brutus were testamentary.

[97] On the *Leges Cassia* and *Saenia* see Heiter, De patriciis gentibus, (1909) 4 and Pistor, Prinzeps und Patriziat, (1965) 8f.

[98] Other instances of patricians adoped by patricians in the period are: Ap.Claudius Pulcher (299) a Pulcher by birth and adoption; Cn.Cornelius Lentulus Clodianus cos.72; Cornelius Scipio Lepidi filius (318); T.Quinctius Crispinus Sulpicianus cos.9; T.Quinctius Crispinus Valerianus cos.2 A.D.; and M.Valerius Messalla Appianus cos.12. Münzer, RE.IV.1380 and Cichorius, Römische Studien, (1922) 147-8 reckoned Clodianus a Claudius Marcellus by birth, but evidence for Clodianus' purported plebeian origin is entirely lacking. On the other hand, that Sallust, Hist., IV.1 M testifies Clodianus was a patrician cannot establish that he was a patrician Claudius by birth (as per Syme, JRS, 53 (1963) 55 n.7). However, the *agnomen* 'Clodianus' is surely significant (Cic., Ad Att., I.19.2, In Vat., 27; Sall., Hist., IV.1 M). The vulgar or 'plebeian' form favouring the long 'o' over 'au' was paradoxically a conceit of the patrician Claudii and was not used by the noble plebeian Claudii (see Münzer, RAA, 273f; W.Allen, CJ, 33 (1937) 107-110 and

implies. Plebeian families sometimes adopted patricians.[99] While it must be remembered that the *Leges Cassia* and *Saenia* and the boast of the emperor Claudius post-date the carnage of the Social and Civil Wars.[100] And the desire to boost patrician numbers was not the sole reason for the enactment of the *Leges Cassia* and *Saenia*.[101]

Observe also that other apparent indications of declining patrician numbers are deceptive. A number of patrician families disappear from the consular *fasti* just before, or early in, the period 218-49. Thus the Claudii Nerones produced two consuls in the Hannibalic War (in 207 and 202), but then no more under the Republic. The last patrician Papirius was consul in 231, the last Quinctius Crispinus in 208, the last Sulpicius Galus in 166, and the last Valerius Laevinus was consul suffect in 179. But none of these families died with their last consul. The Claudii Nerones continued in some numbers after 202, producing at least six praetors before the end of the Republic.[102] Despite which they show no more consuls until 13 B.C. when Ti.Nero, the future emperor, was awarded the consulate by his step-father Augustus.[103] The Papirii Masones, the last recorded *stirps* of the patrician Papirii, are also attested long after their last consul. The last Maso recorded in high office was praetor in 176.[104] But the Masones were still producing senators in the First Century, and a prominent *eques* named M.Papirius Maso was murdered at Clodius' behest in 58.[105]

Slagter, Transitio ad Plebem, Diss., (1993) 35f with further references). In Cicero's parlance the *gens Clodia* was the patrician Claudii Pulchri (Ad Q.fr., II.13.2). Consequently, it may reasonably be inferred that Lentulus belonged to the patrician Claudii by birth (see also Shackleton, Two Studies, 88-9, 112-3). The *agnomina* of the Quinctii appear to indicate that both were adopted (Münzer, RAA, 121-2; Syme, AA, 57, 229). But there is a chance that they allude to their maternal ancestry (Syme, Epigrafia e Ordine Senatorio, 1 (1982) 402). Presuming they were adopted, it is probable that they were born into the patrician Sulpicii and Valerii, as there was a surfeit of these families at that time (Münzer, RAA, 122; Syme, AA, 57, 229). P.Cornelius Lentulus Spinther (239) was adopted by a Manlius Torquatus but the adoption was not intended to make up for a lack of progeny (see Chapter VI).

[99] The cases attested in the period are: M.Livius Drusus (Aemilianus); D.Iunius Silanus (Manlianus); Q.Caecilius Metellus Pius Scipio; L.Licinius Crassus Scipio; M.Livius Drusus Claudianus; and M.Gallius (Claudianus) i.e. Ti.Claudius Nero, the later emperor, who was adopted by a M.Gallius. The adoptions of Metellus Scipio, Crassus Scipio and Ti.Nero were testamentary. P.Clodius Pulcher and P.Cornelius Dolabella had themselves adopted by plebeians so as to become eligible for the tribunate of the plebs - i.e. their adoptions were politically motivated and not driven by the desire to perpetuate their adoptive family.

[100] Lucan, Pharsalia, VII.597-8 laments the mounds of patrician dead at Pharsalus with not a single plebeian corpse among them (cf. VII.760-1). Clearly, that is poetic licence, but Dio, LII.42.5 confirms the Civil Wars had devastated the nobility. The effects of fratricidal warfare were further exacerbated by the judicial murders of the Iulio-Claudian emperors.

[101] Caesar and Augustus also used adlection into the patriciate as a means of rewarding partisans.

[102] Ap.Claudius Nero (245) pr.195, Ti.Claudius Nero (250) pr.181, Ti.Claudius Nero (251) pr.178, Ti.Claudius Nero (252) pr.167, C.Claudius Nero (247) pr.81, and Ti.Claudius Nero (253) praetor at an unknown date before 63.

[103] Badian, Chiron, 20 (1990) 381, 402 n.10 suggested Ap.Claudius (11) the consul suffect of 130 was a Nero and not a Pulcher as is normally assumed. If that were the case the Nerones produced seven praetors in the period of whom one went on to be consul. But while the identification is perfectly possible there are no very compelling reasons to reject the traditional assumption that the consul suffect was a Claudius Pulcher. Pace Badian, it is not difficult to fit the consul suffect into the *stemma* of the Pulchri. As Münzer, RE.III.2665-6 saw he will have been a descendant of Ap.Pulcher (294) cos.185.

[104] He was probably a son of C.Maso, the *Xvir sacris faciundis* ?-213, who was a cousin of the consul of 231 (see Münzer, RAA, 111f, RE.XVIII.3.1063-4).

[105] A senator C.Papirius Maso (59) was prosecuted by T.Coponius at an uncertain date in the later Second or early First Century (see Münzer, RAA, 113; Badian, Gnomon, 33 (1961) 493; Broughton,

Given so few Masones appear on the record, it is worth noting that Cicero affirms there were "multi Masones."[106] After the inglorious death of T.Quinctius Crispinus (cos.208), the other *stirps* of the patrician Quinctii, the Flaminini, rose to prominence while the fortunes of the Crispini waned.[107] A son of the consul of 208 was praetor in 186 and managed to restore some of the family's repute by earning a triumph in Spain but was never consul.[108] Thereafter silence envelopes the Crispini though the family endured into the late Republic and beyond. In the last years of the Republic a senatorial scion of the family receives passing mention, T.Crispinus quaestor sometime before 69, probably the ancestor of the Crispini consuls under Augustus.[109] Perhaps the Crispini produced no senators between the praetor of 186 and the quaestor, perhaps they produced senators in every generation in between, we simply do not know. The Κοιντιος who held a command in Spain in 143 may be one of the missing links between the praetor and the quaestor.[110] C.Sulpicius Galus (cos.166) was the last of that *stirps* of the patrician Sulpicii to grace the consular *fasces* under the Republic. But in spite of the barbs of fortune, the line of the Sulpicii Gali did not falter. The consul earned a place in Cicero's lost *consolatio* as one of a number of men who late in life had to endure the loss of a son or sons.[111] However, the consul was survived by at least one son - the young Quintus exhibited for pathos at the trial of his *propinquus* and guardian Ser.Sulpicius Galba (cos.144) in 149.[112] In addition, a

MRR.III.154; and Alexander, Trials, 171-2). And a C.Maso (60) is attested as aedile of the plebs in the early Principate (see CIL.VI.1480 = ILS.907; MRR.III.155). On the *eques* M.Papirius see Münzer, loc cit. and RE no.63. Since Cicero, Ad Fam., IX.21.2-3 seems to speak of the patrician Papirii as if they were extinct by 46, either the Masones underwent a *transitio ad plebem* at some date before 46 which would explain the plebeian aedileship of C.Maso (so Mommsen in CIL and RF.I.116 and Münzer, Ibid.; cf. P.-Ch.Ranouil, Recherches sur le "Patriciat" (509-366 avant J.-C.), Paris, (1975)136-7, 244), or the aedile usurped the *cognomen*.

[106] So Cicero, Ad Fam., IX.21.2.

[107] The Quinctii Flaminini produced consuls in 198, 192, 150 and 123. On the Quinctii Crispini and Flaminini see Münzer, RAA, 114f; Gundel, RE.XXIV.1034f; Badian, JRS, 61 (1971) 102-111.

[108] On L.Quinctius Crispinus (37) pr.186 see Gundel, RE.XXIV.1033-5, and MRR.I.371, 373, 376, 380. Since the praetor was a Lucius and his father the consul was a Titus L.f. L.n. the praetor probably had an elder brother named Titus who may or may not have survived infancy.

[109] Cic., Pro Fonteio 1. See RE no.39 and MRR.II.128. A T.Quinctius Crispinus Sulpicianus was consul in 9 B.C. and T.Quinctius Crispinus Valerianus in A.D.2. Münzer, RAA, 121-2 thought the quaestor the adoptive father of the consul of 9 B.C.. Note also that M.Iunius Silanus (cos.25) was married to a [Cri]spina (IG.VII.1851-2). Perhaps a (Quinctia) Crispina (as suggested by Groag, PIR^2 C 1581, cf. I 830, Die römischen Reichsbeamten von Achaia bis auf Diokletian, Leipzig, (1939) 9-10 and Syme, AA, 190f; cf. Kajava, Comm.Hum.Litt., 91 (1990) 88. The Iunii Silani had links with the Quinctii see Tac., Ann.III.76.2). The Crispini survived into the reign of Caligula (see Suet., Caligula XXXV.1) and possibly beyond (note the polyonymous consul of A.D.187 L.Bruttius Quin<c>tius Crispinus - PIR^1 B 169 but cf. Salomies, Adoptive and Polyonymous Nomenclature in the Roman Empire, (1992) 107).

[110] Quinctius (RE. no.2) see MRR.I.472, 474 n.3, III.178. Münzer, RAA, 121 n.1 suggested this man might be a Quinctius Crispinus. However, he is sometimes identified with Q.Pompeius (cos.141) see Sumner, Orators, 48; T.Corey Brennan, The Praetorship in the Roman Republic down to 81 B.C., (1990) 412f; N.Rosenstein, Imperatores Victi, (1990) 199 no.76. Note also the Quinctius (RE. no.3) legate in 82. The latter fought against Sulla and so presumably damaged his own and his heirs' political fortunes.

[111] Cic., Ad Fam., IV.6.1, De Amic., 9. See Münzer, RAA, 381f, 384f.

[112] Quintus Sulpicius Galus (RE no.69). See Cic., Brutus 90, De Or., I.228; Val.Max., VIII.1.abs.2; Quint., Inst.Or., II.15.8. Since the consul was a Gaius C.f C.n. Quintus may not have been the only son he left behind. For further sources on the trial see Alexander, Trials, 1.

P.Sulpicius Galus was criticized for effeminacy by Scipio Aemilianus during the censorship of 142.[113] Publius was either another late born son of C.Galus (cos.166), or else the progeny of an otherwise unattested collateral line.[114] The Gali then fade from view only to re-emerge with Galus Sulpicius consul suffect in 4 B.C..[115] We can only guess at the fate of the generations in between.[116] The Valerii Laevini were a *stirps* of one of the foremost patrician *gentes*. C.Valerius Laevinus (cos.suff.179), one of at least three sons born to the consul of 220, 210, was their last consul.[117] Nothing more is heard of the Laevini until the Principate when P.Valerius Laevinus a senator in the 30's proved unable to rise above the quaestorship.[118]

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[113] Gell., NA.VI.12.4-5.

[114] P.Galus (68) was an *adulescens* in 142 (Gell., NA.VI.12.5). As that term could be applied to men in their thirties (see Sumner, Phoenix, 25 (1971) 257, Orators, 55, 92; cf. Badian, Klio, 66 (1984) 302f) Publius might have been a son of the consul. But that Ser.Galba only exhibited Quintus and not Publius at his trial perhaps counts against the notion. On the other hand, it would be curious for C.Galus to have made Ser.Galba the guardian of his children if he had brothers or cousins. Münzer, RE.II.4A.1.808 suggested Publius was a first or second cousin of Quintus.

[115] As Syme, AA, 87 noted the *praenomen* of the consul suffect asserts a claim to descent from the consul of 166. Unfortunately, the *cognomen* of the consul suffect is not recorded. It is possible he was a Galba or a Rufus who annexed the former *cognomen* to use as a *praenomen* while retaining his inherited *cognomen* (i.e. Galus Sulpicius Galba/Rufus). Analogous usurpations are attested (viz. Paullus Aemilius Lepidus). But I suspect Galus was a genuine Sulpicius Galus. Note two consular Sulpicii of the Principate equipped with *cognomina* redolent of the early history of the patrician *gens* - Q.Sulpicius Q.f. Q.n.? Camerinus (28) cos.suff. A.D.9 and Q.Sulpicius Camerinus (30) cos.suff. A.D.46. They do not appear to be Sulpicii Galbae or Rufi and apart from the Rufi, the *praenomen* Quintus was latterly used only by the Gali. The full name of the consul suffect of 4 B.C. may have been Galus Sulpicius Camerinus - perhaps he was a brother of the consul suffect of A.D. 9. A monetal 'Galus' (RE Sulpicius no.67; PIR^2 S 724) was also part of a college that issued quadrantes dated in the period c.13-3 B.C. (see Wiseman, HSCP, 74 (1970) 213-5; NMRS, 150 nn.4, 5). The earlier date would permit identification with the consul suffect, the later date would favour a son of the consul suffect.

[116] Note, however, a certain Gallus was a witness at the trial of L.Calpurnius Piso Caesoninus (88) cos.112 in the late Second Century (see Cic., De Or., II.265; Alexander, Trials, 24-5). Badian, Gnomon, 33 (1961) 495-6 suggested this man was an (Aquillius) Gallus but since the *cognomen* of the Sulpicii is variously spelt Galus or Gallus a (Sulpicius) Gallus is also a possibility. Note too a C.Sulpicius (10) was praetor in 63 (see MRR.II.167). It is likely that this man was a patrician Sulpicius and the *praenomen* points to a member of the Galbae or Gali. It is possible to accomodate the praetor in the *stemma* of the Sulpicii Galbae as a descendant of Ser.Galba (56) the *pontifex*, C.Galba (50) pr.171, or C.Galba (51) the augur (see the *stemma* of Münzer, RE.IVA.2.753-4) but Willems, Le Sénat, I.464 no.98 not implausibly suggested he was a Galus.

[117] Gaius is to be presumed the younger brother of M.Laevinus (210) pr.182 and P.Laevinus (214).

[118] P.Valerius Laevinus (212) see Hor., Sat., I.6.12-20 and the comment of Porphyrio; Broughton, MRR.III.212-3; Konrad, *Imperium Sine Fine*, (1996) 109. Broughton needlessly queries his patrician status.

Note also the Manlii Acidini, a branch of the Torquati, produced their one and only consul in 179. The last recorded Acidinus to hold office was quaestor in 168. But Cicero twice refers to a youth of high station called Acidinus in 45 (Ad Att., XII.32.2, Ad Fam., IV.12.2). It is possible a Torquatus had annexed the *cognomen* (as suggested by Münzer, RE.XIV.1.1151, 1193; Shackleton Bailey, Onomasticon to Cicero's Letters, (1995) 67), but the youth may be a genuine Acidinus. Witness also the Veturii. There were clearly patrician and plebeian branches of the *gens Veturia* (see Mommsen, RF.I.120; Münzer, RAA, 123f; Badian, Arethusa, 1 (1968) 34f; Shatzman, CQ, 23 (1973) 65-77; Ranouil, Recherches sur le "Patriciat", (1975) 114 n.6, 145f, 216-7; M.J.Slagter, Transitio ad Plebem, Diss., (1993) 190f). The last certifiably patrician Veturii are L.Veturius Philo (29) cos.206 and Ti.Veturius Philo (22) *flamen Martialis* 204-? The status of the Veturii attested in the Second and First Centuries is disputed (see Cichorius, Römische Studien, (1922) 177; Taylor, VDRR, 265; Badian, Arethusa, 1 (1968) 34, Klio, 66 (1984) 291-2; Shatzman, Ibid., 69-70; Shackleton Bailey, Onomasticon to Cicero's Speeches^2, (1992) 86; and Chapters IV and VI and Appendices II and VII.

Furthermore, some patrician families are attested in the late Republic which had not produced a consul in centuries. Prominent among them were two of the famous Alban *gentes*. The Quinctilii produced their one and only Republican consul in 453.[119] They were not to recapture the consulate until the ill-fated P.Quinctilius Varus (cos.13 B.C.) benefited from his proximity to the *Domus Augusti*.[120] Yet the Quinctilii were still producing magistrates, including at least three praetors, right up to the fall of the Republic.[121] The Cloelii, another Alban *gens*, had been among the earliest patrician *gentes* to reach the consulate but the censor and consular tribune of 378 are the last recorded high officials produced by the *gens*.[122] Notwithstanding this the family continued. At an unknown date in the period 241-219 a patrician Cloelius drew adverse attention to himself by an unprecedented marriage to a relative within the seventh degree.[123] Later still a P.Cloelius Siculus, probably a descendant of this man, served as *rex sacrorum* from 180 until an unknown date.[124] He may not have been the last patrician Cloelius.[125] It is tempting to think that Cloelia, Sulla's third wife, was, like her husband, a descendant of a decayed patrician family.[126] The

[119] Sex.Quinctilius Varus (15) cos.453. There was in addition a M.Quinctilius Varus (9) consular tribune in 403 but then nothing till the period of the Hannibalic War (see below).

[120] On P.Quinctilius Varus' marriage ties to the Imperial House see Syme, AA, chapter XXIII.

[121] Namely: P.Quinctilius Varus (12) pr.203 and *flamen Martialis*; P.Quinctilius Varus (13) pr.166; Sex.Q(uinctilius?) (3) monetal c.189-180; T.Quinctilius Varus (18) legate 185, 184; Sex.Quinctilius Varus (4) pr.57; Sex.Quinctilius Varus (17) q.49. Note also P.Quinctilius Varus (2, 10a) who may have been a senator in the 70's (see MRR.III.177). Sex.(Quinctilius Varus?) (16) the *pontifex* c.69 conjectured by L.R.Taylor, AJP, 37 (1942) 402 is a phantom and should be expunged from the record (see Appendix VI). The L.Varus (8) legate in 42 may or may not have been a Quinctilius (see Syme, Historia, 5 (1956) 208; MRR.III.178). Whether the poet Quin<c>tilius Varus Cremonensis (5) and Quin<c>tilia (19) the wife of C.Licinius Macer Calvus (113) were members of the patrician family is uncertain (Gundel, RE.XXIV.898 tentatively attached the former to the *stemma* of the patrician Quinctilii, and Münzer, RE.XIII.433 and Gundel, RE no.19 considered Quinctilia a patrician). The Transpadane origin and *cognomen* Varus are only ascribed to the poet in authors of late antiquity and may be due to confusion with P.Alfenus Varus (see R.G.M.Nisbet and M.Hubbard, A Commentary on Horace: Odes Book 1, Oxford, (1970) 227f, 279f; cf. Neudling, A Prosopography to Catullus, Oxford, (1955) 105, 151-3). Sex.Quinctilius Varus, the praetor of 57, may have been prevented from attaining the consulate by an early death. Velleius, II.119.3 says that P.Quinctilius Varus (cos.13), when trapped in the Teutoburg forest, followed the example of his father and grandfather and fell on his sword. The consul's father was Sex.Quinctilius Varus (17) who committed suicide after the battle of Philippi (Vell., II.71.3). The consul's grandfather was almost certainly the praetor of 57. The praetor was proconsul in Hispania Ulterior in 56 (the length of his tenure is unknown Broughton, MRR.II.211, 219 suggested 56-55). If Velleius is correct the praetor should have committed suicide as a result of some military reverse. Perhaps this was occasioned by a revolt during his command in Spain (see Cic., Ad Fam., X.32.2).

[122] A Q.Cloelius Siculus (10) was consul in 498 and a T.Cloelius Siculus (12) was consular tribune in 444.

[123] The anecdote comes from Livy, book XX. That places the incident in the period 241-219 (Develin, Latomus, 45 (1986) 115-8 argued, unconvincingly, that the event should be dated earlier). The manuscript gives the *nomen* as 'P.Celius' but since the fragment certifies the man was a patrician - 'P.Cloelius' is an inevitable emendation (see P.Kreuger and Mommsen, Hermes, 4 (1870) 371-6).

[124] RE no.9. His patrician status is assured by his service as *rex sacrorum* for this priesthood remained an exclusively patrician office throughout the Republic see (Cic., De Domo 38).

[125] The *nomen* recurs in the later Second and First Century (see Shackleton Bailey, CQ, 10 (1960) 41-2, Two Studies, (1976) 25-6, Historia, 30 (1981) 383; C.Tuplin, Chiron, 9 (1979) 137-45; Wiseman, CR, 17 (1967) 263-4; NMRS, 224). Shackleton Bailey, Two Studies, (1976) 25-6 thought the monetals and the senator were possibly descended from the patrician family (cf. Philologus, 108 (1964) 109-10).

[126] For Cloelia see Plutarch, Sulla 6.11. Ranouil, Recherches sur le "Patriciat", (1975) 154-5 and

experience of the Pinarii Nattae was not dissimilar. The Nattae brought forth a number of curule magistrates in the Fifth and Fourth Centuries before lapsing from the record. They reappear in the Second and First Centuries but no longer in high office.[127] Clearly, it was something other than the extinction of the line that prevented the Pinarii from maintaining their position in the office-holding elite.

Other cases are well attested. M.Aemilius Scaurus (cos.115, cens.109), L.Cornelius Sulla (cos.88, 80) and Ser.Sulpicius Rufus (cos.51) all came to the consulship late and not without great effort.[128] Scaurus belonged to an obscure branch of the otherwise resplendent Aemilii which had not produced a consul for at least a hundred years.[129] Sulla's nearest consular forbear was P.Cornelius Rufinus (302) cos.290, 277.[130] While Sulpicius belonged to a *stirps* of the patrician Sulpicii which had failed to capture high office since the Fourth Century.[131] Scaurus, Sulla, and Sulpicius were remarkable for the fact that they managed to resuscitate the fortunes of their family - others were not so successful. L.Sergius Catilina, a remote descendant of Sergii Esquilini-Fidenates, failed to recapture the consulate, though not for want of trying.[132] The number of patrician families known to have continued long

Shackleton Bailey, Two Studies, (1976) 25-6 suggested the possibility that Cloelia was of the patrician *gens*.

[127] A (Pinarius) Natta (14) was monetal c.155-149 (see MRR.III.157). Broughton for unstated reasons considered him plebeian. And L.Pinarius Natta (19) described as "summo loco adulescens" (Cic., Pro Murena 73) was the brother-in-law of Clodius and a *pontifex* c.58-56. A number of other Pinarii are attested in the Second and First Centuries including: L.Pinarius (3) prefect in 213; M.Pinarius Rusca (or Posca) (21) pr.181; and L.Pinarius Scarpus (24) prefect in 42 who is sometimes identified with the L.Pinarius who was a relative and heir of the Dictator Caesar. Their status and relationship to the Nattae is uncertain (see Ranouil, Recherches sur le "Patriciat", (1975) 156f). We have no reason to doubt that the Nattae of the late Republic were genuine descendants of the ancient patrician family. Servius, Aen.VIII.179 states that the Pinarii died out when the cult of Hercules at the Ara Maxima was transferred to state slaves but Servius confused the Pinarii with the Potitii (see Livy, I.7.14; Val.Max., I.1.17; Festus, 270 L).

[128] Scaurus was forty-six years old when consul and had suffered a *repulsa* in the consular elections for 116 (see Sumner, Orators, 69 and further below). Asconius, 23 C tells us Scaurus had had to work like a *novus homo* to reach the consulship. Sulla was approaching fifty when he reached the consulship. His career was retarded (he had been quaestor in 107) and a he suffered a *repulsa* at his first attempt on the praetorship (Plut., Sulla 5.1; Badian, Studies, 158f; Broughton, T.A.Ph.Soc., 81 (1991) 36; T.Corey Brennan, Chiron, 22 (1992) 103f). Sulpicius had been praetor in 65 and had made at least one previous unsuccessful attempt on the consulate (see Broughton, T.A.Ph.Soc., 81 (1991) 18-19 and further below).

[129] Of Scaurus' immediate ancestors the only one known to have held office was his grandfather L.Aemilius Scaurus (138) who held a naval command in 190 (see MRR.I.359). G.M.Bloch, Mélanges d'Histoire Ancienne, 25 (1909) 7f conjectured the Scauri descended from M.Aemilius Barbula (cos.230).

[130] See Vell., II.17.2; Plut., Sulla 1. Note Sallust's description of the Dictator: "gentis patriciae nobilis fuit, familia iam prope extincta maiorum ignavia" (Bell.Iug., XCV.3). Given the actual record of the Sullae (vide infra) Sallust's appraisal is unduly harsh.

[131] In the words of Cicero, Pro Murena 16: "Tua vero nobilitas, Ser.Sulpici, tametsi summa est, tamen hominibus litteratis et historicis est notior, populo vero et suffragatoribus obscurior...Itaque non ex sermone hominum recenti sed ex annalium vetustate eruenda memoria est nobilitatis tuae." On the ancestry of Sulpicius see Gelzer, The Roman Nobility, R.Seager trans., (1969) 32; Afzelius, Class. et Med., 1 (1938) 80; and Brunt, JRS, 72 (1982) 1 n.7. The father of Sulpicius was an *eques* but his grandfather appears to have been a low ranking senator (see Broughton, MRR.III.202).

[132] Catiline was twice prevented from standing for the consulate and suffered two *repulsae* (see Broughton, T.A.Ph.Soc., 81 (1991) 16-17, 29-30). Despite his decayed ancestry Catiline, like Ser.Sulpicius Rufus, placed great emphasis on his lineage. He complained that his birth and that his own and his ancestors' record of service to the Republic entitled him to the highest aspirations but that lesser men had been preferred to him (Sall., Cat., XXXI.7, XXXV.3; cf. LX.7). He was contemptuous of the birth of the *novi homines* Cicero and Murena only to be beaten by both (Sall., Cat., XXXI.7; Asc., 94 C; Cic., Pro Murena 49;

after they produced their last consul proves this was not an uncommon phenomenon.[133]

In some instances it is even more evident that patrician families were failing to capture the consulship for reasons other than a want of male heirs. Some were producing praetors, but consistently failing to reach the consulship. The six praetorships of the Claudii Nerones have already been spoken of, but the Nerones are by no means unique. The heyday of the patrician Sergii ended with the career of Cn.Sergius Fidenas Coxo (28) consular tribune in 387, 385, and 380. Yet two *stirpes* of the *gens* (the Plauti and Sili) survived into the late Republic and continued to produce senators, including at least five praetors.[134] None was destined for the consulship. Witness also the Sisennae, a lesser *stirps* of the patrician Cornelii. First attested in the early Second Century, the family survived into the Principate. In between three praetors stand on record, but no consuls.[135] Moreover, some patrician families that were producing consuls also produced significant numbers of praetors that were never consul. The Manlii Torquati were relatively prolific. In the years

App., BC.II.2).

[133] Other patrician families may have suffered a similar fate. The last patrician Verginius to reach high office was consular tribune in 389, but the family survived into the early Third Century and perhaps beyond (see Livy, X.23.1-10). Similarly, if M.Aebutius Helva (13) pr.168 was a patrician Aebutius, as the *cognomen* suggests, the patrician Aebutii survived into the Second Century, though they apparently languished after Postumus Aebutius Helva (14) cos.442 (see Ranouil, Recherches sur le "Patriciat", (1975) 155f). Consider also the patrician Furii. After L.Furius Camillus (42) cos.338, 325, the grandson of the great M.Furius Camillus, silence envelopes the Camilli. But note C.Camillus an expert on commercial law frequently mentioned in the correspondence of Cicero (RE Furius no.40) and M.Furius P.f. P.n. Camillus (45) cos.8 A.D.. Shackleton Bailey denied the former was a patrician Furius and considered the Furii Camilli of the early empire were probably in truth Crassipedes (Cicero's Letters to Atticus, (1968) III.203, Onomasticon to Cicero's Letters, (1995) 30). Both propositions are possible. Camillus is attested as a *gentilicium* (see Schulze, Zur Geschichte lateinischer Eigennamen, (1966) 290) though it is not common. And it was certainly the fashion to revive ancient *nomina* in the early Principate. Note too a Barbula consul sometime after the battle of Actium (App., BC.IV.49). That was a *cognomen* once favoured by the patrician Aemilii, but Aemilii Barbulae are not heard of subsequent to the consul of 230. However, Barbula may be none other than Q.Aemilius M'.f. Lepidus cos.21 (see PIR^2 L 226; RE Lollius no.11; MRR.II.365, 423, III.8). See also Münzer, RAA, 49 n.1, 133 n.1 and Badian, Foreign Clientelae (264-70 B.C.), Oxford, (1958) 201 on the Geganii; Münzer, RAA, 133 n.1 on the Curiatii; Münzer, RE.XV.1.840 on L.Menenius Agrippa (11); and Badian, PACA, 11 (1968) 1f on the Sempronii Atratini. Cases such as these tend to be received with scepticism, but it should be remembered that comparable and indubitable instances of survival are known and that imposters tended to be exposed (see Cic., Brutus 241, Pro Cluentio, 72, Pro Sestio, 69; Dion.Hal., V.18; Suet., Vitellius I-II; Plut., Brutus 1.6; Dio, XLIV.12).

[134] C.Sergius Plautus (36) pr.200 (wrongly registered as a plebeian by Broughton); M.Sergius Silus (40) pr.197 (Catiline's great-grandfather); M'.Sergius (17) praetor in the late Second Century; L.Sergius Catilina (23) pr.68; and L.Sergius Plautus praetor in the 50's (see Badian, ZPE, 55 (1984) 102f). The rare *praenomen* Manius used by the Sergii Fidenates indicates that M'.Sergius (17) was a patrician (Broughton seemed uncertain - compare MRR.I.543 and II.465). It is likely that he was a Silus and descended from the praetor of 197. Similarly, there can be little doubt that L.Sergius Plautus was a descendant of the praetor of 200. The Sergii Plautii attested in the early Principate (on whom see Syme, Historia, 4 (1955) 66, AJP, 103 (1982) 67f, AA, 71, 78; PIR^2 S 378; Pistor, Prinzeps und Patriziat, Diss., (1965) 25) were patrician (a L.Sergius Plautus was a *salius Palatinus* under Augustus - ILS.2922) and it is peverse to assume they were among those adlected in 45 or 29. Rather they are to be seen as yet another example of a patrician family resuscitated by Augustus. Evidently we must reckon with generations of Sergii Plautii between the praetors that are entirely unknown to us. Other Sergii Sili are attested: M.Sergius Silus (41) leg.168, M.Sergius Silus (42) q.c.115 (Münzer, RE.II.2.1693, 1720 identified them as the grandfather of Catiline and the great-grandson of the praetor of 197 respectively. For undisclosed reasons Broughton considered both plebeian see MRR.I.431, II.13, III.193). M.Sergius M'.f. (18) q. after 212, M.Sergius (19) tr.mil.205, and M'.Sergius (16) leg.164 were also probably members of the family. Any chance the praetor of 197 had of reaching the consulship was probably ruined by the crippling injuries he sustained during the Hannibalic War (see Pliny, NH.VII.104).

[135] P.Cornelius Sisenna (375) pr.183, Cn.Cornelius Sisenna (373) pr.119, and the historian L.Cornelius Sisenna (374) pr.78.

between their last two consulates (in 164 and 65) they amassed at least three praetorships, probably more.[136] None of these praetors went on to be consul. The record of the Sulpicii Galbae was much the same. In addition to three consuls, they produced six praetors who were never consul.[137] Even the Fabii and Cornelii Scipiones were not immune. Between them the Fabii Buteones, Labeones, Maximi, and Pictores sired seven praetors who were never consul in the period.[138] And four, perhaps five, praetorian Scipiones between the 170's and the 90's failed to rise higher.[139] The Cornelii Sullae constitute another such case. The family went into decline after P.Cornelius Rufinus was expelled from the senate.[140] They recovered somewhat in the late Third and Second Centuries producing three praetors but the consulship remained beyond their grasp until the talent and relentless ambition of the Dictator reversed the family's fortunes.[141]

We should also note monetals from patrician families no longer evident in high office.[142] Some may in fact have gone on to higher office unbeknownst to us, possibly as

[136] A.Manlius Torquatus (74) pr.137; A.Manlius Torquatus (76) pr.70; T.Manlius Torquatus (85) pr.c.70/69 (see MRR.III.136-7). Another Torquatus, adopted into the Iunii Silani, was praetor in 141. And L.Manlius Torquatus (80), the son of the consul of 65, was praetor in 50 or 49 (see MRR.III.136). Note also: A.Manlius (12) legate under Marius in Numidia and praetor at an uncertain date (Sall., Iug., C.2, CII.3; App., Num.4; MRR.I.554, II.585. Pliny, NH.XXXIII.21 records a Manilius legate under Marius in Numidia - either the *gentilicium* is corrupt or this is another individual see RE Manilius no.3); L.Manlius (30) pr.79; and Cn.Manlius (21) praetor in 73 or 72 (MRR.III.135). The *praemonina* favour patrician Manlii. Aulus and Lucius look like Torquati, and Gnaeus might be a Manlius Vulso. There is also the aged senator T.Manlius or Manilius referred to in the Pro Rosc.Com., 43-6 (RE Manilius no.10). As Sumner, Orators, 130-1 observed the *praenomen* favours the *gentilicium* Manlius. On L.Manlius/Manilius "senator ille maximis nobilis doctrinis doctore nullo" of the early First Century see Mommsen, Gesammelte Schriften, (1909) VII.70-76).

[137] Ser.Sulpicius Galba (57) pr.187; C.Sulpicius Galba (50) pr.171; Ser.Sulpicius Galba (60) pr.91; P.Sulpicius Galba (55) pr.66?; Ser.Sulpicius Galba (61) pr.54; C.Sulpicius Galba (52) praetor in the late Republic. Another Galba (RE no.48) was praetor by 48. Münzer, RE.II.4A.1.755 considered C.Sulpicius Galba (51) was probably a *praetorius* when he fell victim to the Mamilian Commission. Sumner, Orators, 73-4 suggested Galba was either praetor in 113/2 and intending to run for the consulship of 109, or else was planning to run for the praetorship of 109 (see MRR.III.201). However, Kroll suggested that the Mss reading of Cicero, Brutus 128: "Nam invidiosa lege [Mamilia quaestio] C.Galbam sacerdotem et quattuor consularis ...sustulerunt" should be emended to "quaestorium C.Galbam...." That could account both for the otherwise redundant "quaestio" and for Galba's conviction. Rather than assume with Sumner that Galba was one of the legates of 111. Galba could have served as quaestor to Sp.Postumius Albinus (Bestia's quaestor was a P.Sextius see MRR.I.541).

[138] M.Fabius Buteo (54) pr.201, Q.Fabius Buteo (31, 57) pr.196, Q.Fabius Buteo (32, 58) pr.181, N.Fabius Buteo (56) pr.173, Q.Fabius Labeo (92) praetor in the late Second Century, Q.Fabius Maximus (105) pr.181, and Q.Fabius Pictor (127) pr.189.

[139] The four certain cases are: M.Cornelius Scipio Maluginensis (348) pr.176; L.Cornelius Scipio (325) pr.174; Cn.Cornelius Scipio Hispanus (347) pr.139; and Cn.Cornelius Scipio (321) pr.c.109. Cn.Cornelius Scipio (320, 325) pr.177 is a phantom (see above). The possible fifth praetorian is P.Cornelius Scipio Nasica (351) who held a command in Spain c.93. Whether Nasica was praetor or a legate is unknown (see Broughton, MRR.II.14, 16 n.2, III.72; Sumner, Orators, 74).

[140] Rufinus was expelled from the senate by the censors of 275 (see the sources cited by Broughton, MRR.I.196 plus Gellius, NA., IV.8.7).

[141] P.Cornelius Sulla (383) pr.212, P.Cornelius Sulla (384) pr.186, and Ser.Cornelius Sulla (388) pr.175. Note also P.(Cornelius) Sul(l)a (see 384) monetal c.151 B.C. (see MRR.III.73). Though it is entirely possible, there is no evidence for the suggestion that the father of the Dictator was praetor (see Keaveney and Madden, CP, 88 (1993) 138-141).

[142] To wit: M'.Aemilius Lepidus (see 62) - probably the father of the consul of 66 (see MRR.III.6);

high as the praetorship. To these may be added other patricians who crop up from time to time but are merely names.[143] And obscure branches of patrician *gentes* that all but escape detection.[144]

In some cases the failure to prosper despite the continuance of the line admits of an explanation. Poverty played a role in some instances.[145] Premature deaths probably robbed other families of greater renown.[146] Prosecutions and expulsions also took their toll.[147] Not

Cn.(Cornelius) Cn.f. Blasio (75) c.112-1; (P.Cornelius?) Cethegus (97?) c.115-4; N.Fabius Pictor (125) c.126; M.Furius L.f Philus (79) c.119 - to be presumed a son of the consul of 136; (Pinarius) Natta (14) c.155-149; A.(Postumius) Sp.f. Albinus (35) c.96; A.Postumius A.f. Sp.n. Albinus (36) c.81; T.Q(uinctius Flamininus) (48) c.126 - likely the son of the consul of 123 (see MRR.III.180). Q.Fabius Labeo (92) monetal c.124 is probably identical with the homonymous praetor and proconsul (see MRR.II.464, 562).

[143] Note for instance the senator Q.Claudius Ap.f. (Pulcher) (30) recorded on the *s.c. de agro Pergameno* and a Q.Claudius Pulcher attested on brick stamps of the late Republic or early Principate (see Taylor, VDRR, 203-4; E.Rawson, Historia, 26 (1977) 349; C. and Ö.Wikander, Opuscula Romana, 12.1 (1979) 11; Ö.Wikander, Opuscula Romana, 16 (1987) 142; Badian, Chiron, 20 (1990) 400 n.5). The Cornelii Cethegi provide another example (see the Wikanders, Ibid., 6). The consul of 160 was their last Republican consul. But they were still producing senators in the First Century B.C. like the notorious intriguer P.Cornelius Cethegus (RE no.97 see MRR.III.64) and the brothers who were senators in 63 (RE nos.84 and 89. cf C.Cethegus RE no.90). Note also the orators Num.Fabius Pictor (128), probably a grandson of the historian, and Q.Fabius Labeo, probably a son of the consul of 183, (Cic., Brutus 81; Badian, JRS, 57 (1967) 228, LCM, 1 (1976) 97-8; Sumner, Orators, 43). Given the company with whom they are grouped, they were quite possibly senators. There is also L.Cornelius Merula (273), probably a son of the consul suffect of 87, who was an expert on game farming (Varro, De Re Rustica, III.2.7f). And a Cn.Sergius Silus prosecuted for attempting to seduce a matron (see Alexander, Trials, 176).

[144] Such as the Furii Bibaculi who come to our attention only fleetingly in the late Third Century (see RE nos.35-6. The family is apparently not connected with the Caesarian poet M.Furius Bibaculus (37) who was a Transpadane). Or a branch of the Claudii which favoured the *praenomen* Lucius (viz. L.Claudius (22) pr.174, L.Claudius L.f. (23) a senator in 73, and L.Claudius (21) the *rex sacrorum* of 57 see Taylor, VDRR, 203). Note also the *fratres Cossi* (Cic., De Or., II.98; Alexander, Trials, 172). They may be Cornelii Cossi (see Münzer, RE Suppl.I.32). Perhaps a branch of the Lentuli who had revived the archaic *cognomen* (note some decades later Cossus Lentulus cos.1 B.C.). Then there are the Aemilii Bucae who were probably related in some fashion to the Aemilii Scauri (as Klebs, RE.I.548 suggested). And the Caesarian Scipio Salvitto whose *nomen* brought him brief celebrity in 46 (Plut., Caesar 52.2; Suet., Iul., LIX; Dio, XLII.58.1; Pliny, NH., VII.54, XXXV.8. The ancestry of Salvitto remains obscure, he cannot be descended from L.Scipio Africani f. as per Billows, AJAH, 7 (1982) 61-2 vide supra).

[145] I.Shatzman, Senatorial Wealth and Roman Politics, (1975) 143ff and K.Hopkins, Death and Renewal, (1983) 74ff emphasized the role that impoverishment played in driving some families out of the office-holding elite. In some cases the link is clear. According to Asconius, 23 C three generations of Aemilii Scauri before the *princeps senatus* failed to achieve eminence due to a combination of poverty and indolence. The father of the *princeps* made a living selling charcoal and left his son a mere 35, 000 sesterces and six slaves (Val.Max., IV.4.11; De vir.ill., LXXII.1. See Shatzman, Ibid., 145, 149, 213f). The failure of the Cornelii Sullae to reach the consulship before the Dictator may be linked to limited finances. According to Plutarch, Sulla, 1-2 the Dictator inherited little from his father and it was only after receiving two additional inheritances that he embarked on a political career (see Shatzman, Ibid., 145, 152, 268f). In recent years Plutarch's account has been doubted (L.E.Reams, AJAH, 9 (1984) 158-74 rejected Sulla's early poverty as fiction. T.W.Hillard, Antichthon, 25 (1991) 63-71 argued that Sulla's financial situation was due to the fact he was disinherited by his father). Evidently, Sulla was not poor, but by the standards of his aristocratic peers he was not well off (so rightly Keaveney, RFIC, 108 (1980) 165f). Catiline is said to have been born "in patris egestate" (Comm.Pet., 9; cf. Cic., In Cat., I.14; Sall., Cat., V.7, XXXV.3; App., BC.II.2). And the Manlii Acidini were renowned for enduring poverty with dignity (Cic., De leg.ag., II.64, Ad Att., IV.3.3).

[146] Thus N.Fabius Buteo pr.173 died on the way to his province (Livy, XLII.4.2). L.Furius Philus pr.171 died in the following year (Livy, XLIII.11.13). Two Iulii Caesares died suddenly. One, not certainly identifiable, during his praetorship, and the father of the dictator, when a *praetorius* (Pliny, NH.VII.181). P.Scipio Nasica (351) pr.? 93 died shortly after 91 (Cic., De Or., III.8; Syme, AA, 21, 244). A L.Postumius (13) pr.91/90, possibly a patrician Albinius, was killed in the Social War. And it may be that M.?.Valerius

to mention a lack of ability, or a disinclination for public service.[148] Other instances defy explanation.[149]

Also it is clear that in some years all-plebeian colleges were elected to the exclusion of, not in default of, patrician candidates. It was argued above that this was so with the first all-plebeian consular college elected. The second or third all-plebeian college may be another case in point.[150] And at least four instances are known in the First Century where

Messalla (249), pr.by 91, who was a legate under P.Rutilius Lupus in 90 was one of the many *nobiles* killed in the ambush of Rutilius' army (App., BC.I.43). Note also the Marian Ἄλβινος killed at the battle of the Colline Gate - perhaps a patrician Postumius (App., BC.I.93; MRR.III.173. Gabba suggested he was an Albius Gutta but this is improbable see Wiseman, NMRS, 234). The Manlii Torquati, Cornelii Scipiones, and Servilii Caepiones seem to have been plagued by a high incidence of premature mortality. Two praetorian Manlii died before they had a chance to stand for the consulship (T.Torquatus (85) pr.c.69 see Cicero, Brutus 245; MRR.II.493, III.136-7; Sumner, Orators, 130-1; and L.Manlius Torquatus (80) pr.50/49 who committed suicide after Thapsus). The Servilii Caepiones lost a Cn.Caepio (47) c.125-120 in a shipwreck (on the date see Sumner, Orators, 162-3; Wiseman, Cinna the Poet and Other Roman Essays, (1974) 181. Often identified with the quaestor honoured at Thessalonica see Münzer, RAA, 253f). One, possibly two, praetors killed in the Social War (Q.Caepio (50) pr.91? and Q.Servilius (29) pr.91 - the latter was not certainly a Caepio see Münzer, RE.IIA.2.1767-8; Cichorius, Festgabe Friedrich von Bezold, (1921) 64f; Geiger, Anc.Soc., 4 (1973) 154 n.44; and Wiseman, Ibid., 184f). And the half-brother of M.Cato who died in 67 (Q.Caepio (40-2), perhaps then serving as quaestor see MRR.III.194). The Scipiones also suffered at the hands of fate (see the Scipionic *elogia* and RE nos.324, 326, 327, 339, 347 and Münzer, RAA, 310, 316-7). Note also a Q.Aemilius Lepidus (78), probably a senator, who died suddenly (MRR.III.8). Perhaps the father of the consul of 78. Some patricians endangered their own posterity by their *severitas*. T.Manlius Torquatus (83) cos.165 and the *princeps senatus* M.Aemilius Scaurus caused sons to commit suicide (see MRR.I.477, 569). While M.Fabius Buteo (53) cos.245, dict.216 and Q.Fabius Maximus Eburnus (111) cos.116 put sons to death (Orosius, IV.13.18, V.16.8; Cic., Pro Balbo 28; Val.Max., VI.1.5; [Quint.], Decl., III.17).

[147] A few examples will suffice. The careers of M.Scipio Maluginensis pr.176 and L.Scipio pr.174 were abruptly terminated by the censors of 174 who expelled them from the senate (Livy, XLI.27.2). While P.Furius Philus pr.174 was convicted of peculation on his return from Spain in 172 and went into exile at Praeneste (Livy, XLIII.2.8-11). M.Porcius Cato the Censor accused a number of patricians before the censors and some may have suffered expulsion or degradation (see Astin, Cato the Censor, Oxford, (1978) 81-2, 109f on the speeches entitled *De moribus Claudii Neronis*, *In Lepidum*, *In Q.Sulpicium*, *In Lentulum apud censores*, and the speech against a M.Cornelius). A praetorian Valerius Messalla (248) was prosecuted c.119 *de repetundis* (Alexander, Trials, 15-6). He is one of the missing generations between the consul of 161 and Messalla Niger and Rufus. The outcome of the trial is unknown but a conviction might account for his failure to advance. C.Sulpicius Galba (51) "cecidit in cursu" (Cic., Brutus 127) as a result of the Mamilian Commission (vide supra). Cn.Dolabella (135) pr.81 was convicted in 78 (see Alexander, Trials, 69) and his exile left his children "in egestate atque in solitudine" (Cic., Verr., II.1.77). The senators P.Sulla (385) and Ser.Sulla (389) were convicted in 62 of complicity in the Catilinarian conspiracy (Alexander, Trials, 113-4). M.Aemilius Scaurus (141) pr.56 was convicted of *ambitus* in 52 (Alexander, Trials, 156-7). And C.Claudius Pulcher (303) pr.56 was exiled in 51 (Alexander, Trials, 163).

[148] Thus C.Valerius Flaccus (166) was a notorious libertine prior to his inauguration as *flamen Dialis* in 209 (Livy, XXVII.8.5-8; Val.Max., VI.9.3). P.Scipio the Augur, the elder son of Africanus, had a weak constitution which prevented him from participating in the *cursus honorum* (Cic., De Sen., 35, De Off., I.121, Brut., 77). The last attested Manlius Vulso, L.Manlius Vulso (94) legate in 149, was accounted the 'stupidest of the Romans' (Polybius, XXXVI.14.1-5; Livy, Per. L). Another Scipio, Cn.Scipio pr.c.109 (321), had such an evil reputation that he was prevented from going to the province he had been allotted (Val.Max., VI.3.3b). The Fabii Maximi produced no consuls in the period 115-46 as both lines were afflicted with sons unworthy of the name. The son of Allobrogicus was an infamous wastrel (see Cic., Tusc.Disp., I.81; Val.Max., III.5.2). And Eburnus put his son to death for some unspecified sexual offence (see Münzer, Rh.Mus., 61 (1906) 24-7; J.D.Cloud, ZRG, 88 (1971) 39f; Badian, Klio, 66 (1984) 306f; Alexander, Trials, 31-2).

[149] The failure of the Claudii Nerones to produce a consul between 202 and 13 and the limited success of the Sulpicii Galbae in the Second and First Centuries is surprising. Both were relatively numerous and the Galbae were also rich (see Shatzman, Senatorial Wealth and Roman Politics, (1975) 260-1).

[150] As noted above Plutarch, Aem.6.8 states that L.Aemilius Paullus (cos.182) made an unsuccessful

patrician candidates were passed over and all-plebeian colleges elected.[151] No doubt there were other instances unknown to us.[152]

It is not my intention to suggest that there was a superabundance of patricians in the late Republic, or that declining patrician numbers played no part in the fluctuation in patrician occupancy of the consulate after 172. I wish merely to illustrate that in assessing the influence of patrician numbers on the increase in all-plebeian colleges after 172, it is well to bear in mind that we must make due allowance for the nature of the evidence. Patricians are evident in some numbers and preconceived notions about the size of the patriciate in the late Republic may be defective.[153] In itself, declining patrician numbers is not an entirely satisfactory explanation of the proliferation of all-plebeian consular colleges.

It will also be noted that the modest number of all-plebeian consular colleges elected between 172 and 140 is difficult to account for if there was an endemic shortage of patrician praetors. If this were the case, how is it that the patricians were able for over three decades to keep the number of all-plebeian colleges so low ? In fact, the consulships that went to the patriciate in the 160's and 150's were shared by a large number of

attempt at obtaining a second consulate sometime prior to his election in 168 (Plut., Aem.6.8). In timing his candidacy Paullus almost certainly abided by the statute against iteration of a magistracy within ten years since the rule was observed virtually without exception between the conclusion of the Hannibalic War and the mid-Second Century (witness - P.Sulpicius Galba cos.211, 200; Scipio Africanus cos.205, 194; M.Aemilius Lepidus cos.186, 175; Q.Marcius Philippus cos.186, 169; Ti.Sempronius Gracchus cos.177, 163; C.Popillius Laenas cos.172, 158; M.Claudius Marcellus cos.166, 155, 152; C.Marcius Figulus cos.162, 156; and P.Cornelius Scipio Nasica Corculum cos.162, 155. Of these the third consulate of Marcellus, and the second of Figulus and Nasica appear in contravention of the law but as Mommsen, StR^3.I.519 n.5 commented Figulus and Nasica constitute a special case. They were declared *vitio creatus* in 162 and forced to resign and it seems probable that in their case the rule against iteration was relaxed and their abortive election not counted against them. Marcellus' third consulship is the only genuine exception to the rule and as Mommsen, StR^3.I.521 n.1 argued his election may have inspired the law against iteration passed in the following year) That being so, Paullus' failed attempt must be placed either in the consular elections for 171 (his first opportunity to stand), for 170, or for 169 (the latest possible occasion before his election in 168). In the elections for 171 and 170 all-plebeian colleges were returned but the *repulsa* may equally have occurred in the elections for 169 when the patrician Cn.Servilius Caepio was elected.

[151] In the consular elections for 94 C.Valerius Flaccus was probably beaten by C.Coelius Caldus and L.Domitius Ahenobarbus (see Broughton, T.A.Ph.Soc., 81 (1991) 19-20). In 64 there were seven candidates. Five plebeians: C.Antonius, M.Tullius Cicero, L.Cassius Longinus, C.Licinius Sacerdos, and Q.Cornificius and two patricians: P.Sulpicius Galba and L.Sergius Catilina (see Broughton, Ibid., 10, 11, 12, 16-17, 17-18). Antonius and Cicero were elected. For 62 there were at least two patrician candidates: Ser.Sulpicius Rufus and Catiline and two plebeians: D.Iunius Silanus and L.Licinius Murena (see Broughton, Ibid., 16-17, 18-19). Silanus and Murena were elected. In the elections for 58 the patrician L.Cornelius Lentulus Niger was defeated by L.Calpurnius Piso and A.Gabinius (see Broughton, Ibid., 10). It is also possible Ser.Sulpicius Rufus competed unsuccessfully against Piso and Gabinius. He certainly considered running but whether he did so is unknown (see Broughton, Ibid., 19). The consular elections for 53 also nearly resulted in an all-plebeian college despite the candidacy of two patricians. Before the exposure of the electoral compact the plebeians C.Memmius and Cn.Domitius Calvinus were the favoured candidates and the chances of the patrician candidates M.Messalla Rufus and M.Scaurus seemed slight (see infra).

[152] Dio, fragment 83.8 says Ti.Gracchus attempted to get Ap.Claudius Pulcher (cos.143, cens.136) elected to the consulship for 132, which in the event produced an all-plebeian college. However, Appius' candidature would have been illegal unless, like Scipio Aemilianus in 135, he obtained an exemption from the law of 151 which prohibited iteration of the consulship. In view of the silence of the other sources, it seems unlikely that Appius actually stood. A.Manlius Torquatus (76) pr.70 survived into the 40's and is likely to have stood for the consulship at least once. The year 67, an all-plebeian college, would have been his year.

[153] The Wikanders, Opuscula Romana, 12.1 (1979) 1f high-lighted the tendency among prosopographers to over use Occam's razor. And Hopkins, Death and Renewal, (1983) 32ff, 60ff, 99-117 argued that we must reckon with more sons of noble families than are attested.

patrician families.[154] No one patrician family, or clique of patrician families, accrued a disproportionate share.[155] Nor was the number of patrician consulships inflated by artificial means, such as frequent iteration.[156] There is consequently little evidence to indicate a serious shortage of patricians in the period. There was a change in this respect in the 140's. Of the nine patrician consuls elected between 148 and 140, five came from just two families.[157] When viewed against the sudden rise in the number of all-plebeian consular colleges in the 130's, the dominance of two patrician families in the 140's might be taken to suggest an absence of challengers from other patrician families. Yet patrician families had achieved similar results in earlier periods when they manifestly did not lack patrician rivals.[158] The success of the sons of L.Paullus and Cn.Caepio in the 140's is evidence for the temporary political dominance of this group, not of a dearth of patrician candidates.

The success of the patriciate in the 140's may also be partly ascribed to the appearance of a number of talented, high profile patrician candidates who also had popular appeal - men like Scipio Aemilianus, Ser.Sulpicius Galba and Ap.Claudius Pulcher. The influence and appeal of some patrician candidates proved sufficient to exclude plebeian candidates with excellent prospects and perhaps unknown patricians as well.[159]

The sudden proliferation of all-plebeian colleges in the 130's presents an interpretative problem. Two possible explanations suggest themselves. First, an abrupt shrinkage of the patrician population. Sudden and dramatic shifts in population of the kind envisaged would most likely be the result of warfare, or pestilence, or a combination of the two. Both were recurring facts of life, and both are evident at the appropriate juncture. In the decades preceding the 130's the Romans waged major wars in a number of theatres and suffered some serious reverses in the process.[160] In addition, though the record is fragmentary,

[154] These years produced consular representatives of the Aemilii Paulli (in 168) and Lepidi (in 158); the Cornelii Cethegi (in 160), Dolabellae (in 159), Lentuli (in 162, 156), and Scipiones (in 162, 155); the Iulii Caesares (in 157); the Manlii Torquati (in 165, 164); the Postumii Albini (in 154, 151); the Quinctii Flaminini (in 150); the Servilii Caepiones (in 169); the Sulpicii Gali (in 166); and the Valerii Flacci (in 152) and Messallae (in 161).

[155] In this period one set of brothers secured consecutive consulships (T.Manlius Torquatus cos.165 and A.Manlius Torquatus cos.164), and two pairs of cousins obtained consulships (P.Cornelius Lentulus cos.suff.162 and L.Cornelius Lentulus cos.156, and L.Postumius Albinus cos.154 and A.Postumius Albinus cos.151). But this was in no way remarkable, plebeian families were achieving similar results.

[156] The only case of patricians iterating in the period are L.Aemilius Paullus (cos.182, 168) and P.Cornelius Scipio Nasica Corculum (cos.162, 155). However, Nasica was forced to resign his first consulship and was replaced by the suffect P.Cornelius Lentulus hence his two notional consulships were not the result of a lack of patrician competitors.

[157] P.Scipio Aemilianus (cos.147, 134) and Q.Fabius Maximus Aemilianus (cos.145) were brothers by birth being the sons of L.Aemilius Paullus (cos.182, 168). And Q.Fabius Maximus Servilianus (cos.142), Cn.Servilius Caepio (cos.141) and Q.Servilius Caepio (cos.140) were all brothers, the sons of Cn.Servilius Caepio (cos.169). Also Cn.Lentulus (cos.146) was the brother of L.Lentulus (cos.156).

[158] Between 186 and 173 the Postumii Albini and Claudii Pulchri took seven consulships.

[159] Thus Q.Fabius Maximus Aemilianus and L.Hostilius Mancinus were elected for 145 and Ser.Sulpicius Galba and L.Aurelius Cotta for 144 over Q.Metellus Macedonicus (see Broughton, T.A.Ph.Soc., 81 (1991) 8). Macedonicus was finally returned for 143 with Ap.Pulcher.

[160] In the three decades before the 130's as well as the wars in Macedonia, Greece, Africa, and Spain there was sporadic fighting in Cisalpine Gaul, Corsica, Sardinia and Dalmatia.

outbreaks of famine and pestilence are documented in 165 and 142.[161] And the epidemic of 142 was remembered as having had an especially devastating effect on the *domus magnae* of the capital.[162] Clearly, events like the plague of 142 could have had a dramatic impact on the already limited patrician population.[163]

Second, we might postulate a sudden increase in the number of patricians being passed over in consular elections. Since there is no reason to suspect a conscious reaction against the patriciate *per se,* one way to explain the sudden increase in all-plebeian colleges is to posit a change in electoral procedure which favoured plebeians.[164] The year 139 did witness a major reform of electoral procedure (the *Lex Gabinia tabellaria*) and Cicero considered the secret ballot ruinous to the electoral influence of the nobility.[165] Consequently, Salmon directly linked the introduction of the secret ballot to the declining number of patrician consuls elected in the later Second Century.[166] Yet if the secret ballot undermined the electoral influence of the inherited *clientelae* of the nobility, it ought in theory, to have

[161] Obsequens, 13, 22; Orosius, V.4.8. Other occasions may be surmised. Syme, AA, 21f noted that the two young sons of L.Aemilius Paullus perished within days of each other in 167. Perhaps Paullus' army brought disease in its train. It may also have been about this time that C.Sulpicius Galus (cos.166) lost his son (see above).

[162] Orosius, V.4.8 commenting on the plague of 142 wrote: "iamque etiam magnae domus vacuae vivis plenae mortibus remanserunt: largissimae introrsum hereditates et multi penitus heredes."

[163] The extent of the impact would depend on the dynamics of the patrician population. If the patrician population was static, or in decline, sudden and dramatic increases in mortality occasioned by extraordinary and transitory phenomena such as famine, plague, or heavy losses on the battlefield could have a long-term effect, otherwise the impact would tend to be short-term.

Brunt, Italian Manpower 225 B.C. - A.D.14, Oxford, (1987) 136 remarked that the census figures for the late Republic suggest that there was "no sharp decline and no sudden upswings" in the population as a result of epidemics, famine or war. However, the kind of losses that would be necessary to make a decisive impact on the patriciate would be too small to register in the census figures.

[164] E.T.Salmon, REL, 47 bis (1969) 329f, 331, 337 and Dialoghi di Archaeologia, 4-5 (1970-1) 371-2 suggested the poor performance of the patriciate in the consulship in the years 133-91 was principally due to the fact that the patricians had championed the enfranchisement of the Italians in order to bolster their electoral support, and the Roman people, resentful of this, had punished them at the polls. While the improved performance of the patriciate in the consulship after 91 was partly the result of disillusionment with the "plebeian policy" that had led to the Social War, and partly of the enfranchisement of the Italians who favoured the patriciate because of their pro-Italian sympathies. The notion is without foundation. As Salmon, REL, 47 (1969) 329 realized it is a nonsense to think of the patriciate as a "monolithic group" with unanimous political goals. Nor is there evidence that pro-Italian sympathies were widespread in the patriciate. Salmon made much of the role played by Cinna and Sulla in the enfranchisment of the Italians, but both men simply used the Italians as pawns in their struggle for dominance. Sulla only made concessions to the Italians in 85 and 83 when he was compelled to do so by the circumstances. And Sulla's vehement hatred of the Samnites is a source of embarrassment which Salmon both admits (Dialoghi di Archaeologia, 4-5 (1970-1) 418) and attempts to explain away (REL, 47 (1969) 333f). Moreover, as Salmon, Ibid., 337 was aware the Italians can only have had a minor influence on the electoral performance of the patriciate down to the censorship of 70, due to the rate and manner of their registration (see Taylor, VDRR, 101-131; Wiseman, JRS, 59 (1969) 59-75; Brunt, Italian Manpower, (1987) 91f, and The Fall of the Roman Republic, (1988) 125f, 133-6). While in the decade following the mass registration of 70 *fewer* patrician consuls were elected than in the preceding decade (there were six all-plebeian colleges in the 60's as against five in the 70's).

[165] See Broughton, MRR.I.482. Cicero, De Leg., III.33-9, cf. De leg ag., II.4, De Amic., 41, Pro Plancio 16. The development was carried further by the *Lex Maria tabellaria* of 119 (MRR.I.526). Plutarch, Marius 4.2-3 states that Marius' law was intended to undermine the influence of the nobility in the *comitia*. But P.Bicknell, Latomus, 28 (1969) 327-348 attempted to argue Marius' law was passed with the support, and for the benefit of the Metelli.

[166] Salmon, REL, 47 (1969) 326, 328, 332, cf. 337.

been equally detrimental to the patriciate and the plebeian nobility. However, the suggestion of a link may not be altogether spurious. If as a result of the *Lex Gabinia* candidates could rely less than before on *clientelae*, they may have been compelled to place greater emphasis on expensive inducements to win the favour of the voters. That projection would seem to be confirmed by the proliferation of *ambitus* laws in the late Second and First Centuries. If then the increasing cost of public life impaired the competitiveness of those with limited finances, the performance of the more numerous plebeian nobility would not be seriously effected by the reduced competitiveness of a few families, whereas the marginalization of only a few impoverished patrician families would impact noticeably on the performance of the patriciate.[167]

One factor which very probably contributed to the diminished success of the patriciate in and after the 130's was the end of alternation in the curule aedileship.[168] The curule aedileship was an important means of courting popular favour - especially for patricians who were denied access to other avenues for winning *gratia* (namely the tribunate of the plebs and the plebeian aedileship). Statistics demonstrate that the curule aedileship was an invaluable stepping stone to the praetorship and consulship.[169] When alternation between the orders in the curule aedileship lapsed patricians will have faced increased competition and found the aedileship harder to obtain. For those patricians who failed to secure an aedileship the praetorship and consulship will have been correspondingly more difficult to attain. It is perhaps not coincidental, therefore, that alternation probably ceased in the 140's and so will have begun to impact on the consular elections in the 130's.

The poor showing of the patriciate in the 110's is contemporaneous with the signal success of two great noble plebeian dynasties. Above all the period marked the apogee of the 'age of the Metelli.'[170] In the space of just seven years the Metelli acquired four consulates (L.Delmaticus cos.119, L.Diadematus cos.117, M.Metellus cos.115, and C.Caprarius cos.113).[171] In addition, two grandsons of Cato the Censor reached the consulship in 118 and 114. As a consequence only those patricians that could not be denied acceded to the *fasces* in the period.[172] For 116 a Fabius Maximus who by virtue of his *nomen* and

[167] Of course, those born with insufficient means could obtain the requisite funds by various means. One method was to borrow heavily (as did P.Lentulus Sura cos.71, P.Lentulus Spinther cos.57, C.Caesar cos.59, and L.Lentulus Crus cos.49 to name but a few see Shatzman, Senatorial Wealth and Roman Politics, (1975) 79f, 115f, 333-5, 346f). Another was to make astute marriages (financial considerations appear likely to have been uppermost in cases like the alliances of the Iulii Caesares with the Cossutii, Granii, Marii, Atii Balbi and Pedii, and the Valerii Flacci with the Saufeii. And the Asculan mother of L.Manlius Torquatus (80) and his wife, Vinia Aurunculeia, perhaps made up for a lack of pedigree with sizeable dowries. Marriages within the Roman elite could also prove remunerative (M.Scaurus cos.115, P.Scipio Nasica cos.111 and Sulla all married into the Metelli, and Catiline's second wife, Aurelia Orestilla, was a woman of means see Sall., BC., XXXV.3).

[168] The end of alternation in the curule aedileship is the subject of Chapter IV.

[169] See Chapter IV and Appendix II.

[170] Syme, Historia, 36 (1987) 321 commented: "In the epoch when the Metelli achieved predominance, the patriciate underwent a decline in prestige and influence, as shown by intermissions in consulates."

[171] Q.Metellus Balearicus had been consul in 123 and Q.Metellus Numidicus was to be consul in 109.

[172] In the absence of Livy's praetorian lists we do not know how many patrician hopefuls might have run in the period. But despite the paucity of evidence we can identify three patricians who were eligible: P.Cornelius Lentulus (202a) pr.c.128; Sex.Iulius Caesar (150) pr.123; and C.Cornelius Sisenna

lineage alone was destined for the consulship.[173] For 115 an Aemilius, the scion of a decayed *stirps,* but a prodigiously talented individual and an assiduous campaigner, was victorious in a bitter contest that led to recriminations in the courts and a lasting feud.[174] For 111 a Cornelius Scipio who had the blood of Africanus in his veins, had annexed a daughter of Macedonicus for wife (and so presumably enjoyed the backing of a plethora of Metellan consuls), and was to cap it off a favourite of the people.[175] And for 110 an Albinus, the last of a great crop of Postumian consuls elected in the Second Century, and next to the last produced by the once powerful and prolific family.

The reaction against the nobility remarked upon by Sallust and the rise of C.Marius will go some way toward explaining the number of all-plebeian colleges elected in the last decade of the Second Century.[176] Between 121 and 109 the consulship had been dominated by *nobiles* to the almost total exclusion of new men.[177] The change described by Sallust begins to manifest itself in 108 with the election of a *novus homo* as suffect for 108 and with the designation of C.Marius for 107.[178] The following years witnessed in addition to the repeated tenure of Marius, the election of the new men P.Rutilius Rufus and Cn.Mallius Maximus for 105 and C.Flavius Fimbria as Marius' colleague for 104.[179] But the *odio nobilitatis*, the influence of C.Marius and the *petitionis angustiae* occasioned by Marius' successive consulships are at best a partial explanation.[180] For in spite of the anti-noble sentiment of the electorate a substantial number of *nobiles*, including some patricians, were returned for the years 108-100.[181] Marius himself hand-picked a number of *nobiles* as

(373) pr.119.

[173] Q.Fabius Maximus Eburnus' defeat of M.Aemilius Scaurus came as something of a surprise (see Cic., Pro Murena 36).

[174] Scaurus we are told worked like a *novus homo* to secure his election (Asc., 23 C) and in so doing defeated the *novus homo* P.Rutilius Rufus (cos.105) who had the support of the Metelli (see Badian, Studies, 39f; Syme, Sallust, (1964) 165; Broughton, MRR.I.527, T.A.Ph.Soc., 81 (1991) 16; and Alexander, Trials, 18).

[175] P.Scipio Nasica (cos.111) was descended from Africanus by virtue of the marriage of his grandfather P.Scipio Nasica Corculum (cos.162, 155) to the elder daughter of Africanus (see Polyb., XXIX.14.1, XXXI.27, XXXII.13.1-7; Cic., Ad Att., VI.1.7; Livy, XXXVIII.57.2; Plut., Aem.15.3; Vell., II.3.1). For his marriage to Metella see Cic., Brutus, 212, Post red. in Sen., 37, Post red. ad Quir., 6. For his popularity with the people see Pliny, NH.XXI.10.

[176] Münzer, RAA, 285 described the last decade of the Second Century as a "verhängnisvolle Zeit" for the patriciate.

[177] The one likely exception is C.Licinius Geta (cos.116) who probably did not descend from the noble Licinii (as Brunt, JRS, 72 (1982) 4, 7; Badian, Chiron, 20 (1990) 384. But cf. Afzelius, Class. et Med., 7 (1945) 155-6). L.Calpurnius Bestia (cos.111) must and M.Iunius Silanus (cos.109) ought to be accounted *nobiles* (see Afzelius, Ibid., 163-4, 173-4; Brunt, Ibid., 4, 8; Badian, Ibid., 385, 386; Sumner, Orators, 75).

[178] For M.Aurelius Scaurus (cos.suff.108) see MRR.I.548; Badian, Chiron, 20 (1990) 386.

[179] The *novi homines* elected in 105 and 104 were elected over the *nobilis* Q.Lutatius Catulus (cos.102) see Broughton, T.A.Ph.Soc., 81 (1991) 13.

[180] The former phrase belongs to Sallust, Iug.XL.3, the latter was coined by Cicero, Brutus 175.

[181] Note: Ser.Sulpicius Galba and L.Hortensius (coss.108); L.Cassius Longinus (cos.107); Q.Servilius Caepio and C.Atilius Serranus (coss.106); L.Aurelius Orestes (cos.103); Q.Lutatius Catulus (cos.102); M'.Aquillius (cos.101); and L.Valerius Flaccus (cos.100). Badian, Chiron, 14 (1984) 127 commented the election of the patrician Ser.Galba, brother of the C.Galba condemned by the *quaestio Mamiliana*, for 108 is remarkable and inexplicable.

colleagues.[182] His decision to back the patrician L.Valerius Flaccus in 101 is a case in point and almost certainly prevented the election of an eighth all-plebeian college for 100.[183] And in the absence of the *fasti praetorii* we cannot judge the extent to which patricians were displaced by the repeated tenure of Marius.[184]

The increase in the number of patrician consuls elected in the 90's was precipitated by various factors. The electoral influence of Marius was partly responsible. The backing of Marius had much to do with the sudden return to the *fasti* of the Iulii Caesares (in 91 and 90) after a long absence. Marius probably also threw his weight behind C.Valerius Flaccus (cos.93), the cousin of his colleague in 100, though a Valerius Flaccus could command much support in his own right. In addition, the 90's saw the coming of age of some candidates 'designated for the consulship from birth.' One such was C.Claudius Pulcher (cos.92) whom Cicero showered with superlatives.[185] Finally, on at least one occasion the election of a patrician candidate was facilitated by a freak circumstance. A.Postumius Albinus was a rather unlikely victor in the consular elections for 99.[186] His chances were undoubtedly markedly improved by the violent disorders attendant upon the elections which saw two plebeian candidates killed.[187]

The success of the patriciate in the late 90's carried over into the early 80's.[188] Then the First Civil War intervened and the abnormal electoral practices occasioned by the War artificially restricted the election of all-plebeian colleges. Having retaken Rome, L.Cinna (cos.87) occupied the consulate continuously until his death in 84. The regime also produced the first all-patrician consular college since 343 (in 86) in violation of the *Leges Licinia Sextia* and *Genucia*.[189]

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[182] Notably: L.Aurelius Orestes (cos.103); Q.Lutatius Catulus (cos.102); M'.Aquillius (cos.101); and L.Valerius Flaccus (cos.100).

[183] Plutarch, Marius 28.4-6 states that when Marius was competing in the consular elections of 101, he got L.Flaccus elected over a Metellus, almost certainly Numidicus, through the influence of his soldiers and lavish bribery (see Badian, Chiron, 14 (1984) 121f and Broughton, T.A.Ph.Soc., 81 (1991) 9).

[184] R.J.Evans, LCM, 10.5 (1985) 76-77 attempted to locate some of those who missed the consulate in the period 104-100. Cicero, Brutus 175 names only the plebeian *novus homo* C.Billienus. Plutarch, Marius 14.7 says many great men were candidates for the consulship of 102 but fails to name them. A Cn.Scipio (321) was praetor c.109 but it is not known whether he lived long enough to stand for the consulship. Legitimate suspicion falls on those families that are conspicuous by their absence around this time (like the Valerii Messallae, Manlii Torquati, Furii Phili, Aemilii Lepidi, and Claudii Nerones). And it may be that some of the patricians elected to the consulship in the 90's reached the consulship late (we do not know when A.Albinus (cos.99), Cn.Lentulus (cos.97), or C.Flaccus (cos.93) were praetor).

[185] Cicero, Pro Plancio 51, Brutus 166 described C.Pulcher as *nobilissimus*, *potentissimus*, *clarissimus*. Even Pulcher, however, did not reach the consulship *suo anno* (see Appendix II).

[186] Albinus should probably be identified with the homonymous legate of 110 routed by Jugurtha (see Broughton, MRR.I.544, III.173; Sumner, Orators, 82, 84; Badian, Chiron, 14 (1984) 124f, 145f, Chiron, 20 (1990) 404).

[187] Namely, C.Memmius and C.Servilius Glaucia (see Badian, Chiron, 14 (1984) 106f).

[188] Six of the seven years 93 to 87 witnessed mixed colleges (89 was an all-plebeian college).

[189] Following the death of C.Marius on the 13th of January, Cinna saw to the election of a patrician suffect, L.Valerius Flaccus, who served for the remainder of the year (see MRR.II.53). Mommsen, RF.I.94, 114 denied Cinna and Flaccus were an all-patrician college, preferring to argue that the Cornelii Cinnae were plebeian. De Sanctis, RFI, 62 (34) 550f retorted with 'proofs' of Cinna's patrician status. He contended the young *flamen Dialis* designate C.Caesar repudiated the plebeian Cossutia and married Cinna's daughter because the *flamen Dialis* had to be married *per confarreationem*, a ceremony restricted to patricians, and

In the years immediately after Sulla's victory, the patriciate, received a conspicuous boost. Though the results were not uniformly to his liking, the elections conducted under Sulla's gaze (those for the years 81 to 78), all produced patrician consuls.[190] Sulla's wishes also prevailed in the first elections conducted after his death. In the consular elections for 77 the Sullani rallied to the support of the patrician candidate, who had been Sulla's choice for the previous year, and persuaded his most dangerous plebeian rival to stand aside.[191]

Sulla's demise in 78 was immediately followed by an increase in the number of all-plebeian colleges.[192] One contributory factor is identifiable. As a result of Sulla's reforms from 81 eight praetors rather than six were elected each year. It is probable as a consequence that the number of plebeian praetors, and hence potential plebeian consular candidates, was greater than ever before. This development will not have had an impact on the consular elections before the later 70's, since the members of the first enlarged praetorian college of 81 cannot have stood for the consulship before 78, and the consulships of 81-78 were in any case earmarked for the most prominent Sullani. However, from the later 70's the growing numbers of plebeian praetors will have made the task of patrician competitors

because the *flaminica Dialis* had to be a patrician (accepted by Taylor, CP, 36 (1942) 114-5; Broughton, MRR.II.30 n.3; Badian, Chiron, 20 (1990) 382). But in the historical period *confarreatio* was not restricted to patricians and no source certifies the *flaminica Dialis* had to be patrician - the wives of the other *flamines maiores* demonstrably did not (see Linderski in Raaflaub (ed.), Social Struggles in Archaic Rome, (1986) 244-261 and Vanggaard, The Flamen: A Study in the History and Sociology of Roman Religion, (1988) 51f). Yet pace Mommsen, there is no good reason to doubt the patrician status of the Cornelii Cinnae. Hence T.J.Cadoux (cited by Broughton, MRR.III.64) suggested the absence of protest at the election of two patricians on occasion after 49 indicates the laws prohibiting this eventuality had been repealed or were obsolete. However, as Shackleton Bailey, Cicero's Letters to Atticus, II.202 rightly pointed out, Cicero's testimony proves the *Lex Licinia* was still binding in the First Century (see Ad Att., IV.16.6, De Domo 37 and Pro Scauro 34). The appointment of Flaccus is rather to be seen as an example of the disregard for constitutional proprieties characteristic of the period (Broughton, MRR.II.30 n.3; Brunt, JRS, 72 (1982) 8 n.32).

As Mommsen, RF.I.95, 123 noted after 49 the appointment of two patrician consuls became more frequent. The incidence varies according to whether the patrician creations of Caesar and Augustus are included but even reckoning only with representatives of original patrician families the phenomenon is still quite common (witness the college of 46, the *suffecti* of 32, the consuls of 18, 13, 9, 3, and so on. See further Pistor, Prinzeps und Patriziat, Diss., (1965) 90f; T.T.Rapke, Latomus, 47 (1988) 92-3).

[190] Sulla had opposed the election of the erratic M.Aemilius Lepidus for 78 (see Plut., Sulla 34.7-9, Pomp.15.1-2; Sall., Hist., I.55 M; App., BC.I.105). Sulla had had his own patrician candidate for that year - Mam.Aemilius Lepidus Livianus (see Badian, Studies, 234 n.17; Sumner, JRS, 54 (1964) 45; and the following note).

[191] The plebeian *novus homo* C.Scribonius Curio was one of the favoured candidates, but Curio was persuaded to step aside in favour of the patrician (by adoption) Mam.Aemilius Lepidus Livianus who had suffered a *repulsa* the year before (Sall., Hist.I.86M; Sumner, JRS, 54 (1964) 45; Broughton, T.A.Ph.Soc., 81 (1991) 6, 29). Lepidus was elected with the plebeian D.Iunius Brutus for a colleague. As Curio was elected for the following year, it seems he was fairly certain of election in 78, and had he not agreed to stand aside, he might have been elected over Lepidus and with D.Brutus as his colleague.

[192] Between 76 and 67 not one patrician graced the consular *fasces*. Salmon, REL, 47 (1969) 336f linked the success of the patriciate in the post-Sullan period with the proscriptions and the prohibition on political careers for the sons of the proscribed. As an example Salmon cited the return to prominence of the Iulii Caesares. This is hardly persuasive. The proscriptions included some patricians, like L.Scipio Asiaticus (cos.83) who went into exile at Massilia, and the political ban on the sons of Sulla's enemies also affected some patricians (notably Cinna's son and would have affected the son of Asiaticus had he not been killed in the revolt of Lepidus see F.Hinard, Les proscriptions de la Rome républicaine, (1985) 343-6). Moreover, the majority of the proscribed were representatives of families that were of a calibre that made them unlikely to threaten the chances of the patriciate at the consular elections (see Hinard, Ibid., 329ff). Finally, the return to prominence of the Iulii Caesares pre-dated the proscriptions.

more and more difficult and will at least partly account for the increase in the number of all-plebeian consular colleges in the later 70's and in the 60's.[193]

The 50's witnessed a remarkable resurgence by the patriciate.[194] Two factors appear relevant. Firstly, a number of the patrician families that benefited from the 'patronage' of Sulla saw sons reach consular age in the later 60's and 50's.[195] Further, some of the patricians who had missed out on a consulship in the 60's were successful in the 50's.[196] The election of one such veteran patrician candidate, M.Valerius Messalla Rufus (cos.53), was aided by the eruption of a political scandal that effectively eliminated one of his plebeian rivals.[197] Four candidates presented themselves for the year 53 two patricians (Messalla and M.Aemilius Scaurus), plus two plebeians (C.Memmius and Cn.Domitius Calvinus). Initially Cicero thought all four candidates had equally good chances.[198] After Domitius and Memmius made their notorious compact with the consuls of 54, the chances of Scaurus and Messalla seemed sunk, though the former had been Pompey's candidate.[199] But when Memmius exposed the deal, he ruined his own chances and Messalla and Calvinus were elected. Secondly, the electoral battles of the Triumvirs and their opponents seems to have worked to the advantage of the patriciate. Not that the Triumvirs or their opponents are to be credited with some special predilection for patricians, both groups merely exploited the material that came to hand. Thus although a significant number of the patricians elected in the 50's had the support of the coalition,[200] the Triumvirs had opposed the candidacy of others,[201] and both the all-plebeian colleges elected in the 50's had the

[193] The increase in the number of praetorships will have been highly significant, but was not necessarily the determining factor in the increase. It will be remembered that the number of all-plebeian consular colleges elected in the decades between 120 and 100 had equalled, or exceeded the number elected in the 70's and 60's, despite the fact that in the Second Century there were still only six praetorships a year.

Badian, Chiron, 20 (1990) 412 connected Sulla's doubling of the senate with the decline in the number of patrician consuls elected in the period 78-70, but given the length of time needed to progress through the *cursus*, this could not have had an affect on the consulate till the end of the 70's at the earliest. Moreover, the majority of consuls continued to be drawn from old senatorial families, and not from new families introduced by Sulla.

[194] Noted by Badian, Chiron, 20 (1990) 412.

[195] See Syme, AA, 54. Most notably M.Valerius Messalla Niger (cos.61) and M.Valerius Messalla Rufus (cos.53), also Ap.Claudius Pulcher (cos.54), and a number of Lentuli.

[196] Like M.Valerius Messalla Rufus (cos.53), and Ser.Sulpicius Rufus (cos.51).

[197] Messalla was praetor probably in 62 (see MRR.II.173) and must have run unsuccessfully, perhaps on a number of occasions, before 54. In 55 Messalla had contemplated running for the consulship of 54 (Cic., Ad Att., IV.9.1), but whether he did so or not is unknown.

[198] Cic., Ad Att., IV.16.6. For a detailed treatment of the campaign see Gruen, Hommages á Marcel Renard, (1969) II.311-21.

[199] See Cic., Ad Att., IV.15.7, Ad Q. frat., II.15b.4, III.2.3, 8.3.

[200] Caesar's own candidacy for 59, though prior to the formation of the 'Triumvirate' *per se*, had the support of both Pompey and Crassus (see Gruen, LGRR, 88f). P.Lentulus Spinther elected for 57 enjoyed Pompey's and Caesar's support (see Gruen, LGRR, 144f). Pompey had also backed his father-in-law Metellus Scipio for the consulship of 52 and later saw Scipio elected to served as his colleague for the latter part of 52 (see Gruen, LGRR, 151f).

[201] On Cn.Lentulus Marcellinus elected for 56 see Gruen, LGRR, 146. For Pompey's opposition to the candidacy of M.Messalla Rufus see Gruen, Hommages á Marcel Renard, (1969) II.315, LGRR, 149. Though in the event he maintained a neutral stance L.Aemilius Paullus was elected for 50 as an avowed

backing of the Triumvirate.[202] While other patricians whose candidacy was supported by the Triumvirs failed to get up.[203] It would, however, appear that when the Triumvirs or the *boni* declared themselves behind a patrician candidate there was a tendency for the opposing camp to advance the cause of a rival patrician candidate.[204]

The elections for 172 were an event of signal importance in the history of the patriciate. Having reached an accomodation with the plebeians in the Fourth Century, the patriciate enjoyed for the better part of two centuries an unshakable claim on one consulship *per annum*. Though the plebeians had made legal provision for the election of all-plebeian consular colleges, the patrician claim was protected by the notion that only patrician consuls could possess the *auspicia publica*. That dogma retained its potency as late as the consular elections of 215. Yet a little over a generation later two plebeian consuls were returned and the result was endorsed. Thenceforth plebeians could sue for both places every year and the *angustior petitio* that prospective patrician candidates were forced to endure was acknowledged as a grievous handicap.[205] Whereas prior to 172 prospective patrician consular candidates had only to consider the potential electoral appeal of their likely patrician rivals, after 172 they had to contend with plebeian competitors as well.[206] Between 172 and 140 all-plebeian consular colleges were infrequently elected, but the incidence rose suddenly and dramatically in the 130's and thereafter all-plebeian consular colleges predominated, except in the 90's, 80's, and 50's when mixed colleges were in the majority. Nevertheless, in the period 172-49 the patriciate enjoyed a level of representation

opponent of Caesar and in the knowledge that he was hostile to Pompey (see Gruen, LGRR, 156f; L.Hayne, L'Ant.Class., 41 (1972) 148-155). Caesar had made some overtures towards L.Cornelius Lentulus Crus but eventually backed a rival patrician candidate - Ser.Sulpicius Galba (see Gruen LGRR, 157f; L.Hayne, Acta Classica, 39 (1996) 72-76; and Broughton, T.A.Ph.Soc., 81 (1991) 18).

[202] In 58 Caesar's father-in-law L.Piso was elected with Pompey's faithful adjutant A.Gabinius, over at least one patrician candidate - L.Lentulus Niger (see Broughton, T.A.Ph.Soc., 81 (1991) 10). In 56 the Triumvirs initially supported unnamed candidates for 55, but when it became clear they would not get up Pompey and Crassus ran themselves (see Dio, XXXIX.27.2). It is possible one of the unnamed Triumviral candidates for 55 was T.Ampius Balbus whom Pompey supported unsuccessfully for 54 (Schol.Bob., p.156 St). The only known candidate for 55 was L.Domitius Ahenobarbus who was violently opposed to the Triumvirs. R.J.Evans, Acta Classica, 34 (1991) 122-3 conjectured that Lentulus Crus and Ap.Pulcher may have run for 55, but there is no evidence that Crus competed and as Appius was praetor in 57 he cannot have run before the elections of 55 for 54.

[203] Pompey had supported the candidature of M.Aemilius Scaurus in 54 and it would seem the 'Triumviral ticket' for 53 was Scaurus and C.Memmius (see Gruen, Hommages á Marcel Renard, (1969) II.313f, LGRR, 148). Caesar fostered Ser.Sulpicius Galba's candidacy for 49 (see Broughton, T.A.Ph.Soc., 81 (1991) 18).

[204] Thus in the elections for 53 the Triumvirs backed Scaurus whilst Messalla had the support of Pompey's enemies and in 50 Caesar backed Galba against Lentulus Crus, the candidate of the *boni* (see above).

[205] See Cicero, De Domo 38, Pro Scauro 31-4.

[206] Thus for instance Cn.Manlius Vulso, the least popular of the three patrician candidates in 192 and 191, did not run in 190 as he would have been contending with L.Scipio, and Scipio though unsuccessful in 191, had polled better than him. Manlius ran again in 189 when one of his rivals M.Messalla was given no chance and the other M.Lepidus had made himself unpopular due to his irregular candidacy. Whereas in 64 Catiline and M.Antonius formed a *coitio* in order to keep Cicero, their nearest rival, out (Asc., 82-3 C). But Catiline was beaten convincingly by Cicero and narrowly by Antonius (Asc., 94 C). Asconius says that it was the reputation of his father that gave Antonius the victory. While according to Cicero, Pro Murena 17, he beat his two patrician rivals (Catiline and P.Galba) because he surpassed Catiline in *dignitas*, and Galba in *gratia*.

in the consulate out of all proportion to patrician numbers.[207] The evidence suggests that it was increasing competition for the consulship following the increase in the number of praetorships from 197, rather than a dearth of patrician praetors, that led to the election of the first all-plebeian college in 172. The explanation of the sudden proliferation of all-plebeian consular colleges from the 130's is more complex. Some possible contributory causes are declining patrician numbers, the introduction of the secret ballot, the end of alternation in the curule aedileship, and the influence of domestic political events.

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[207] So rightly Syme, RR, 10; Salmon, REL, 47 (1969) 322f; Linderski, Staat, 43. Of the 124 consular colleges elected between 172-49 only 49 or 39.52% were all-plebeian colleges and 75 or 60.48% were mixed colleges (if *suffecti* are counted as new colleges 51/132 or 38.64% were all-plebeian colleges, 80/132 or 60.61% were mixed colleges and 1 was an all-patrician college).

III

THE PATRICIATE AND POLITICAL OFFICE: THE CENSORSHIP

From the inception of the office in the mid-Fifth Century until the middle of the Fourth Century the censorship was monopolized by the patriciate. In the mid-Fourth Century, in line with developments in the consulship, plebeians gained access to the censorship. For the next two centuries, in spite of the legal entitlements of the plebeians under the *Lex Publilia*, the censorship was shared equally between the orders. The advent of all-plebeian consular colleges in the early Second Century presaged the election of all-plebeian censorial colleges, but that eventuality was forestalled until the proliferation of all-plebeian consulships in the 130's made the innovation unavoidable. Yet in spite of the breakthrough achieved in 131, and the diminishing patrician share of consulships from the 130's, just over half the sixteen censorial colleges elected between 131 and the fall of the Republic were mixed colleges.

It has been suggested that the creation of the censorship in 443 was a patrician ploy to divest the consular tribunate, for which plebeians were eligible, of some of its responsibility.[1] Whether that be so or not, the censorship remained a patrician preserve until the election of C.Marcius Rutilus in 351 - against, it is said, the united but ineffectual opposition of the patriciate.[2] In the decades following this plebeian victory the history of the office is somewhat obscure. Only three censorships are recorded at irregular intervals between 351 and 319.[3] The success of Marcius was not repeated until the election of Q.Publilius Philo in 332.[4] The censorship of Philo was purportedly preceded by an all-patrician college[5] which may have been part of a patrician reaction to plebeian advances, much like the all-patrician consular colleges of the 350's and 340's, and was perhaps the event that prompted the tabling of the third of the *Leges Publiliae* of 339.[6] Like the *Lex Genucia*, the *Lex Publilia de censore plebeio creando* was intended to reinforce plebeian claims to office and its effects were not dissimilar.[7] In one respect it was highly successful - after its passage no more all-patrician censorial colleges were

[1] See E.S.Staveley, JRS, 43 (1953) 30; J.Suolahti, The Roman Censors: A Study on Social Structure, (1963) 23, 92. This was doubted by Mommsen, StR[3].II.335.

[2] Both consuls at the time were patrician and are said to have threatened not to accept any votes for Marcius (Livy, VII.22.7-10).

[3] In 340, 332 and 319.

[4] Livy, VIII.17.11-12.

[5] Velleius, II.8.3 says that two Scipiones who were brothers held the censorship together but he offers no clue as to the date. Jerome, Chron., p.122 Helm records a census in 340 but does not give the name of the censors responsible. The two notices are usually combined. Some scholars accept a Scipionic censorship in 340, others reject it (see De Boor, Fasti Censorii, 73f; Degrassi, Inscript.It., XIII.1.107, 408f; Broughton, MRR.I.136; and Suolahti, Censors, 204f. Münzer both accepted and rejected it - compare RE.IV.1428, 1434 and RAA, 38-9).

[6] See Münzer, RAA, 38-9; W.Weissenborn and H.J.Müller, Titi Livi ad urbe condita libri[8], Berlin, (1965) III.236; and Suolahti, Censors, 76, 92-3, 204.

[7] The text of the *Lex Publilia* as reported by Livy, VIII.12.16 is problematic (see J.-C.Richard, Mnemosyne, 34 (1981) 127-135). However, it is perfectly plausible that the law stipulated not only that one censor must be plebeian but that both censors might be plebeian.

elected under the Republic. Yet in another respect the provisions of the *Lex Publilia* were not felt for over two centuries, for although it allowed for the election of two plebeian censors this did not occur until 131.

By the Hannibalic War the division of political responsibility between the orders in the censorship that had been established in 339 was well entrenched.[8] As was the case with the consulate, long after the plebeians gained the legal right to sue for both places every year, the patricians continued to maintain a *de facto* hold on one of the two available censorial places. However, the ability of the patriciate to secure equal representation with the plebeians in the censorship was conditional upon the success of the patriciate at the consular elections, as it was already customary by the Hannibalic War that candidates for the censorship be drawn from amongst the ex-consuls.[9] This requirement was temporarily waived in 210 and 209 due to the exigencies of the War but the non-consular censors of 209 were the last elected under the Republic.[10] This prerequisite made a decline in the level of patrician representation in the censorship inevitable in the period after 172 when it became possible to elect two plebeian consuls, since the number of patricians elected to the consulship governed the number of potential patrician candidates for the censorship.[11] The inextricable correlation between the level of patrician representation in the consulship and censorship eventually put an end to the equal representation of the orders in the censorship. The settlement reached in the Fourth Century was finally shattered in 131 with the election of the first all-plebeian college of censors.[12] Thereafter, the fluctuation in the level of patrician representation in the consulship, exacerbated by the effects of mortality, foreign service, and the operation of the courts, combined to determine the ability of the patriciate to take part in the censorial

[8] For analyses of the censorship in the period see among others B.Borghesi, Oeuvres Complètes, (1865) IV.1-88; F.Münzer, Rh.Mus., 61 (1906) 37-40; R.V.Cram, HSCP, 51 (1940) 71-110; J.Suolahti, The Roman Censors, (1963); E.T.Salmon, REL, 47 bis (1969) 321-339; and Develin, Antichthon, 14 (1980) 84-87. Cram, Suolahti and Salmon must be treated with care. Cram and Salmon are unreliable on some points of detail. Note among other errors Salmon, Ibid., 324 claimed that the college of 86 was the only all-plebeian college of censors between the years 90 and 48 B.C. - overlooking the censorship of 65 and the distinct possibility that the censorship of 64 was also an all-plebeian college (see infra). The statistics Cram provides at pages 105-107 on patrician and plebeian occupancy of the censorship must be disregarded. For some unaccountable reason Cram considered the Sempronii censors in 300, 252, 230, 209, P.Servilius Vatia Isauricus, censor in 55, and P.Sulpicius Rufus, censor in 42, patrician.

[9] See Suolahti, Censors, 23ff, 551ff, 570ff and Develin, Practice, 120f.

[10] The reasoning behind the anomalous elections was the desire not to tie up ex-consuls who might otherwise be used for military commands. Both the ex-consuls elected to the censorship of 214 were unfit for active service (M.Atilius Regulus cos.227, 217 by reason of his age see Livy, XXII.40.6, while P.Furius Philus cos.223 was probably still suffering the effects of a near fatal wound received in 216 see Livy, XXIII.20.2. Perhaps L.Veturius Philo cos.220 cens.210 was also convalescing since like Philus he died in office). All three of the non-consular censors of 210 and 209 were subsequently consul (P.Licinius Crassus Dives cens.210, cos.205; M.Cornelius Cethegus cens.209, cos.204 and P.Sempronius Tuditanus cens.209, cos.204). The last such case before 210, undoubtedly caused by the same phenomenon, occurred during the First Punic War (viz. A.Manlius Torquatus Atticus cens.247, cos.244, 241).

[11] See Suolahti, op cit., 93f, 307f, 402f, 573f and Develin, Antichthon, 14 (1980) 84-7. And as iteration in the censorship was prohibited after 265 (Val.Max., IV.1.3; Plut., Coriolanus 1.1) a shortage of patrician candidates could not be remedied by the election of a patrician censorius.

[12] Though oblivious to the significance of the election of the first all-plebeian consular college, Livy did not fail to register the election of the first all-plebeian censorship (Periochae, LIX). Only a few letters of the entry in the *Fasti Capitolini* for the censorship of 131 survive so it is unknown whether the innovation was noted there also.

elections.[13]

Prior to 172 there was still lively competition between patrician candidates for the censorship.[14] Indeed, as the number of all-plebeian consular colleges remained low until the 130's, the effect of the innovation that occurred in 172 was slow to make itself felt on the censorship.[15] It was only from the late 130's that the increasingly frequent election of all-plebeian consular colleges, and the resultant decline in the pool of patrician ex-consuls, periodically compounded by other factors, began to seriously impinge on the censorial elections. When the first all-plebeian censorial college was elected in 131 only a handful of possible patrician candidates can be discovered.[16] And the situation of the patriciate was destined to deteriorate further in the three decades after 131 when the number of all-plebeian consular colleges increased markedly.[17] The censorial elections for 125 did produce a mixed college but that result was made possible by the longevity

[13] Mortality naturally affected the number of ex-consuls available to contest censorial elections. During the Hannibalic War, the Social and First Civil Wars the pool of ex-consuls was subject to especially severe levels of mortality, but the number of potential candidates must regularly have been thinned by epidemics, convictions, and by the absence of potential candidates due to provincial commands and foreign embassies (see further below). When the pool of potential candidates was already small, the elimination of even a few possible candidates will have been influential.

[14] The elections of 190 attracted three patrician candidates: T.Quinctius Flamininus (cos.198); L.Valerius Flaccus (cos.195) and P.Cornelius Scipio Nasica (cos.191) and three plebeians (Livy, XXXVII.57.9-58.2). The elections of 185 attracted five patricians: L.Valerius Flaccus and P.Cornelius Scipio Nasica competed again, as well as L.Furius Purpurio (cos.196); L.Cornelius Scipio Asiaticus (cos.190) and Cn.Manlius Vulso (cos.189); and four plebeians (Livy, XXXIX.40.6-41.4, 42.5-45.9; Plut., Cato Maior 16-19).

[15] Thus despite the election of all-plebeian consular colleges in 172, 171, and 170 there were still three patrician competitors for the censorship of 169: C.Claudius Pulcher (cos.177); L.Postumius Albinus (cos.173) and C.Valerius Laevinus (cos.suff.176) as well as three plebeians (Livy, XLII.14.1). And although the evidence for censorial elections fails in the absence of Livy it is probable there were a reasonable number of patrician candidates into the 140's. Scipio Aemilianus had at least one patrician competitor in the elections for the censorship of 142 - Ap.Claudius Pulcher cos.143 (Plut., Aem.38.3-5).

[16] See Münzer, RAA, 283f. Even if the patrician consuls of the 140's are taken into consideration there were only four possible candidates. Scipio Aemilianus (cos.147, 134, cens.142) and Ap.Claudius Pulcher (cos.143, cens.136) were not eligible as both had already been censor. Q.Fabius Maximus Aemilianus (cos.145) was probably alive (though he predeceased his brother Scipio Aemilianus dying sometime before 129 - Cic., Lael., 69; Münzer, RE.VI.1794). However, Fabius served with his brother in Spain and it is unknown whether Fabius returned to Rome in time to contest the elections. It is unclear whether Ser.Sulpicius Galba (cos.144) was still alive at the appropriate juncture. Galba was dead by 129 (Cic., De Rep., III.42) but the precise date of his demise is unknown. Q.Fabius Maximus Servilianus (cos.142) is not attested after 141. Q.Servilius Caepio (cos.140) is not heard of subsequent to 139. And P.Cornelius Scipio Nasica Serapio (cos.138) died in Asia in 132. That leaves four possible patrician candidates: the ancient P.Cornelius Lentulus (cos.suff.162) who lived beyond 120; Cn.Servilius Caepio (cos.141) who was elected censor in 125; M.Aemilius Lepidus Porcina (cos.137) who was alive as late as 125 (see MRR.I.510); and L.Furius Philus (cos.136) who survived at least until 129 (see Cic., De Rep., I.17f). None are known to have competed. Some may have been otherwise engaged. Caepio crushed a slave revolt c.133-2 (see MRR.III.39, 194), but it is unlikely that this could have kept him from standing, since he shared the command with Metellus Macedonicus and Macedonicus competed (L.Hayne, Historia, 27 (1978) 234-5 suggested that Caepio ran unsuccessfully for 131 which is entirely possible but there is no evidence see the comments of Develin, Antichthon, 14 (1980) 84-7). What Lentulus, Lepidus, and Philus were doing at this time is unknown and we should bear in mind the possibility that some were absent serving on embassies or as legates.

[17] The low point was reached in 120 and 102 when both consuls and both censors were plebeian. Suolahti, Censors, 94 erroneously claimed that 102 was the only year when all-plebeian consular and censorial colleges coincided.

of the victorious patrician candidate.[18] A decline in patrician representation could not be forestalled indefinitely and the overwhelming preponderance of all-plebeian consular colleges from the 120's till the end of the Second Century enabled the plebeians to monopolize the censorships of 120, 115 and 102.[19]

Nevertheless, the plebeian dominance of the censorship in the period was punctuated by the election of mixed colleges in 109 and 108. And the election of M.Aemilius Scaurus (cos.115) in 109, and Q.Fabius Maximus Eburnus (cos.116) in 108, is all the more remarkable when placed in perspective. The pool of potential patrician candidates for these years was very limited to begin with because of the surge in the number of all-plebeian consulships but it was restricted even further by the elimination of two of the four patrician consuls elected in the 110's.[20] In short, Scaurus and Eburnus were probably the only patrician contenders, and both were elected, despite a probable surfeit of plebeian candidates. It is tempting to speculate that the electorate continued to prefer

[18] Cn.Servilius Caepio consul back in 141. In the elections for the censorship of 125 of the four possible candidates for 131 cited above only three were certainly still alive in 126/5: P.Cornelius Lentulus (cos.suff.162); Cn.Servilius Caepio (cos.141) and M.Aemilius Lepidus Porcina (cos.137). To these may be added the patrician consuls elected in the meantime: L.Valerius Flaccus (cos.131); L.Cornelius Lentulus (cos.130); Ap.Claudius Pulcher (cos.suff.130); L.Cornelius Cinna (cos.127); M.Aemilius Lepidus (cos.126). Of these Lentulus died in office and Flaccus, Pulcher and Cinna are not heard of subsequent to their consulships. That leaves four possible candidates (P.Lentulus, Cn.Caepio, M.Lepidus Porcina and M. Lepidus). Only Caepio is known to have competed.

[19] The election of the second all-plebeian censorial college for 120 is hardly surprising when one considers the possible patrician contenders. Only one is identifiable: T.Quinctius Flamininus (cos.123). Flamininus lived into the 90's (Cic., Brut.109, 259; Sumner, Orators, 68) but there is no indication in the sources that he competed. The only other possible patrician candidates for this year, P.Lentulus (cos.suff.162) and Q.Fabius Maximus (cos.121), can be ruled out. Lentulus was out of favour because of his part in the suppression of C.Gracchus and was forced to depart for Sicily (see MRR.I.523) and Fabius was probably in Gaul at the time of the elections.

Flamininus is the only readily identifiable patrician candidate for the censorship of 115. It is uncertain whether Q.Fabius Maximus Allobrogicus (cos.121) was still among the living when the elections were held. Allobrogicus may be identified with the legate of 113 (see MRR.I.536, 537 n.5) and with the Q.Fabius Q.f. mentioned in the *lex agraria* of 111 (CIL.I.200 = I^2.2.585 - thus Münzer, RE.VI.2.1796). However, as it is Q.Fabius Maximus Eburnus that is repeatedly mentioned in this epoch (viz. consul 116, censor 108) and Eburnus was still alive in 104 (see Münzer, Rh.Mus., 61 (1906) 19f; and Alexander, Trials, 31-2) whilst Allobrogicus is not certainly attested after his triumph in 120, it makes more sense to identify both with Eburnus (MRR.III.88). Eburnus is unlikely to have considered running since he was consul at the time of the elections, not a consular of some standing as was customary, and he will presumably also have expected to take up a provincial appointment after his consulship (that Eburnus was in fact proconsul of Macedonia c.115-114 as per Broughton, MRR.III.87-8 remains uncertain. Q.Kallet-Marx, CQ, 45 (1995) 129-153 argues the proconsul was Q.Fabius Maximus Servilianus (cos.142, c.144-3).

In the elections for 102 only two possible patrician competitors are apparent: Flamininus and Ser.Sulpicius Galba (cos.108) who survived at least until 100 (Cic., Pro Rab.Perd.21). That either Flamininus or Galba competed is doubtful as neither were active after their consulships (on Galba see Badian, Chiron, 14 (1984) 141f). Indeed, Flamininus is probably the only living consular who did not participate in the suppression of Saturninus (missed by Badian, Ibid., 126f) and his retirement from active politics probably predated 100. The only other potential candidate, Q.Servilius Caepio (cos.106), had been condemned in 103.

[20] There were three possible patrician candidates for 109: Flamininus; Eburnus; and Scaurus. Scaurus, the only known competitor, was elected.

In 108 there were three possible patrician candidates: Flamininus; Eburnus and Ser.Galba. Eburnus was elected (on the question whether the censor of 108 was Eburnus or his cousin Allobrogicus see Münzer, Rh.Mus., 61 (1906) 19f; MRR.I.550 n.3). The two potential patrician candidates that were eliminated were P.Cornelius Scipio Nasica (cos.111) and Sp.Postumius Albinus (cos.110). Nasica died in office. And if Albinus had any ambitions to seek the censorship of 109, his chances were ruined by the fiasco in Numidia, as a result of which he was condemned and exiled in 109.

whenever possible to divide the available censorial places equally between the orders, as was customary, but the relative influence and merits of the candidates were doubtless the decisive factors.

Following the all-plebeian college of 102 the fortunes of the patriciate improved briefly with another unlikely victory in the elections for the censorship of 97. A mixed college was elected for 97, in spite of a notable dearth of patrician consulars, due to the plebeian dominance of consulate in the preceding decades.[21] If the ambitions of C.Marius had been realized, 97 might have seen a mixed college consisting of Marius and L.Valerius Flaccus, as Marius had intended to run for the censorship himself, no doubt with Flaccus as colleague.[22] However, Marius' involvement with Saturninus had alienated much of the electorate and Marius did not compete for fear of defeat. As events turned out, Flaccus was elected nonetheless.

The experience of the patriciate in the later 90's and the 80's was mixed. In the elections for 92 the extremely limited number of eligible patrician candidates allowed the plebeians to sweep the censorship once more.[23] However, an increase in the number of patrician consuls elected in the 90's made possible the election of a mixed college for 89, despite a high level of mortality in the ranks of the patrician consulars.[24] That success proved an aberration as a further all-plebeian college of censors was elected for 86. A combination of high mortality, foreign service and the political milieu of the Civil War having conspired to eliminate the only identifiable patrician candidates for that year.[25]

Sulla's victory ushered in a rise in the number of patrician consuls elected in the years 81 to 77 - though this success tailed off dramatically after the Dictator's death.

[21] Apart from the successful candidate, L.Valerius Flaccus (cos.100), the only other possible patrician candidate for 97 was A.Postumius Albinus (cos.99). That the consul of 99 was still alive is based on his probable identification with the legate Postumius Albinus murdered in 89 (as per Broughton, MRR.I.544, III.173; Sumner, Orators, 82, 84; Badian, Chiron, 14 (1984) 124f, 145f, Chiron, 20 (1990) 404; and T.Corey-Brennan, Chiron, 22 (1992) 157 n.156 contra Münzer, RE.XXII.1.907-910). But Albinus had an unenviable record. He is probably to be identified with the homonymous legate of 110 routed by Jugurtha (see Broughton, Sumner and Badian, loc.cit.) and he accomplished nothing worthy of note during his consulship.

[22] Plutarch, Marius 30.4. On Marius and the censorship of 97 see the comments of Badian, Foreign Clientelae, 210f, Studies, 47f., and Chiron, 14 (1984) 141f.

[23] In fact, the only identifiable patrician candidate in the elections for 92 is A.Albinus (cos.99). Cn.Cornelius Lentulus (cos.97) is not heard of subsequent to his consulship and more likely than not was dead, whilst C.Valerius Flaccus (cos.93) was absent continuously from 92-81 governing Spain and Gaul (see Badian, Studies, 88f; Sumner, Orators, 83; T.Corey-Brennan, Chiron, 22 (1992) 143).

[24] Of the patrician consuls A.Postumius Albinus (cos.99); Cn.Cornelius Lentulus (cos.97); C.Valerius Flaccus (cos.93); C.Claudius Pulcher (cos.92) Sex.Iulius Caesar (cos.91); and L.Iulius Caesar (cos.90) the only probable patrician competitor for 89 was the successful candidate - L.Caesar. Albinus was probably in the field in 90 and was killed in 89 (see above); Lentulus was very likely dead (see previous note); Flaccus was away on command (see previous note); C.Claudius Pulcher (cos.92) probably did not long survive his consulship (see Münzer, RE.III.2856; cf. Badian, Phoenix, 25 (1971) 134-7; MRR.III.58); and Sex.Caesar died in 90 (see MRR.II.27).

[25] Of the surviving patrician consulars C.Flaccus (cos.93) was still on command; L.Cornelius Sulla (cos.88) was in the East; and the *flamen Dialis* L.Cornelius Merula (cos.suff.87), though possibly still alive when the elections were conducted, was not in favour with the Cinnan regime and it is doubtful whether the elections were entirely free and fair. L.Cornelius Cinna (cos.87-4) was apparently disinterested, since he could hardly have been denied the office had he decided to take it on.

However, the early demise of many of these patrician consulars, and the temporary hiatus in election of censors between 86 and 70, meant there were few eligible patrician candidates surviving when the decision was taken to elect censors for 70.[26] Yet in spite of the odds, a mixed college was elected for the year 70.[27]

The censorial elections for 65 and possibly 64 produced all-plebeian colleges.[28]

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[26] Of the patrician consuls elected prior to and during the Civil War only one was alive in 70. Sulla (cos.88, 80) had died in 78; Cinna (cos.87-4) was murdered in 84; Merula (cos.suff.87) committed suicide in late 87; and L.Valerius Flaccus (cos.suff.86) was murdered in 85. L.Cornelius Scipio Asiaticus (cos.83) was alive but had been proscribed and was in exile (Cic., Pro Sestio 7; Schol.Bob., p.126 St.). Of the patrician consuls elected between 82 and the elections for the censorship of 70: Cn.Cornelius Dolabella (cos.81) is not heard of after 77; Ap.Claudius Pulcher (cos.79) died in 76; M.Aemilius Lepidus (cos.78) died in 77; and P.Cornelius Lentulus Sura (cos.71) was a man of infamous character and lifestyle and even had he entertained the prospect of competing, stood little chance. That leaves only two possible patrician candidates for 70: Mam.Aemilius Lepidus Livianus (cos.77), who survived into the mid-60's (see Chapter V and Appendix III), and the successful candidate Cn.Cornelius Lentulus Clodianus (cos.72). However, the victory of the younger and much less distinguished Clodianus is only explicable on the presumption that Livianus did not compete.

[27] Cn.Cornelius Lentulus Clodianus (cos.72) was elected with L.Gellius Poplicola (cos.72).

[28] Q.Lutatius Catulus (cos.78) was elected with M.Licinius Crassus (cos.70) for 65.

Only one of the censors of 64 is known - the plebeian L.Aurelius Cotta (cos.65). The identity of his colleague has been the subject of prolonged dispute (for a full account see M.Dondin, REL, 57 (1979) 126-144; cf. Suolahti, Censors, 472-5, 644ff). Borghesi, Oeuvres, IV.32-9 drew attention to an anecdote related by Fronto, Ad Caes., V.26 (41), 27 (42) involving an "Acilius censor" who imposed a *nota* on a tribune of the plebs named M.Lucilius for imprisoning a Roman citizen in spite of the protestations of his fellow tribunes. The episode must belong to the Republic but no Acilius is recorded as censor and the two principals are otherwise unknown. Borghesi argued the event described is characteristic of the First Century B.C. and identified Acilius as M'.Acilius Glabrio (cos.67), suggesting Glabrio was Cotta's colleague in 64. In Borghesi's favour is the fact that, if an Acilius was censor in the First Century, Glabrio is the only possible candidate and the censorship of 64 is the only possible year. As no other Acilius was consul in the First Century, Glabrio is the only Acilius who might have been censor in the period. Further, the only alternative date, the censorship of 61, can be ruled out since the censors of 61 did not issue a single *nota* - they enrolled all the eligible ex-magistrates (Dio, XXXVII.46.4), and Glabrio cannot have been the colleague of L.Caesar (cos.64) in 61 as his name will not fit in the lacuna in the *Lex Gabinia Calpurnia de Delo* (see infra). However, De Boor, Fasti Censorii, 92-4, 129 nn.1-2 rejected Borghesi's thesis since Dio, XXXVII.9.4 states that the *lectio* of 64 was not completed (so also Willems, Le Sénat, I.421). De Boor suggested the possibility of a copyist's error and proposed that the censor concerned was actually M.Atilius Regulus, censor in 214. Regulus and his colleague were especially severe in the conduct of the *census* and *recognitio equitum* and are known to have been in conflict with at least one tribune of the plebs - a L. or M.Caecilius Metellus (Livy, XXIV.18.1-10, 43.2-4; Val.Max., V.6.8). Suolahti put forward yet another candidate - Mam.Aemilius Lepidus Livianus (cos.77). Suolahti based the suggestion on the premise that Lepidus might have been elected "so that he might also be elected princeps senatus" in 64 or 61. That is patently erroneous. As Lepidus was appointed *princeps* in 70 he cannot have been censor prior to his nomination (see Chapter V and Appendix III). Furthermore, the premise that the post of *princeps senatus* was still restricted to *censorii* or serving censors in the First Century is fallacious. Already in the Second Century non-censors had been appointed (witness the appointment of P.Lentulus in 125 and M.Scaurus in 115). Consequently, the fact that Lepidus was *princeps senatus* is no guarantee that he was ever censor. More recently, Dondin returned to Borghesi's conjecture arguing that Dio erred and that the *lectio* was accomplished in 64. According to Dondin in 65 one of the censors, M.Crassus, was in favour of enfranchising the Transpadanes and tried to force the tribunes to co-operate by threatening them with expulsion, but his colleague Q.Catulus intervened and the quarrel that ensued forced the censors to abdicate without accomplishing anything. Whereas in 64 the new censors L.Cotta and M'.Glabrio did revise the senatorial role during which they inflicted a *nota* on the tribune M.Lucilius. But Dio confused the events of the censorships of 65 and 64 wrongly supposing that the *lectio* was not completed in 64 as a result of tribunician opposition to the censors. Dondin's argument is far from compelling (neither Astin, Historia, 34 (1985) 176 n.1, nor Brunt, Italian Manpower 225 B.C. - A.D.14, (1987) 700-2 was convinced. Broughton was equivocal - compare MRR.III.2-3, 9, 128-9). We have no good reason to question Dio's account. That the censors of 64 did indeed fail to complete their main duties is suggested by the fact that the next censors were elected within the *quinquennium*. And if Dondin's alternative version of history is accepted, it is

That result was predictable as the almost total absence of eligible patricians made the election of all-plebeian colleges a foregone conclusion.[29] In the final years of the Republic patrician representation in the censorship improved significantly, primarily due to an increase in the number of patrician consulars. The election of patrician consuls in three successive years in the latter half of the 60's (66, 65, 64) paved the way for the election of a mixed college of censors in 61.[30] While a dramatic increase in the number of

difficult to see how or why Dio can have garbled the facts so extensively as to produce the account handed down to us. However, it might still be possible to reconcile the testimony of Dio and Fronto and salvage the hypothesis of Borghesi without rewriting history. Suppose that the *recitatio* was necessary for the validation of the *lectio* and that the tribunes could obstruct the *recitatio* (see Mommsen, StR^3.I.113 n.4, II.357-8, 422; Willems, Le Sénat, I.247f, 264. Dondin questioned both propositions). Then it could be argued that in 64 Glabrio and Cotta inflicted a *nota* on the tribune Lucilius during the preparation of the *album senatorium*. But forewarned of the intention of the censors, the tribune Lucilius obstructed the *recitatio* and so technically the censors were unable to complete the *lectio*. If so, Fronto's claim that the censor Acilius inflicted a *nota* on the tribune Lucilius would not conflict with Dio's statement that the *lectio* was abandoned in 64 because of the opposition of unnamed tribunes who feared expulsion. However, for the present it is best to regard the question of the identity of L.Cotta's colleague in 64 as unresolved.

[29] As the plebeians had virtually monopolized the consulate between 76 and 66 the list of possible patrician candidates for 65 was very short. The patrician consuls of 72 and 71 were ruled out - Lentulus Clodianus (cos.72) was censor in 70 and Lentulus Sura (cos.71), never censorial material, was not eligible as he was no longer of consular standing having been expelled from the senate in 70. That leaves Mam.Aemilius Lepidus Livianus (cos.77) who died sometime between 65 and 63 and M'.Aemilius Lepidus (cos.66) who survived until 49 (see Chapter V and Appendix III). Neither are known to have competed.

The only possible patrician candidates for 64 were: Mamercus and Manius Lepidus again and L.Manlius Torquatus (cos.65). It is unlikely, however, that Torquatus was interested in competing for he will have been anticipating a provincial command in the year following his consulate (and in fact he spent 64 and 63 in Gaul).

[30] The identity of the censors of 61 was until recently a matter of fruitless speculation (see Suolahti, Censors, 644ff). C.Nicolet in REL, 51 (1974) 150-158, and C.Nicolet, T.C.Dumont, J.L.Ferray and P.Moreau (eds.), Insula Sacra: La loi Gabinia-Calpurnia de Délos (58 av.J.-C.), Rome (1980) 111-125 has now identified the censors of 61 as L.Iulius Caesar (cos.64) and C.Scribonius Curio (cos.76) based on a revised reconstruction of the text of the *Lex Gabinia Calpurnia de Delo* of 58 B.C.. Line 22 of the law preserves the letters:

...CATIONE . Q..AM . L.CAE.....NSVL...DELEI . FECERV

The E following the letters L.CA is only partially preserved and there is a gap of 12.5 centimetres between the letters E and N plus another shorter lacuna between the letters L and D. Nicolet et al advocate the restoration:

*in lo*CATIONE . Q*u*AM . L.CAE*sar . C.Curio . cens . i*NSVL*ae* . DELEI . FECERV*nt*

Nicolet argued as follows. The *locatio* was the job of the censors hence 'L.CAE' and his unknown colleague must be censors (p.84f). Of the known censors between 92 and the enactment of the law in 58 only one, L.Iulius Caesar (cos.90, cens.89), bore the *praenomen* Lucius and a *gentilicium* or *cognomen* beginning with the letters CAE. However, the censors of 89 may be ruled out since the *locatio* referred to in 58 ought to be more recent than the censorship of 89 and the lacuna is not large enough to accommodate the restoration 'L.CAEsar . P.Crassus . cens' (p.112f). That leaves the unknown censors of 64 and 61. Of the consulars in the requisite period only L.Caesar (cos.64) and L.Caecilius Metellus (cos.68) bear a *nomen* beginning with the appropriate letters but Metellus was not censor as he died during his consulship (p.115). Hence 'L.CAE' must be identified as L.Caesar (cos.64). Nicolet adduced in support a Greek inscription from Troy (OGIS.440; ILS.8770) honouring a 'L.Iulius L.f. Caesar censor.' Previously assigned to L.Caesar (cos.90, cens.89), Nicolet argued the inscription ought rather to be assigned to his homonymous son the consul of 64 (p.118f). Finally, L.Caesar (cos.64) cannot have been the unknown colleague of L.Aurelius Cotta in the censorship of 64 for although 'L.Cotta' would fit in the lacuna, the censors of 64 achieved nothing before resigning (Dio, XXXVII.9.4) and so cannot have been responsible for the *locatio* referred to in Gabinius' and Piso's law (p.114). A.Lintott, Imperium Romanum, (1993) 89 added a further argument. The Scholiast of Bobbio, p.157 St states that the agitation of the *publicani* for a partial refund of the Asian tax contract in 61-60 was opposed in the senate by M.Cato but supported by 'Caesar.' Since C.Caesar was in Spain, if the Scholiast's testimony is accurate, the Caesar who supported the *publicani* in the senate must be L.Caesar - whose involvement would have been unavoidable if he was then censor.

patrician consuls elected in the 50's, though thinned by death and the demands of empire and of justice, made possible the election of mixed colleges of censors for 55 and 50.[31]

At the outbreak of the Hannibalic War the patriciate retained a firm hold on the censorship. In the late Third Century the two orders continued to share the censorship equally as they had done for the past century. That arrangement was undermined by the advent of all-plebeian consular colleges, but due to the relative infrequency of all-plebeian consulships before the 130's, the first all-plebeian censorship did not eventuate until 131. Whether the first all-plebeian censorial college was elected as a result of a lack of patrician candidates, or in spite of patrician competitors, we cannot say. The increase in all-plebeian consular colleges from the 130's was mirrored by a marked decline in the patrician share of the censorship after 131. The first all-plebeian censorial college was to be followed by a further six, possibly seven, before the end of the Republic.[32] Nevertheless, the patriciate continued to be disproportionately represented in the censorship - with more than half of the sixteen censorial colleges elected after 131 being mixed colleges.[33]

As to the identity of L.Caesar's colleague. The lacuna after Caesar's name only leaves space for a *praenomen* and *gentilicium* or *cognomen* consisting of five or six letters (p.122f), and Caesar's colleague must be a plebeian consular. That being so, only two names satisfy all the criteria: C.Scribonius Curio (cos.76) and C.Calpurnius Piso (cos.67). Either 'C.Curio' or 'C.Piso' would fit in the lacuna. Nicolet, following Borghesi's lead, opted for Curio. Borghesi, Oeuvres, IV.41-4 long ago argued C.Scribonius Curio (cos.76) was one of the censors of 61. He cited a number of passages in which Curio is compared to, or listed with known censors (Cic., De Off., II.58; Val.Max., IX.1.7; Pliny, NH.IX.14.5), described in language used elsewhere of censors (Val.Max., IX.1.7), or portrayed as acting in a manner befitting a censor (Plut., Ant.2.3). According to Borghesi, Cicero's description of Curio as "adeptus omnia quae haberentur amplissima" and Valerius Maximus' reference to Curio as "omnibus honoribus abundans" establish that Curio held all the highest offices of state. Nicolet also noted that Cicero, Ad Att., I.16.3 compares the censorious behaviour of L.Cornelius Lentulus Crus with the scandalous behaviour of Curio and contended the passage is especially poignant if Cicero was comparing the strict behaviour of the non-censor Crus with the lax attitude of the censor Curio (p.125). Though suggestive, the passages cannot be said to be conclusive (see Suolahti, Censors, 650-4; Nicolet, Ibid., 123f; cf. Shatzman, Athenaeum, 46 (1968) 353-4; Badian, Athenaeum, 48 (1970) 4). However, the evidence is sufficient to justify Nicolet's "quasi-certitude" that L.Caesar (cos.64) was censor in 61 and since Caesar's colleague, whatever his identity, must have been a plebeian - the censorship of 61 was a mixed college.

The only other patricians eligible for contention for 61 were M'.Aemilius Lepidus and L.Manlius Torquatus who died shortly after 55 (see Münzer, RE.XIV.1.1202).

[31] The possible patrician candidates for 55 were: M'.Lepidus; L.Torquatus; M.Valerius Messalla Niger (cos.61); and Cn.Cornelius Lentulus Marcellinus (cos.56). Ruled out were: L.Iulius Caesar (cos.64) censor in 61; C.Iulius Caesar (cos.59) who was in Gaul 58-49; and P.Cornelius Lentulus Spinther (cos.57) who was in Cilicia 56-4. Only the successful candidate, Messalla Niger, is known to have competed.

In the election for 50 the number of possible patrician candidates was the highest it had been for decades. As well as M'.Lepidus and Lentulus Spinther there were Ap.Claudius Pulcher (cos.54), Q.Caecilius Metellus Pius Scipio Nasica (cos.52) and Ser.Sulpicius Rufus (cos.51). Three others may be ruled out: C.Caesar was still in Gaul; Lentulus Marcellinus appears to have died shortly after his consulate (see Shackleton, Two Studies, 30; Syme, AA, 248); and M.Valerius Messalla Rufus (cos.53) had been convicted in 51. Only Ap.Pulcher is known to have run and he was elected.

[32] In the years 120, 115, 102, 92, 86, 65. The total number is seven if the censorship of 64 was also an all-plebeian college.

[33] Nine of the sixteen censorial colleges elected after 131 were mixed colleges (viz. the censorships of 125, 109, 108, 97, 89, 70, 61, 55, 50). The total number is ten if the unknown censor of 64 was a patrician.

IV

THE PATRICIATE AND POLITICAL OFFICE: THE CURULE AEDILESHIP

The previous chapter dealt with the erosion of the prerogatives of the patriciate in high political office resulting in an end to equal representation of the orders in the praetorship, consulship, and censorship. The present chapter is devoted to another instance of plebeian encroachment on the political prerogatives of the patriciate - the curule aedileship. By the beginning of the Hannibalic War it was a long established principle that the curule aedileship be shared equally between the orders - patricians and plebeians holding the office in alternate years. At some date between 160 and 91 the principle of alternation was abandoned, enabling plebeians to compete for both the available places in any and every year. The curule aedileship was thereby brought into line with developments in the praetorship, consulship, and censorship.[1] Since the matter has been long neglected, the evidence for the date of the breakdown in alternation will be reviewed. It will also be argued that as the curule aedileship was a valuable asset for those hoping to advance to higher office, that the end of alternation inevitably meant fewer patrician candidates would be elected aedile and that this in turn was bound to impact on the level of patrician representation in the praetorship and consulship.

According to Livy the curule aedileship was created in 366 when the plebeian aediles refused to shoulder the extra burden resulting from the extension of the *ludi maximi*.[2] The patricians thereupon proposed the creation of the curule aedileship which was to be a patrician preserve. But in 365 the patricians agreed to admit the plebeians to the office in alternate years[3] and the first plebeian college entered office in the following year.[4] Thereafter patricians served in odd numbered years and plebeians in even years. When recording the inception of alternation Livy indicates that the practice subsequently brokedown but he offers no clue as to the date.[5] Fortunately, the combined evidence of Livy's later books, the *didascaliae* of Terence and a casual remark of Cicero permit us to narrow down the date of the breakdown. Livy provides the names of the majority of the curule aediles from 217 to 192 which clearly demonstrates that alternation was still the rule during that period.[6] Between 191 and the lapsing of Livy's text, Livy only records

[1] It may be that the end of alternation in the curule aedileship predated the first all-plebeian censorship (see infra).

[2] Livy, VI.42.12-14, VII.1.1.

[3] Livy, VII.1.6.

[4] M.Popillius Laenas served in 364 (see MRR.I.116). According to M.Iuventius Laterensis, the praetor of 51, Popillius' colleague was a Iuventius but that claim was doubted by Cicero (Pro Plancio 58). Cicero's scepticism was apparently justified as a fragmentary entry in Festus, 326 L names Popillius' colleague as a C.[...]lium.. Münzer, RAA, 28 conjectured C.Poetelius Libo Visolus cos.360, 346, 326. J.Seidel, Fasti Aedilicii von der Einrichtung der plebeischen Aedilität bis zum Tode Caesars, Dissertation, Breslau (1908) 8-9 suggested C.Licinius cos.361 or C. Plautius cos.358 were equally possible.

[5] VII.1.6 - "Primo ut alternis annis ex plebe fierent convenerat: postea promiscuum fuit."

[6] For the details see Seidel and MRR. Livy's record keeping is less than perfect. He omits the name of one of the curule aediles for 217, 215, and 212 and both the curule aediles for 211, 206 and 195 (in

the names of the curule aediles for 189, 187, 179 and 169 and in the absence of Livy the Terentian commentary of Donatus and the *didascaliae* of Terence's plays are our only sources for the colleges of curule aediles in the years 166, 165, 163, 161 and 160.[7] Yet together these sources provide sufficient evidence to establish that alternation remained in force at least until 160 as they record plebeians serving in the plebeian years 166 and 160 and patricians in the patrician years 189, 187, 179, 169, 165, 163, and 161.[8] On the other hand, Cicero's statement that the plebeian M.Claudius Marcellus was curule aedile in 91 proves that alternation had been abandoned by that date as 91 was a notionally patrician year.[9] Thus the evidence of Livy and the Terentian *didascaliae* establish that alternation persisted until 160, while the testimony of Cicero shows it had been abandoned by 91. As luck would have it, of all the known curule aediles between 160 and 91 the tenure of only one is securely dated - C.Claudius Pulcher curule aedile in 99 - that is Pulcher, a patrician, was aedile in a patrician year and so cannot be used to establish whether alternation was or was not then still in force.[10]

Despite its significance, the breakdown in the practice of alternation in the curule aedileship has never been satisfactorily treated in its own right.[11] The earliest substantive

the latter patrician year the patrician L.Scipio was probably curule aedile see Seidel, FA, 31-2; MRR.I.340). He records the curule aediles of 213 under the year 212 (MRR.I.263, 267 n.4) and one of the curule aediles of 212 under 211 (Münzer, RAA, 127; MRR.I.268, 271 n.3).

On the supposed election of two plebeians for the patrician year 299 see Seidel, FA, 14-15; MRR.I.173, 174 n.3 and Develin, Patterns, 21 n.32. The patrician Q.Fabius and the plebeian Cn.Apronius attested as aediles by 266 were obviously not colleagues (Seidel, FA, 16-17; MRR.I.200-1). The L.Veturius recorded as curule aedile with P.Licinius Varus in 210, a plebeian year, is probably a plebeian Veturius rather than a patrician erroneously transposed from the previous year (see Appendix II).

[7] On the *didascaliae* in general and the details concerning these years see further below. Livy also records the names of a single plebeian curule aedile in the plebeian years 184 and 182. A patrician Sp.Postumius Albinus was also curule aedile either in 191 or 183 - both patrician years (see Appendix II) and the plebeian Cn.Octavius was probably curule aedile in the plebeian year 172 (see Seidel, FA, 38; MRR.I.411).

[8] The evidence of the *didascalia* relating to the year 160 has been the subject of dispute. Seidel, FA, 39-40 disputed the traditional assignment of the aediles Q.Fulvius and L.Marcius who presided at the third performance of the Hecyra to the year 160. Seidel argued the college should be dated to 156 and consequently that alternation remained in force at that date. But the argument is fallacious (see below).

[9] Cicero, De Or.I.57 see Broughton, MRR.II.21, 24 n.7 (note Marcellus' colleague was not the patrician Ap.Claudius Pulcher (cos.79) as suggested there see Appendix II). The curule aedileship of the patrician C.Iulius Caesar Strabo in 90, a nominally plebeian year, reinforces the case of Marcellus (MRR.II.26, 30 n.6). Other evidence from the First Century also testifies to the breakdown in alternation: the plebeians L.Licinius Lucullus and M.Terentius Varro Lucullus were curule aediles in 79 - a notionally patrician year (MRR.II.83, 85 n.1); C.Iulius Caesar and M.Calpurnius Bibulus served together in 65 (MRR.II.158); the plebeian L.Domitius Ahenobarbus was curule aedile in 61 - a 'patrician year' (MRR.II.179) and M.Aemilius Scaurus and P.Plautius Hypsaeus were colleagues in 58 (Seidel, FA, 7; MRR.II.195). There is also the case of the plebeians Cn.Plancius and A.Plautius curule aediles possibly in 55 - a 'patrician year' but perhaps in 54 (MRR.III.158).

[10] The date of the aedileship of C.Claudius Pulcher (cos.92) is certified by Pliny, NH.VIII.19 (see further Appendix II Table III). The tenure of one other curule aedile in the period is practically certified. A.Hostilius Mancinus was almost certainly curule aedile in 150 (see Appendix II Table III). But as Mancinus was a plebeian and 150 was a notionally plebeian year this is equally unhelpful for our purposes. The remaining possible and certain curule aediles in the period are necessarily imprecisely dated (see Appendix II Table III). If as some scholars argue M.Aemilius Scaurus was curule aedile in 122, and Marius' failed attempt on the curule aedileship was for the year 117 the breakdown in alternation must be placed in the Second Century but the date in both cases remains uncertain (see Appendix II Table III).

[11] Pighius, Annales Romanorum^2, volume II, Antwerp, (1615) and F.W.Schubert, De Romanorum aedilibus libri quattuor (quibus praemittuntur de similibus magistratibus apud potentiores populos antiquos

contribution features in the work of two literary historians - C.E.Geppert and K.Dziatzko.[12] Having analysed in detail the manuscripts of the *didascaliae* of Terence and the Terentian commentary of Donatus, Geppert and Dziatzko argued there was evidence for a number of reproductions of Terence's plays after the playwright's death. One of these was a revival of the Eunuchus which they dated in 146. As the curule aediles who presided at this performance appear to be a mixed college (i.e. a patrician and a plebeian), this presupposes a breakdown in alternation by that date. Yet neither Geppert nor Dziatzko was concerned with the aedileship. Both scholars were attempting to fix the chronology of the performance of Terence's plays. Neither even commented on the constitutional implications of their work - which emerged as an unlooked for and unrecognized by-product of their research. Mommsen considered the issue twice. First in the course of his study of the patriciate in Römische Forschungen and later in Römisches Staatsrecht when he outlined the history of the aedileship.[13] However, his treatment was not only cursory, it was also defective - in so far as he omitted all mention of the work of Geppert and Dziatzko.[14] Mommsen took the first case of the non-observance of the principle of alternation known to him (i.e. the aedileship of M.Marcellus) to be the first actual instance and dated the breakdown to 91. In the first years of this Century Seidel endeavoured to produce a complete *fasti* for the curule and plebeian aedileships.[15] In so doing he dealt with the matter, but only very briefly, and his treatment of Dziatzko was unsatisfactory. Uncertain what to make of the variant readings in the manuscripts of the *didascaliae* and Donatus, Seidel nonetheless concluded the breakdown in alternation occurred in the Second Century (between the years 155 and 135). His verdict being predicated on a statement of Cicero concerning the *cursus* of C.Sempronius Tuditanus (cos.129). Subsequently, the issue has not received much attention and scholars have tended to evade definitive pronouncements.[16] A

dissertationes duae), Königsberg, (1828) attempted to produce comprehensive *fasti* for the aedileship but they often took no account of the practice of alternation when dating known or conjectural aedileships. Thus for instance Schubert, Ibid., 348 without any authority assigned Cn.Manlius Capitolinus Imperiosus and C.Fabius Ambustus curule aedileships in 362 - a plebeian year.

[12] C.E.Geppert, Neue Jahrbücher für Philologie und Pädagogik, Supplementband 18 (1852) 550-82; K.Dziatzko, Rh.Mus., 20 (1865) 570-598 and Rh.Mus., 21 (1866) 64-92.

[13] Mommsen, RF.I.97-102, StR^3.II.482, cf. CIL.I^2.2.807.

[14] Geppert's article appeared in 1852 long before the publication of Römische Forschungen and Römisches Staatsrecht. The relevant articles by Dziatzko were published in 1865 and 1866, too late to be incorporated into volume I of Römische Forschungen (1864), but well before the appearance of volume II of Römisches Staatsrecht (first published in 1874-5, a second edition appeared in 1877, and a third in 1887). Moreover, the existence of some variant names for the aediles was known long before the work of Geppert and Dziatzko (see infra).

[15] J.Seidel, Fasti Aedilicii von der Einrichtung der plebeischen Aedilität bis zum Tode Caesars, Dissertation, Breslau (1908).

[16] Mommsen was followed by L.Lange, Römische Alterthümer, Berlin, (1876) I^3.680, 861 and Kubitschek, RE.I.1.450. C.Cichorius, Untersuchungen zu Lucilius, Berlin, (1908) 234-6 who supervised Seidel's dissertation, supported his conclusion (see below). As did A.Afzelius, Class. et Med., 7 (1945) 187 n.6. J.Heurgon, REL, 27 (1949) 106-8 followed Dziatzko and Seidel.

Most scholars have been more circumspect. Madvig, Die Verfassung und Verwaltung des römischen Staates, (1881) I.424-6 and Herzog, Geschichte und System der römischen Staatsverfassung, (1884) I.798f made no attempt to date the end of alternation. A.H.J.Greenidge, Roman Public Life, London (1901) 122 cited Mommsen's opinion but was non-committal. Astin, The Lex Annalis before Sulla, Latomus, vol.32, (1958) 9 n.3 admitted to uncertainty. Initially Badian, Studies, 174 n.16 was undecided but later he concurred with Seidel (Hommages à Marcel Rennard, (1969) I.56 n.1). Sumner, Orators, 10 n.3 believed alternation

comprehensive review of the evidence is overdue.

Mommsen's argument may be treated first since it is concise and straightforward. Mommsen knew of no evidence for a breakdown in the practice of alternation prior to 91 and so placed the innovation in that year. Mommsen also cited Polybius, X.4.1-2 to establish a *terminus post quem* for the development. Polybius there relates an anecdote concerning the aedileship of Scipio Africanus (in 213) as follows:

> "Μετὰ δὲ ταῦτα, πρεσβύτερον ἔχων ἀδελφὸν Λεύκιον, καὶ τούτου προσπορευομένου πρὸς τὴν ἀγορανομίαν, ἣν σχεδὸν ἐπιφανεστάτην ἀρχὴν εἶναι συμβαίνει τῶν νέων παρὰ Ῥωμαίοις, ἔθους δ' ὄντος δύο πατρικίους καθίστασθαι, τότε δὲ καὶ πλειόνων προσπορευομένων, ἐκ πολλοῦ μὲν οὐκ ἐτόλμα μεταπορεύεσθαι τὴν αὐτὴν ἀρχὴν τἀδελφῷ."[17]

Niebuhr singled out the phrase " ἔθους ὄντος δύο πατρικίους καθίστασθαι" and argued it may be inferred from Polybius' use of the present tense that alternation persisted in Polybius' lifetime.[18] Mommsen concurred.[19] That being so, the end of alternation can be dated no earlier than the late 120's.

But Mommsen's argument will not do. Whilst the aedileship of Marcellus is incontrovertible evidence of the end of alternation, it was a remarkably bold decision given the lacunose state of the *fasti aedilicii* between 160 and 91, with or without knowledge of the work of Geppert and Dziatzko, to take Marcellus' aedileship as anything other than

had "probably been abandoned by the Gracchan period" (cf. pp.52, 69 and below). R.Develin, Patterns, 97 thought the change occurred "most probably earlier" than 91, perhaps as early as the 140's (Practice, 286 n.33). Münzer was sceptical of Dziatzko's and Seidel's arguments (RE.XV.2.1944, IIA.2.1441, VIIIA.1.2296, RAA, 30, 264). He appears to have thought the end of the Second Century was the *terminus post quem* (see RAA, 30, RE.VIIIA.1.2296, XXII.1.895). But he did not exclude a somewhat earlier date (see RAA, 264 where he was uncertain whether the rule was still in force in the 140's). Broughton was wary of Dziatzko's and Seidel's arguments (see MRR.I.466, 489, 490 nn.4, 5, III.190). He admitted that the aedileship of P.Licinius Crassus Mucianus might be dated in the plebeian years 142, 140 or 138 or the patrician years 143, 141, 139 or 137 (I.475, 476 n.2, III.120). Yet he suggested, with a query, that the plebeian A.Hostilius Mancinus was curule aedile in 151 - a patrician year (I.455), and the patrician M.Aemilius Scaurus in 122 - a plebeian year (I.517. On both men see Appendix II). And he preferred 135 - a patrician year - as the date of the putative curule aedileship of C.Sempronius Tuditanus (III.190). J.Geiger, RSA, 4 (1974) 163 appears to have thought alternation was still in force in 53. Linderski, AHB, I.4 (1987) 83-8, one of the few scholars in recent years to investigate the question, declined to make a ruling (see further below). T.Corey Brennan, Chiron, 22 (1992) 134-5 suggested alternation was possibly still in force c.100 B.C. (citing in support Ibid., 135 n.96 the belief that two patricians, C.Claudius Pulcher and L.Valerius Flaccus, were possibly curule aediles in 99 - a patrician year. But the date of Flaccus' aedileship is uncertain see Appendix II and the possibility that two patricians were curule aediles in 99 does not establish that alternation was then still in operation anymore than the election of two plebeians, M.Caelius Rufus and M.Octavius, for 50 - a plebeian year, is evidence that alternation was still in force at that date - which of course it was not). F.Ryan, Klio, 78 (1996) 68-86, esp. 86, ignored the *didascaliae*, rejected Seidel's argument as unproven, and claimed by means of a series of unwarranted assumptions to date the curule aedileship of L.Crassus and Q.Scaevola to 103 thereby 'proving' alternation was then at an end.

[17] W.R.Paton (ed.), The Histories of Polybius, Loeb, (1925) IV.109 offered the translation: "After this his elder brother Lucius was a candidate for the aedileship, which is almost the highest office at Rome open to young men, it being the custom to elect two patricians; but there being on this occasion several patrician candidates, Publius for long did not venture to stand for the same office as his brother."

[18] Niebuhr, Römische Geschichte^2, (1832) III.49-50. Niebuhr, Ibid., III.50 n.73 claimed that if this situation had altered when Polybius was writing he would have written 'at that time.'

[19] Mommsen, RF.I.97, 102, StR^3.II.482 n.3. So also Lange, loc.cit..

a *terminus post quem non* for this development. In addition, Niebuhr's and Mommsen's use of Polybius is unsatisfactory.[20] Polybius' sole interest in the aedileship of Africanus was the light it purportedly shed on his character. He was manifestly not interested in the details of the story. Indeed, matters of fact were so incidental that Polybius accepted the joint aedileship of Publius and Lucius Scipio oblivious to the fact it was an apocryphal invention - Africanus having been curule aedile with M.Cornelius Cethegus.[21] Nor does Polybius make any general pronouncements on constitutional procedure.[22] Rather his comments are specific to the events of 213. By means of the statement " ἔθους ὄντος δύο πατρικίους καθίστασθαι" Polybius intimates, without specifically referring to the practice of alternation, that the year in which L.Scipio intended to stand for the (curule) aedileship was a year in which competition was restricted to patricians. But this observation was not intended as an informative aside on the aedileship, it serves as an explanation of what follows. Polybius continues: "τότε δὲ καὶ πλειόνων προσπορευομένων, ἐκ πολλοῦ μὲν οὐκ ἐτόλμα μεταπορεύεσθαι τὴν αὐτὴν ἀρχὴν τἀδελφῷ." That is, L.Scipio's year happened to be a year in which many patrician candidates were standing and as a result Africanus was for a long time deterred from competing. Polybius' comments are designed to heighten the drama of the event and magnify the extent of Africanus' (fictive) success. Polybius' meaning is transparent - only two patricians might be elected but many were standing, yet despite the odds Africanus succeeded in getting himself and his brother Lucius elected. It was not Polybius' intention to inform his readers in this passage of the regulations governing elections to the curule aedileship. As a consequence he had no interest in explaining to his audience whether the regulations pertaining in Africanus' day were or were not still binding in his own time. The fable recounted by Polybius tells us only that the unknown author of this fantasy was aware that the practice of alternation remained in force in Africanus' youth.

Next we must examine the contribution of Geppert and Dziatzko. Before embarking on a detailed examination of the evidence of the *didascaliae* a brief explanatory excursus on their form and content is necessary. The *didascaliae* of Terence preserve a host of information about his plays. Take for example the *didascalia* for the Phormio which reads:

> INCIPIT TERENTI PHORMIO : ACTA LVDIS ROMANIS
> L.POSTVMIO ALBINO L.CORNELIO MERVLA AEDILIBVS
> CVRVLIBVS : EGERE L.AMBIVIVS TVRPIO L.HATILIVS
> PRAENESTINVS : MODOS FECIT FLACCVS CLAVDI TIBIIS
> INPARIBVS TOTA : GRAECA APOLLODORV EPIDICAZOMENOS
> FACTA IIII C.FANNIO M.VALERIO COS.[23]

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[20] W.A.Becker, Handbuch der römischen Alterthümer, (1846) II.2.304 n.764 rightly objected: "Dass es in Polybius Zeit noch so gewesen, folgt daraus nothwendig nicht."

[21] Livy, XXV.2.6. See Mommsen, RF.I.98 n.67. See also Münzer, RE.IV.1279; Seidel, FA, 22-3. The anecdote also includes the erroneous claim that Africanus was younger than his brother Lucius (see Walbank, A Historical Commentary on Polybius, (1967) II.199-200).

[22] If this had been Polybius' intention he can hardly have expressed himself as he does here since the declaration that it was customary to elect two patricians to the aedileship would be grossly inaccurate for it was customary to elect two patricians to the curule aedileship only in alternate years and had been so since the Fourth Century.

[23] The version cited is based on the Oxford text of Kauer and Lindsay but variants are recorded see Geppert, Neue Jahrbücher für Philologie und Pädagogik, Supplementband 18 (1852) 560f; Dziatzko, Rh.Mus., 20 (1865) 575f, Rh.Mus., 21 (1866) 70f and further below.

Contained therein is author and the title of the Latin play, the games at which the play was staged (i.e. whether at the *ludi Romani* or *ludi Megalenses*) and the names of the curule aediles who presided, the names of the lead actors/producers and of the *modulator* who played the musical score, as well as the type of pipes on which the score was played, the name of the author of the Greek play on which Terence's play was based and the title of the Greek play, the order in which the play was performed (i.e. the Phormio is here said to have been the fourth of Terence's plays to be performed), and finally the names of the eponymous consuls in whose year of office the performance took place.[24] Donatus provides similar information in similar form in the *praefationes* of his commentary.

Fate has been kind in that a large number of manuscripts of Terence have been preserved and *didascaliae* survive for all Terence's plays excepting the Andria where the commentary of Donatus fills the void.[25] It had long been known that some manuscripts of Terence and Donatus contained variant readings for the *didascaliae* of Terence's plays.[26] Geppert was the first scholar to undertake a systematic and comprehensive study of the variants. Geppert consulted a large number of the manuscripts of Terence and Donatus as well as many early editions of Terence. His detailed analysis revealed that although there is a large measure of agreement in the majority of Mss a significant number of serious discrepancies exist in the manuscripts of Terence and between the testimony of Donatus and the Terentian manuscripts. Geppert identified discrepancies as to the games at which the plays were staged, the names of the aediles, the lead actors/producers, and the consuls, the type of instrument on which the musical score was intended to be played, the name of the author of the original Greek play, and the sequence in which the plays were originally performed. Like Pighius, Schubert, and Ritschl before him, and Wilmanns[27] and Dziatzko after him, Geppert contended that some of these variants derive from genuine notices of reproductions of Terence's plays after the playwright's death. If their arguments are accepted, and the authenticity of some of the variant colleges of curule aediles is upheld, the end of alternation must be placed in the Second Century.

In the present context it is the variants regarding the names of the aediles and consuls that are of interest.[28] They are as follows:

Donatus informs us the Andria was first performed in the consulship of M.Claudius Marcellus and C.Sulpicius Galus - i.e. in 166 B.C..[29] But when it comes to naming the

[24] On the usual content and order of the notices see Geppert, Ibid., 579f; Dziatzko, Rh.Mus., 20 (1865) 578f; and Jachmann, RE.VA.1.601f. Some of the *didascaliae* are abbreviated lacking some of the above details (for an instance see the *didascalia* of the Phormio cited below).

[25] In the case of the Heautontimorumenos the situation is reversed - the *didascaliae* survive but not the commentary of Donatus.

[26] Some of the variants were already known to Pighius; Schubert, De Romanorum aedilibus, (1828); and F.Ritschl, Parerga zu Plautus und Terenz, Leipzig, (1845) (see infra).

[27] W.Wilmanns, De didascaliis Terentianis, Berlin, (1864). Wilmanns accepted fewer of the variants than Geppert or Dziatzko (see infra).

[28] In compiling the following list I have relied on Geppert, Dziatzko, Wilmanns, R.Kauer and W.M.Lindsay (eds.), P.Terenti Afri Comoediae, Oxford (1961), and P.Wessner (ed.), Donatus Commentum Terenti, Teubner, (1962). Since all of these authors have overlooked some variants (see infra) scrutiny of the Mss might reveal other significant omissions.

[29] Donatus, *praef.* I.6 (see Wessner, op cit., I.36). Suetonius, Vita Terenti, II.1 and Jerome, Chron.,

curule aediles, the manuscripts of Donatus plainly preserve the names of four individuals - viz: 'm.fuluio et m.glabrione q.minutio termonii L.ualerio.'[30] It has long been recognized that Fulvius and Glabrio are identical with M.Fulvius Nobilior (cos.159) and M'.Acilius Glabrio (cos.suff.154) and that they were undoubtedly the aediles who presided at the début performance of the Andria in 166.[31] That leaves the appearance of Q.Minucius Thermus and L.Valerius unexplained. Nor is this an isolated instance.

The Hecyra was twice driven off the stage before being well received at its third performance.[32] Donatus in the prologue of his commentary and the *didascalia* date the first abortive performance in the consulship of Cn.Octavius and T.Manlius Torquatus - 165 B.C. - and give the aediles as 'Sex.Iulius Caesar and Cn.Cornelius Dolabella.'[33] The second abortive performance is said to have taken place at the *ludi funebres* of L.Aemilius Paullus (dated in 160), while the third successful production was staged in the aedileship of 'Q.Fulvius and L.Marcius' (also to be dated in 160).[34] Yet in the preface of his

p.142 Helm both state that the Andria was Terence's first production but neither gives a date.

[30] This is the reading of codex V which is corroborated by codices C and T. All the Mss preserve the *praenomen* of Minucius and the *gentilicia* Minucius and Valerius but only C, T, and V contain the *cognomen* of Minucius and the *praenomen* of Valerius. Consequently, most commentators have overlooked their existence (see Geppert, op cit., 576f, 581; Dziatzko, Rh.Mus., 20 (1865) 572, Rh.Mus., 21 (1866) 65; Seidel, FA, 79; P.Wessner (ed.), Donatus Commentum Terenti, Teubner, (1962) I.36; R.Kauer and W.M.Lindsay (eds.), P.Terenti Afri Comoediae, Oxford, (1961); and Broughton, MRR.I.489, III.211). J.Heurgon, REL, 27 (1949) 106-8 drew attention to the manuscript evidence for them (see also Linderski, op cit., 84 and further below).

[31] See Schubert, De Romanorum aedilibus, (1828) 385; Geppert, op cit., 581; Mommsen, RF.I.100; Wilmanns, op cit., 6-7, 16-17; Dziatzko, Rh.Mus., 21 (1866) 64-5; Seidel, FA, 39.

[32] The chequered history of the Hecyra is attested in the *didascalia,* in Donatus, and the two prologues of the play.

[33] See Geppert, op cit., 563f; Dziatzko, Rh.Mus., 20 (1865) 576f, Rh.Mus., 21 (1866) 72f; Donatus, prol.I.3 (see Wessner, op cit., II.192-3).

[34] Neither Donatus nor the *didascalia* of the Hecyra gives a date for the *ludi funebres* of L.Paullus but the date is certified by the *didascalia* of the Adelphi which names the consuls as M.Cornelius Cethegus and L.Anicius Gallus (and also by Livy, Per.XLVI, cf. Polyb., XXXI.22, 26, 28; Diod., XXXI.25f. See also D.Gilula, Athenaeum, 67 (89) 283-7). The date of the aedileship of Q.Fulvius and L.Marcius who presided at third performance of the Hecyra is not attested but the funeral games of Paullus provide a *terminus post quem* for their aedileship. Fulvius and Marcius have long been identified with Q.Fulvius Nobilior (cos.153) and L.Marcius Censorinus (cos.149) - so Pighius, Annales Romanorum, II.392; Schubert, De Rom. aed., (1828) 387; Geppert, op cit., 569; Mommsen, RF.I.100; Wilmanns, op cit., 13; Dziatzko, Rh.Mus., 21 (1866) 72f; Broughton, MRR.I.445. And since the second prologue of the Hecyra which was delivered at the third performance (we are told the first performance was delivered "sine prologo") assumes Terence is still alive (see lines 20ff) it provides a *terminus ante quem* of 159 for the college of Fulvius and Marcius (see Dziatzko, Rh.Mus., 21 (1866) 73; and Broughton, MRR.I.445 n.1. There was some disagreement in antiquity as to the precise manner of Terence's death. Q.Cosconius claimed he died at sea whereas most authorities stated he died in Greece - Suet., Vita Terenti V. Also as to the site. Most commentators maintained he died at Stymphalus in Arcadia though some favoured Leucadia in Acarnania - Suet., Ibid.. whilst the Comm.Lucani., V.652 suggests Ambracia. But there is no evidence for significant disagreement over the date, which most authorities placed in 159 - Suet., Vita Ter.V. Jerome, Chron. p.142 Helm registered Terence's death under the year 158. The year 159 squares with the claim that Terence had not yet passed his twenty-fifth year when he died - Suet., Vita Ter.IV and that he was an *aequalis* of Scipio Aemilianus and Laelius - Nepos apud Suet., Vita Ter.I. Laelius was born c.186/5 and Scipio probably in 185 see Sumner, Orators, 44. Mattingly, RCCM, 5 (1963) 31f, 48 whilst arguing, unconvincingly, that Terence's whole life and career must be drastically redated suggested Terence's death ought to be placed in 148 but that date is explicitly ruled out by Fenestella's statement that Terence died before the outbreak of the Third Punic War - Suet., Vita Ter.I). Hence the aediles Fulvius and Marcius have traditionally been dated in 160. That date accords with all the available evidence. Alternation was still in force in the previous year and if it remained in force in 160 that

commentary Donatus gives the aediles at the first performance as 'S.Iulius and C.Rabirius.'[35] Where Rabirius fits in is unclear.

The Mss of the *didascalia* of the Heautontimorumenos register variants for the names of the aediles and the consuls. The aediles L.Cornelius Lentulus and L.Valerius Flaccus are common to all manuscripts but four codices contain additional names: one adds 'L.Cornelius Merula'; another has 'L.Cornelius, L.Lentulus and L.Valerius Flaccus'; and two others have 'Laelius Cornelius Lentulus and L.Valerius Flaccus.'[36] And whilst most Mss register the consuls as 'M.Iunius and T.Sempronius', one has 'Cn.Cornelius and M.Iuvenius.'[37] Neither reading is satisfactory as there was never a consular college of a M.Iunius and T.Sempronius, nor of a Cn.Cornelius and a M.Iuvenius. However, the corruption was deciphered long ago and the correct reading restored.[38] The Heautontimorumenos was first performed in 163 in the consulship of M'.Iuventius Thalna and Ti.Sempronius Gracchus. But what are we to make of the consul Cn.Cornelius ?

In the case of the Eunuchus the manuscripts of the *didascaliae* testify that the play was first performed in the consulship of M.Valerius Messalla and C.Fannius - i.e. in 161 B.C.[39] Donatus and almost all the manuscripts of the *didascalia* for the Eunuchus, as well as the *didascalia* for the Phormio, agree the curule aediles of 161 were L.Postumius Albinus and L.Cornelius Merula. However, two codices containing the *didascalia* of the Eunuchus cite variant names for the aediles: the one registers the aediles as 'L.Piso and L.Cornelius', the other as 'M.Iunius and L.Iulius.'[40] In addition, most of the Mss exhibit an anomalous entry for the names of the consuls of 161. The majority register the consuls as 'M.Valerio C.Mummio Fannio.'[41] Whilst four manuscripts have the reading: 'M.Valerio

will have been a plebeian year and 160 is also the latest possible year that Q.Fulvius Nobilior (praetor by 156, consul 153) could have been aedile (allowing for a *biennium* between the curule aedileship and the praetorship and 159 being a patrician year). Seidel, FA, 39-40 rejected the identification of the aedile Fulvius with Q.Fulvius Nobilior (cos.153) but accepted the identification of L.Marcius with L.Marcius Censorinus (cos.149) and argued the college ought to be dated probably in 156 and certainly before 154 not in 160 (accepted by Afzelius, op cit., 187 n.6). On which basis he maintained that alternation remained in force in 156. But Seidel overlooked the evidence of the second prologue which assumes Terence is alive and so precludes a date later than 159.

[35] Donatus, *praef*.I.6. Iulius and Rabirius appear in all the Mss (though Caesar appears as Sexto tullio in codex C). See Geppert, op cit., 565; Dziatzko, Rh.Mus., 20 (1865) 577, Rh.Mus., 21 (1866) 73; Wessner, op cit., II.190. The *didascalia* of the Hecyra contained in Ms Sorbonne 1768 also preserves a possible trace of the *gentilicium* Rabirius as it equips the aedile Fulvius with the *praenomen* 'R.' (see infra).

[36] The Mss are respectively, Sorbonne 1768; 7906; Notre Dame 185 and St.Victor 719. See Geppert, op cit., 557, 559; Dziatzko, Rh.Mus., 20 (1865) 574-5, Rh.Mus., 21 (1866) 68-70.

[37] See Geppert, op cit., 556f, 559-60; Dziatzko, Rh.Mus., 20 (1865) 574-5, Rh.Mus., 21 (1866) 68-70. 'Cn.Cornelius and M.Iuvenius' occur only in the codex Bembinus.

[38] Iuventius was restored as early as the 1536 edition of H.Stephanus. The truth was also known to Pighius and Schubert, De Rom. aed., (1828) 386. See also Geppert, op cit., 558f; Wilmanns, op cit., 8, 17f and Dziatzko, Rh.Mus., 21 (1866) 69.

[39] See Geppert, op cit., 552f; Dziatzko, Rh.Mus., 20 (1865) 573-4, Rh.Mus., 21 (1866) 65f. Donatus omits the names of the consuls (see Wessner, op cit., I.266).

[40] According to Dziatzko, Rh.Mus., 20 (1865) 574 'L.Piso and L.Cornelius' occur in "ein Leidener codex." The variant is not reported by Geppert. 'M.Iunius and L.Iulius' appear in the codex Bembinus.

[41] See Geppert, op cit., 553, 555; Dziatzko, Rh.Mus., 20 (1865) 573-4, Rh.Mus., 21 (1866) 65f. This is believed to have been the reading of the codex Bembinus but it is illegible at this point. A number of

Cornelio Mummio Fannio.'[42] Clearly, 'C.Mummius', or 'Cornelius and Mummius' do not belong amidst the consuls of 161 but how are we to account for their appearance ?

Finally, Donatus and all but one of the manuscripts of the *didascalia* of the Phormio agree that the play was first performed in 161 in the consulship of M.Valerius Messalla and C.Fannius and the curule aedileship of L.Postumius Albinus and L.Cornelius Merula.[43] The one exception omits the names of the aediles and gives the consuls as 'Q.Caspio and Cn.Servilius' and yet no such consular college is on record.[44]

What is to be made of these additional or alternate names ? Mommsen was either unaware of their existence, or dismissed them outright, for while he employed the evidence of Donatus and the *didascaliae* on the curule aediles, he made no reference to the variants or to Geppert and Dziatzko.[45] But faced with the existence of the variant readings it is necessary to make some attempt to account for their occurrence. Either they must be explained as errors of one kind or another, or else another explanation of their appearance is required. Are the variants merely errors ? The manuscripts do indeed contain variant readings for the names of the aediles and consuls which are simple errors but almost all may be accounted for in one of three ways. First, some are predictable corruptions of the correct reading. Thus the *gentilicium* of the consul T.Manlius Torquatus becomes in some instances 'Mallius' and 'Manilius', and the consul Fannius is recorded as 'Finnio', 'Phammo' and 'Fauno.'[46] In the same category belong some more complex examples. At an early stage the rare *gentilicium* Iuventius was corrupted, perhaps by degrees, into the more

variants of the *gentilicia* Mummius and Fannius are recorded see Geppert, op cit., 555 and further below.

[42] The four Mss are: Regius; 7907; 7914; and Berlin A.

[43] See Geppert, op cit., 560f; Dziatzko, Rh.Mus., 20 (1865) 575, Rh.Mus., 21 (1866) 70f; Wessner, op cit., II.346.

For present purposes Terence's Adelphi is not relevant. Donatus, *praef.*I.6 and the *didascalia* agree the Adelphi was performed at the *ludi funebres* of L.Aemilius Paullus in 160 hence no aediles presided over the performance (though some manuscripts erroneously make the sons of Paullus - Q.Fabius Maximus Aemilianus and Scipio Aemilianus - who commissioned the performance into aediles) see Geppert, op cit., 569f; Dziatzko, Rh.Mus., 20 (1865) 577f, Rh.Mus., 21 (1866) 78f; Wessner, op cit., II.4. The *didascalia* date the performance in the consulship of M.Cornelius Cethegus and L.Anicius Gallus - i.e. 160 (the consuls are not named by Donatus). Nor do any significant variants exist concerning the names of the consuls. Geppert, op cit., 573-5, 581 argued that the *didascalia* of the Ambrosian pamlipsest which discloses a performance of a play based on Menander's Adelphoe in the consulship of C.[sic].Sulpicius (Galba Maximus) and C.Aurelius (Cotta) and is held to refer to a performance of Plautus' Stichus in 200 should actually be referred to a performance of Terence's Adelphi in 144 (i.e. in the consulship of Ser.Sulpicius Galba and L.Aurelius Cotta). Dziatzko, Rh.Mus., 20 (1865) 581, Rh.Mus., 21 (1866) 82f was not persuaded. Mattingly, Athenaeum, 35 (1957) 78-88 acknowledged the argument had been effectively demolished but nevertheless originally endorsed it. Later he recanted (Latomus, 19 (1960) 250). Even if this argument was accepted - it would not be relevant for our purposes since the aediles concerned are explicitly designated as plebeian not curule aediles.

[44] 'Q.Caspio and Cn.Servilius' occur only in the codex Bembinus.

[45] At RF.I.100 Mommsen cites the *didascalia* as evidence for the curule aediles of 166, 165, 161 and 160. But he falsely ascribed the aediles Sex.Caesar and Cn.Dolabella to the *didascalia* of the Heautontimorumenos instead of the Hecyra and makes no mention of the aediles that do appear in the *didascalia* of the Heautontimorumenos (namely L.Cornelius Lentulus and L.Valerius Flaccus). Although Mommsen, RF.101 n.69 cites Niebuhr, RG.III.49 n.72 Niebuhr made none of these errors. In Römisches Staatsrecht Mommsen refers to the *didascaliae* of Terence regarding the aediles curatorship of the games but nowhere else (StR^3.II.518 n.1, 520 n.3).

[46] See Geppert, op cit., 555, 564, 567. Likewise Mummio appears in some Mss as Nummio, Numio, and Mimio (see Geppert, op cit., 555).

familiar Iunius, which in turn inspired further variations.[47] It is also probable that the aediles registered as 'L.Pisone and L.Cornelio' are the result of the corruption of the aediles 'L.Postumio (Albino) L.Cornelio (Merula).'[48] Other variants are also clearly corrupt renderings of the correct reading, though it is not always clear how they were arrived at.[49] Second, some of the variants are the result of faulty scribal conjecture. As Wilmanns argued it is probable that originally the *praenomina* of the consuls and aediles were represented by the standard ancient abbreviations.[50] Later some scribes evidently decided to expand the initials they found, leading to other errors. Poorly versed in the system of Roman nomenclature, some substituted *gentilicia* for *praenomina,* so that in one case the consul M.Valerius becomes 'Manlius Valerius', the consul 'T.Sempronius' (sic) appears once as 'Tullius Sempronius' and once as 'Terentius Sempronius', and the aedile L.Cornelius Lentulus becomes in one manuscript 'Laelius Cornelius Lentulus.'[51] Similarly, ignorance of Roman nomenclature or negligence turned the two aediles L.Cornelius Lentulus and L.Valerius Flaccus into three: 'L.Cornelius, L.Lentulus and L.Valerius Flaccus.'[52] The third kind of spurious variant is also probably the result of scribal negligence. In one instance a third aedile - L.Cornelius Merula - was appended to the names of L.Cornelius Lentulus and L.Valerius Flaccus. That is almost certainly the product of internal contamination - the scribe having inadvertently imported Merula from the *didascaliae* of the Eunuchus and Phormio into the *didascalia* of the Heautontimorumenos.[53]

[47] M'.Iuventius perhaps became M.Iunius by way of intermediate steps such as M.Iuvenius (as he appears in the Bembinus codex. The antecedent 'M.Iuvenius' probably also explains the readings: - M.Nevius of Berlin B; and L.M.Nenius of Sorbonne 1768). From M.Iunius it is a short step to some of the other attested corruptions (such as M.Livius, M.Lucius see Geppert, op cit., 559).

[48] As Dziatzko, Rh.Mus., 20 (1865) 574 suggested. The *cognomina* Albinus and Merula are omitted in some Mss and in the absence of 'Albino', the *gentilicium* 'Postumio' might degenerate into the *cognomen* 'Pisone.'

[49] For example it is unclear how 'Fannio' became in one case (7915) 'Flavinio' and in another (7917 A) 'Serumio' (by conflation with Mummio ?). Iuventius in one Ms (7917) became 'M.Sumus' !

[50] See Wilmanns, op cit., 3f.

[51] None of the Mss known to Geppert contained the correct *praenomen* for the consul Gracchus - i.e. 'Ti.' (see Geppert, op cit., 559; cf. Wilmanns, op cit., 30).

[52] Martin Stone suggested to me that 'L.Lentulus' may have initially been a marginal gloss on the reading 'L.Cornelius' which was then incorporated into the main text by a subsequent copyist.

[53] Internal contamination may be the explanation of another puzzle. Geppert, op cit., 560 and Wilmanns, op cit., 8, 18-19, 22 n.2 noted a highly anomalous entry for the names of the consuls in the *didascalia* of the Heautontimorumenos in the 1508 edition of Terence edited by Guido Iuvenalis and Ascensius - viz. 'M.Iunio et Tito Sempronio aut Aulo Nitimo et M.Cornelio.' M.Iunius and T.Sempronius are as noted above recognizable as the consuls of 163 - M'.Iuventius Thalna and Ti.Sempronius Gracchus. But 'Aulo Nitimo et M.Cornelio' have provoked consternation. They are probably the result of contamination and corruption. The Adelphi was first staged in the consulship of M.Cornelius Cethegus and L.Anicius Gallus (160). Most Mss refer to Cethegus and Gallus in the form - 'M.Cornelio Cethego L.Anicio Gallo'. But some Mss contain different readings. One variant is significant: 'Anicio. M.Cornelio' (see Geppert, op cit., 569f; Dziatzko, Rh.Mus., 20 (1865) 578). I would suggest Anicius and Cornelius were erroneously linked to the *didascalia* of the Heautontimorumenos and Anicius was corrupted (whether by Iuvenalis and Ascensius or by their source is difficult to judge). 'Anicio' became 'A.Nicio' or 'A.Nitio', the *praenomen* 'A.' was expanded to 'Aulo' and the *gentilicium* 'Nicio' or 'Nitio' became 'Nitimo.' Note that in the *didascalia* of the Adelphi both the Venetian editions of Iuvenalis and Ascensius give the consuls as: 'A.Nitio M.Cor.' (see p.CXXIIII of the 1512 edition and p.CXXX of the edition c.1515). The same editions also include other evidence of internal contamination. Both editions date the Andria in the consulship of 'M.Val.

However, this leaves a significant body of variants for which textual corruption and scribal error are not a satisfactory explanation. What is to be made of the aediles Q.Minucius Thermus and L.Valerius, C.Rabirius, M.Iunius and L.Iulius, and the consuls Cn.Cornelius, Cornelius and Mummius, Q.Caspio and Cn.Servilius ? Plainly none are simple corruptions since they bear little resemblance to the names of the aediles and consuls recorded for the original performances. Indeed, it is difficult to see how the correct names could have become so distorted as to produce the recorded variants.[54] Equally, the expansion of *nomina* is an inadequate explanation. In fact, there is only one case where the possibility comes into question - the variant consul(s) C.Mummius or Cornelius and Mummius. It might be argued the *praenomen* of the consul C.Fannius was erroneously expanded into the *gentilicium* Cornelius.[55] But if so, that ought to have produced the reading 'M.Valerio Cornelio Fannio', not the 'M.Valerio Cornelio Mummio Fannio' found in the Mss. Nor can the *gentilicium* Cornelius be the result of the expansion of the *praenomen* of Mummius since the only Mummius who was ever consul was a Lucius.[56] In any case, that theory fails to account for the appearance and placement of the *gentilicium* Mummius. Rather it would seem the opposite is true. The *didascalia* of the Eunuchus as we have it is the product of incompetent editing. For reasons that remain unclear the *gentilicium* Cornelius was all but excised from the Mss though the *gentilicium* Mummius was retained.[57] There are other possible traces of editing in the Mss.[58] Finally, contamination cannot feasibly explain all the variants. We noted one probable instance of internal contamination above. It might be ventured that the aedile L.Valerius in the *praefatio* of Donatus' commentary on the Andria is a duplicate of the aedile L.Valerius Flaccus who presided at the first performance of the Heautontimorumenos.[59] Or that the consul Cn.Cornelius in the Bembinus *didascalia* of the Heautontimorumenos and/or the consul

C.Mutio fanio' - instead of M.Claudius Marcellus and C.Sulpicius Galus - the former are clearly transposed from the *didascalia* of the Eunuchus.

[54] Thus M.Fulvius and M.Glabrio are simply incredible as the hypothetical antecedents of Q.Minucius Thermus and L.Valerius. Similarly, C.Rabirius is an improbable putative corruption of Cn.Cornelius Dolabella, and one wonders how the names M.Iunius and a L.Iulius could be derived from L.Postumius Albinus and L.Cornelius Merula. Wilmanns, op cit., 27f contended Mummius was a corruption of the *gentilicium* of Minucius Prothymus but this is untenable see Dziatzko, Rh.Mus., 21 (1866) 67-8.

[55] This was the explanation advanced by Wilmanns, op cit., 30. Dziatzko, Rh.Mus., 21 (1866) 66 accepted this was possible.

[56] L.Mummius (cos.146) on this see further below. Fannius is sometimes equipped with the *praenomen* 'L.' and sometimes with a double *praenomen* - 'L.C.' Perhaps this was the result of confusion with the *praenomen* of Mummius.

[57] Ignorance of Roman nomenclature may have played a role. Presuming the scribes were aware there ought to be only two consuls' names they may have 'corrected' their source excising the names judged superfluous. Since scribes were capable of expanding the abbreviated *praenomina* 'L.' and 'T.' to Laelius and Terentius/Tullius (see above) perhaps the reverse operated here - i.e. 'Cornelius Mummius' was taken to be *praenomen* and *gentilicium* and abbreviated to the 'C.Mummius' found in some Mss.

[58] In the *didascalia* of the Hecyra the Ms Sorbonne 1768 equips the aedile Q.Fulvius with the *praenomen* 'R' (see Geppert, op cit., 567). Perhaps this is the remnant of the *gentilicium* of the aedile C.Rabirius cited by Donatus. Note also from the Mss of Donatus the reading: 'Sexto Iulio Ce. Rabirio' where the *cognomen* Caesar and the *praenomen* of Rabirius have apparently been conflated (see Dziatzko, Rh.Mus., 20 (1865) 577).

[59] If so, this would have to be a case of cross contamination since the aedile L.Valerius Flaccus only appears in the *didascaliae* of the Terentian manuscripts not in the Mss of Donatus.

Cornelius apparent in some Mss of the Eunuchus are the result of confusion with other Cornelii who feature in the *didascaliae*.[60] Yet even if this suggestion is credited, how are we to account for the names of the aediles Q.Minucius Thermus, C.Rabirius, M.Iunius and L.Iulius, and the consuls Mummius, Q.Caspio and Cn.Servilius ? These names are not recorded elsewhere in the *didascaliae* and so cannot have been unwittingly transferred to their present location.[61] Alternatively, it might be conjectured these variants are the result of contamination from an external source.[62] Hence the aediles L.Valerius, and Q.Minucius Thermus might be supposed duplicates of L.Valerius Flaccus and Q.Minucius Thermus the curule aediles of 201 and 198. But this cannot account for the aediles C.Rabirius, M.Iunius, or L.Iulius, as there is no record of a C.Rabirius, a M.Iunius, or a L.Iulius in the extant lists of curule aediles. Moreover, if the names were believed to be duplicates, it would leave unexplained why certain names were chosen and how they came to be lodged in their present alien context.[63]

Add to the foregoing the fact that other serious discrepancies exist. The *didascaliae* and Donatus routinely attribute the staging of the plays to two men - usually L.Ambivius Turpio and L.Atilius Praenestinus. Ambivius Turpio is known from other sources as an actor who had a long and successful career.[64] Atilius is otherwise unknown. Dziatzko argued the mention of two men is anomalous since other evidence indicates that the lead actor also directed the play.[65] Thus C.Publicius Pollio was both lead actor and director of Plautus' Epidicus and Stichus.[66] The same conclusion is supported by the prologues of Terence's Phormio and Hecyra which indicate the lead actor staged the production.[67] It follows, Dziatzko argued, L.Ambivius Turpio was responsible for the original productions and L.Atilius Praenestinus for later revival performances.[68] In addition, while most Mss credit the performance and production of the plays to Ambivius Turpio and Atilius

[60] That is, with the aediles Cn.Cornelius Dolabella, L.Cornelius Lentulus, or L.Cornelius Merula, or with Scipio Aemilianus, or the consul M.Cornelius Cethegus.

[61] Though there is the aedile Sex.Iulius Caesar and in some Mss the consul M'.Iuventius is corrupted into M.Iunius.

[62] That is some source which could be mined for the names of consuls and aediles such as Atticus', Liber Annalis, or Livy.

[63] Interpolations of this kind would have to be deliberate in which case it is difficult to fathom their author and purpose.

[64] See Cic., De sen., 48; Tac., Dialogus 20; Symm., Ep., I.31.3, X.2.

[65] Dziatzko, Rh.Mus., 20 (1865) 587-91, Rh.Mus., 21 (1866) 65-70, 72, 75-6, 78, 81-2.

[66] See Plautus, Bacch. 214-5, and the *didascalia* of the Stichus (Dziatzko, Rh.Mus., 21 (1866) 82-3).

[67] See the prologue of the Phormio lines 30ff and the second prologue of the Hecyra lines 52ff.

[68] Dziatzko's argument has been accepted by most scholars (see H.T.Karsten, Mnemosyne, 22 (1894) 177-8; J.C.Watson, TAPA, 36 (1905) 126-7; Kroll, RE.XV.2.1956; Jachmann, RE.V.A.1.604; M.Schanz & C.Hosius, Geschichte der römischen literatur bis zum Gesetzgebungswerk des Kaisers Justinian[4], (1959) I.104, 106). Geppert, op cit., 556 had considered this explanation but also envisaged the possibility that Ambivius and Atilius might both be actors (i.e. the protagonist and deuteragonist). Cf. Wilmanns, op cit., 26ff.

Praenestinus others name a L.Minucius Prothymus, a L.Sergius, and L.Cassius.[69] Cassius and Sergius are unknown but Prothymus is attested as the man who introduced masks to the performance of tragedy.[70] Dziatzko argued they must also be assigned to reproductions. Then there is the question of the discrepancies regarding the games at which the plays were staged. Donatus and most Mss of the *didascaliae* agree that the first production of the Hecyra, the Eunuchus, and the Phormio were staged at the *ludi Megalenses* but other Mss state they were staged at the *ludi Romani*.[71] Dziatzko argued that here too later productions were the source of the confusion. As is the case with the variants recorded for the names of the aediles and consuls, it is difficult to explain all these discrepancies away as errors.

Unless therefore all these variants are dismissed as fantastic and inexplicable errors, an alternative explanation of their appearance is required. Since we know Terence's works enjoyed continued popularity after his death, the premise that the variants reflect revival performances is an eminently plausible explanation.[72] Indeed, most scholars have been willing to follow Geppert and Dziatzko at least so far as to accept that the additional names preserved in some manuscripts derive from later productions.[73] And there is a

[69] See Dziatzko, Rh.Mus., 20 (1865) 574-5, 577-8, Rh.Mus., 21 (1866) 66-8, 72, 78, 81-2.

[70] Evanthius, De comoedia, VI.3. Unfortunately, the *floruit* of L.Minucius Prothymus cannot be established on the basis of this statement since the sources are contradictory on the author and date of the introduction of masks to the Roman stage (compare Evanthius with Donatus Eunuchus and Adelphi *praef.*I.6; Festus, 238 L; Diomedes, p.489 K; cf. Cic., De Or., III.221. On which see C.Saunders, AJP, 32 (1911) 58-73; A.S.F.Gow, JRS, 2 (1912) 65-77; W.Beare, CQ, 33 (1939) 139-146; G.E.Duckworth, The Nature of Roman Comedy: A study in popular entertainment, (1952) 92f; D.Wiles, The Masks of Menander. Sign and Meaning in Greek and Roman Performance, (1991) 129f).

[71] See Geppert, op cit., 552-3, 560-1, 563-4; Dziatzko, Rh.Mus., 20 (1865) 573-4, 575-7, Rh.Mus., 21 (1866) 66, 68, 70-3.

[72] Horace, Ep., II.1.60-1 says the works of Terence were still performed in his day. Similarly, Varro, De Re Rustica II.11.11 and Quintilian, Inst., XI.3.181-2 had evidently witnessed performances of Terence. See also L.D.Reynolds (ed.), Texts and Transmission: A survey of the Latin Classics, Oxford, (1983) 412; and Grant, Text and Tradition, (1986) ix.

[73] As noted above Pighius, Schubert, Ritschl, and Wilmanns were all also advocates of the reproduction theory in some instances. The following scholars also accepted the argument at least in principle: Karsten, Mnemosyne, 22 (1894) 176f; Watson, TAPA, 36 (1905) 126f; Seidel, FA, 78-9 (tentatively); Schanz & Hosius, Geschichte der römischen literatur[4], (1959) I.105-7 who cite further references; Münzer, RE.VIII.A.1.2296, XV.2.1943-4; Kroll, RE.XV.2.1956; Jachmann, RE.V.A.1.604, 607; J.Heurgon, op cit.; Broughton, MRR.I.466, 489, III.144, 211; W.Beare, The Roman Stage: A Short History of Latin Drama in the time of the Republic[3], (1964) 116; D.Klose, Die Didaskalien und Prologe des Terenz, (1966) 12-13 (unavailable to me); F.Leo, Geschichte der römischen literatur, (1967) I.257-8; J.N.Grant, Studies in the Textual Tradition of Terence, (1986) 11, 215; Linderski, op cit.. However, these scholars do not all accept the dates Geppert and Dziatzko assigned these additional colleges of aediles (see below).

L.Gestri, Stud. Ital. di fil. class., 13 (1936) 61-105, Stud.It di fil. class., 20 (1943) 3-58 and H.B.Mattingly, Athenaeum, 35 (1957) 78-88, Athenaeum, 37 (1959) 148-173, RCCM, 5 (1963) 12-61 rejected the authority of the *didascaliae* altogether, arguing they are without any basis in official or theatrical records (cf. R.Blum, Stud. Ital. di fil. class., 13 (1936) 106-116). Mattingly, RCCM, 5 (1963) 32 n.57 cited in support the work of W.Beare. But Beare's criticisms of the record centred on the reliability of some of the information contained in the Suetonian, Life of Terence not the *didascaliae*. In fact, he argued the *didascaliae* contain some of the few trustworthy details we possess about Terence as "the events in the career of a dramatist most likely to be accurately chronicled were the occasions on which his plays were produced" (Hermathena, 59 (1942) 23). Beare also accepted that the *didascaliae* indicated revival performances of Terence's plays (Roman Stage[3], (1964) 116). The rejection of the authority of the *didascaliae* was central to Gestri's and Mattingly's contention that the performances of Terence's plays should be comprehensively redated - a suggestion which they based on their interpretation of the prologues of the plays. Their argument

further piece of evidence which has not previously been fully exploited that reinforces this conclusion. One of the variants cited above has never been adequately explained - that is the variant notice contained in Codex A (the codex Bembinus) for the Phormio. It reads:

INCIPIT TERENTI PHORMIO
ACTA LVDIS MEGALENSIB Q CASPIONE
CN SERVILIO COS GRAECA APOLLODORV
EPIDICAZOMENOS FACTA EST IIII

The notice is unusual in two respects. Firstly, it is highly compressed, lacking the usual information concerning the aediles who presided at the performance, the name of the producer, the accompanyist, and the instrument on which the musical score was intended to be played. Secondly, codex A is the sole authority for a performance of the Phormio at the *ludi Megalenses* in the consulship of a 'Q.Caspio and Cn.Servilius' and as such is in conflict with the testimony of all the other codices of Terence and with Donatus, which assert the play was first performed at the *ludi Romani* in the consulship of C.Fannius Strabo and M.Valerius Messalla - i.e. in 161 B.C..[74]

How then are we to explain the entry ? A scribal error or evidence of a revival production ? In fact, the answer is a little of each. The entry is the result of the corruption of information recalling a reproduction. 'Caspio' is readily recognisable as a corruption of the *cognomen* Caepio used by the patrician Servilii. That obvious restoration also accords with the *praenomen* with which the consul is equipped - Quintus - a favourite *praenomen* of the Servilii Caepiones. However, this necessary emendation benefits us little since there was never a consular college consisting of a Q.Servilius Caepio and a Cn.Servilius.[75] Pighius, Schubert and Wilmanns suggested that the notice was the corrupt reflection of a reproduction performed in 150 over which the brothers Cn.Servilius Caepio (cos.141) and Q.Servilius Caepio (cos.140) presided as curule aediles.[76] Wilmanns claimed the original notice will have read: CN. Q. SERVILIIS CAEPIONIBVS AEDILIB. CVRVLIB.[77] This improbable explanation was rightly rejected by Dziatzko.[78] Geppert and Dziatzko preferred

has not won acceptance and the overwhelming majority of scholars accept the testimony of Donatus and the *didascaliae* (for the refutation of Gestri see M.R.Posani, Atti della Reale Accademie d'Italia, 7 (1942) 244-51; F.Arnaldi, Da Plauto a Terenzio, (1947) II.103f, esp.109ff; D.Klose, Die Didaskalien und Prologe des Terenz, (1966) 51-80). As Linderski, op cit., 87 n.25 aptly commented in this regard, although the *didascaliae* contain doubtful information they also preserve much that may be profitably exploited, whereas interpretation of the prologues is a highly subjective procedure.

[74] Donatus, *praef.*I.6 (Wessner, op cit., II.346) like codex A states the games were the *ludi Megalenses* not the *ludi Romani* (see further below).

[75] The only consular Servilii Caepiones were: Cn.Servilius Caepio consul with C.Sempronius Blaesus in 253; Cn.Servilius Caepio consul with C.Servilius Geminus in 203; Cn.Servilius Caepio consul with Q.Marcius Philippus in 169; Cn.Servilius Caepio consul with Q.Pompeius in 141; Q.Servilius Caepio consul with C.Laelius in 140; and Q.Servilius Caepio consul with C.Atilius Serranus in 106.

[76] See Schubert, De Rom. aed., (1828) 389; Wilmanns, op cit., 12, 21-2; Dziatzko, Rh.Mus., 21 (1866) 71-2. Note they dated the performance in 150 not 149 as Dziatzko, Rh.Mus., 21 (1866) 72 states.

[77] Ibid., 12.

[78] Rh.Mus., 21 (1866) 71-2. Not only is the style: 'Cn.Q.Serviliis Caepionibus' improbable in itself but it would also be necessary to explain why the *praenomina* became reversed and why the aediles became 'consuls.' Finally, a joint aedileship of Cn.Caepio and Q.Caepio in 150 is not credible. The three brothers Cn.Caepio (cos.141), Q.Caepio (cos.140), and Q.Fabius Maximus Servilianus (cos.142) reached high office in rapid succession suggesting they did so *suo anno* or very nearly so (as Sumner, Orators, 51). Gnaeus will

the solution propounded by Ritschl.[79] Ritschl conjectured that the notice as we have it, is a confused recollection of a revival performance produced in the consulship of Cn.Caepio and Q.Pompeius (141) or Q.Caepio and C.Laelius (140) - the name of Pompeius or Laelius having somehow become obscured.[80] Geppert opted for the former date, as did Dziatzko, who professed the latter less likely on the grounds the necessary corruption was less feasible.[81] Neither proposition is satisfactory but the correct explanation is not far to seek. The original notice will have read 'Q.Caepione C.Serrano cos' - i.e. the consular college of 106 B.C..[82] The entry 'Cn.Servilio' is a corruption of 'C.Serrano.' A parallel instance is ready to hand. In 136 B.C. L.Furius Philus was consul with Sex.Atilius Serranus. The Chronographer of 354 lists the college as 'Pilo et Serrano' but the *Fasti Hydatiani* gives 'Philo et Servilio' and the *Chronicon Paschale* 'Φιλου χαι Σερβιλιου'.[83] With the restoration of the text comes a minor accretion to our knowledge of the history of the Roman stage. There can be little doubt that a revival performance of Terence's Phormio was staged at the *ludi Megalenses* of 106 in the consulship of Q.Servilius Caepio and C.Atilius Serranus.[84] Unfortunately, for our purposes the notice does not record the names

therefore have been praetor by, or perhaps in, 144 whilst Quintus will have been praetor by, or in, 143 and neither was of an appropriate age to be aedile in 150. If Gnaeus and Quintus reached office *suo anno* and served together as aediles - allowing for the requisite *biennium* between the curule aedileship and the praetorship - their putative joint aedileship would have to be dated in 146 - a plebeian year - presupposing that alternation had lapsed. But the reading of the codex Bembinus does not warrant a joint aedileship of the two Caepiones.

[79] Geppert, op cit, 562-3; Dziatzko, loc.cit.. Ritschl's hypothesis was discounted by Wilmanns, op cit., 21.

[80] Ritschl, op. cit., ventured in a note on pages 250-251.

[81] Dziatzko, loc.cit.. How Dziatzko can have imagined the corruption of Q.Pompeius Rufus into Cn.Servilius was easier than the corruption of C.Laelius is difficult to conceive. Dziatzko was followed by Karsten, Mnemosyne, 22 (1894) 177-8; Schanz and Hosius, Geschichte der römischen literatur[4], (1959) I.106 and M.D.Reeve in L.D.Reynolds (ed.), Texts and Transmission: A survey of the Latin Classics, Oxford, (1983) 412.

[82] The names of the consuls in the *didascaliae* and in Donatus are recorded in various fashions. Most often only the *praenomen* and *nomen gentilicium* are cited omitting *cognomina* (eg: C.Fannio M.Valerio cos.). In one instance the *tria nomina* of both consuls were presumably originally listed though the notice was subsequently corrupted (codex A on the Adelphoe has 'Marco Cornelio Cethego Lucio Gallo cos'. The *gentilicium* Anicius having dropped out. The other codices have 'M.Cornelio Anicio cos'). Sometimes the styles are mixed (eg: Donatus on the Andria - 'M.Marcello C.Sulpicio consulibus'). Codex A on the Phormio apparently only gave the *praenomen* and *cognomen* of Caepio and Serranus as it would be difficult to account for the notice if the *tria nomina* of both Caepio and Serranus were originally listed. For even were 'Cn.Servilius' the result of the misplacement of the *gentilicium* of Caepio rather than the corruption of the *cognomen* Serranus it would be difficult to account for the elimination of both the *gentilicium* and *cognomen* of Serranus.

[83] See CIL.I[2], pp.148-9 and Inscr.It., XIII.1 pp.468-9. The corruption is not repeated in the *Fasti Hydatiani* or *Chronicon Paschale* with A.Serranus (cos.170) and C.Serranus (cos.106). Note that C.Serranus bore the same *gentilicium* as one of the producers of Terence's plays viz. L.Atilius (sometimes written Hatilius) Praenestinus. But since the original notice did not apparently include Serranus' *gentilicium* this cannot have been a source of confusion. More significant is Serranus' *cognomen*. The *cognomen* Serranus might readily have been confused with the name of the pipes on which the musical score for the Phormio was intended to be played i.e. the *tibiae impares* otherwise known as *tibiae Serranae* or *Sarranae* (see Servius on the Georgics II.506. The variation in the vowel is also recorded for the Atilii Serrani).

[84] The revival performance of the Phormio in 106 might explain a number of textual discrepancies. The majority of the Mss place the first performance of the Phormio at the *ludi Romani* but codex A and Donatus both state that it was performed at the *ludi Megalenses*. Presumably, therefore, the original production was staged at the *ludi Romani* whilst the performance in 106 was put on at the *ludi Megalenses* hence the

of the curule aediles who presided at the revival performance. Nonetheless, the entry is further confirmation that the variant names of the consuls and curule aediles preserved in some Mss of the *didascaliae* and in Donatus do in fact derive from genuine records of reproductions of Terence's plays. The premise having been vindicated, it remains to attempt to date the variant colleges of curule aediles.

First, the college of Q.Minucius Thermus and L.Valerius. It was not until 1949 that J.Heurgon pointed out codices C, T and V preserved both the *cognomen* of Minucius - in the form 'termonii' - and the *praenomen* of Valerius.[85] Previously the variant was only known in the form 'M.Fulvio M.Glabrione Q.Minucio Valerio.' Some early editors attempted to make two or three aediles of the four men listed - to wit: M.Fulvius, M.Glabrio and Q.Minucius Valerius; or M.Fulvius Glabrio and Q.Minucius Valerius.[86] Others preferred to excise Minucius and Valerius altogether.[87] However, Geppert and Dziatzko correctly discerned the names of four individuals - the aediles who were present at the début performance of the Andria (M.Fulvius and M'.Glabrio), plus two others (Minucius and Valerius).[88] Geppert tentatively raised the possibility that Minucius and Valerius were curule aediles who presided at a subsequent revival performance but offered no date. Dziatzko identified Valerius with L.Valerius Flaccus, the consul of 131, and dated the college c.143-139/137-134.[89] Seidel agreed that the additional names were perhaps due to a reproduction but considered the identification of Valerius and the consul of 131 unfounded because the *praenomen* of Valerius was lacking in the Mss.[90] He concluded that if the names were accurately recorded, as a mixed college (i.e. a plebeian Minucius and a patrician Valerius), they must be dated after the breakdown of alternation. Münzer was initially inclined to follow Dziatzko.[91] Later his stance altered. He acknowledged the names seemed to derive from a revival performance[92] which he placed in the period after 160 and before 133[93] but then declared the presence of a mixed college at that time was

discrepancy. The reproduction of 106 is also a possible explanation of the intrusion of the *gentilicium* Cassius in the text of Donatus. Donatus gives the producers as 'L.Cassio Atilio et L.Ambivio'. As we have seen Dziatzko attributes Atilius to the later reproductions. 'Cassio' is routinely excised by editors but Cassius may have been the lead actor/director of the reproduction in 106.

[85] J.Heurgon, REL, 27 (1949) 106-8.

[86] See Geppert, op cit., 576; cf. Dziatzko, Rh.Mus., 21 (1866) 64 n.1.

[87] See Wessner, op cit., I.36; Wilmanns, op cit., 7, 16-17. Wilmanns declared the entry an unfathomable error (on which see the comments of Dziatzko, Rh.Mus., 21 (1866) 64).

[88] See Geppert, op cit., 576, 581; Dziatzko, Rh.Mus., 20 (1865) 572f, Rh.Mus., 21 (1866) 64f.

[89] Rh.Mus., 21 (1866) 64-5. Followed by T.Kartsen, Mnemosyne, 22 (1894) 177. As Linderski, op cit., 84 noted Dziatzko ruled out the year 138 for no apparent reason.

[90] FA, 78-9.

[91] Münzer, De gente Valeria, 41 registers L.Valerius Flaccus (cos.131) as curule aedile "intra annos 611-613." In note 2 on this entry he remarks: "Titulus Andriae Terentii hanc fabulam retractatam tradit intra annos 611 et 620 a Q.Minucio et Valerio aedilibus (cf. Dziatzko Rh.M. 21, 65), e quibus ille ignotus, hic consul anni 623 videtur esse." He justified narrowing Dziatzko's parameters and placing the aedileship in the years 143-141 on the grounds that Flaccus was praetor in 139 (see his note 3 - the argument there advanced for dating the praetorship this early has since been repudiated see MRR.I.491 n.2).

[92] RE.VIII.A.1.2296, XV.2.1943-4.

[93] RE.VIII.A.1.2296. He gave no reason for the *terminus ante quem* of 133.

problematic "weil damals noch patricische und plebeische Paare von curulischen Aedilen Jahr für Jahr wechselten" (a claim for which he cites no evidence).[94] And finally he upheld Seidel's objection to the identification of Valerius and L.Flaccus (cos.131).[95] In sum, his verdict was that the uncertainties surrounding the notice were such that it could not profitably be used.[96]

However, as Heurgon demonstrated, three codices (T, C and V) certify the *praenomen* of Valerius and so Seidel's principal objection to the identification lapses. Heurgon supported the identification stating that among the Valerii the *praenomen* Lucius was "porté seulment chez les Valerii Flacci"[97] and in virtue of the identification he dated the aedileship of Minucius and Valerius no later than 137 - a notionally patrician year.[98] Heurgon also advanced an orthographic argument for dating the college prior to the end of the Second Century. He noted the Mss have Minucius' *cognomen* as 'Termus' whereas "c'est seulement à la fin du II^{e} siécle et au début du I^{er} que les aspirées, vraies ou fausses, ont été marquées dans l'orthographe" so that by 90 B.C. the canonical spelling of the *cognomen* was 'Thermus.'[99] Hence the spelling preserved by Donatus betrays an early date. But that argument cannot be relied upon, for the Chronographer of 354 A.D., whose version of the *fasti* presumably goes back ultimately to a late Republican or Augustan source, cites the *cognomen* of the consul of 64 as 'Turmo.'

The most recent commentators have been wary of Dziatzko's proposition. Broughton both before and after he became cognizant of Heurgon's discovery was sceptical on the

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[94] RE.VIII.A.1.2296, cf. XV.2.1943-4.

[95] RE.VIII.A.1.2296, XV.2.1943-4.

[96] RE.XV.2.1943-4.

[97] Heurgon, op cit., 106 (cf. Linderski, Ibid., 84). Within the circle of the aristocratic families belonging to the *gens Valeria* the *praenomen* Lucius is rarely attested in use outside the patrician *stirpes* and of the patrician Valerii in the later Republic the Flacci enjoyed a monopoly on the *praenomen*. In the Fifth and Fourth Centuries the *praenomen* had also been used by the Poplicolae. However, between the Third and First Centuries B.C. the Maximi/Messallae restricted themselves to Marcus and Manius (in the First Century A.D. there is attested a L.Valerius Messallae Volesus cos.5 A.D. and L.Valerius Catullus Messallinus cos.73, 85 A.D.) and the Valerii Faltones favoured Quintus, Marcus, and Publius. The Valerii Laevini used only Marcus, Manius, Gaius and Publius (RE no.212 was a Publius not a Lucius as in MRR.III.212-3).

The following plebeian senators are the only known exceptions: L.Valerius Antias (99) legate? 215; L.Valerius Tappo (350) praetor 192; L.Valerius Praeconinus (310) legate before 78; L.Valerius (not in RE) XVvir s.f. in 76; and L.Valerius Asiculus (94) monetal c.45 and perhaps tr.pl. (see MRR.III.211). The Valerius Triarius (363, 366), praetor in 78, was probably a Gaius not a Lucius (MRR.III.214-5). The first two are clearly to early to be considered and Antias is any case suspected as an invention of the homonymous annalist. And the *XVvir s.f.* is quite likely identical with the patrician L.Valerius Flaccus (179) praetor in 63.

[98] Ibid., 107. Heurgon did not state how he arrived at that date but the calculation was presumably based on the fact that L.Flaccus (cos.131) was praetor no later than 134 and thus allowing for the *biennium* obligatory at this period between the curule aedileship and praetorship (the evidence in favour of which is overwhelming see Astin, Latomus, 16 (1957) 588f) Flaccus can have been aedile in 137 at the latest. If, however, Flaccus did not reach the consulship *suo anno* the date of his praetorship and aedileship may be earlier still. Linderski, op cit., 86 stated that if the identification is accepted, 136 is the earliest possible date for the aedileship of Minucius and Valerius, but that was presumably a slip since he accepted 134 as the latest possible date for Flaccus' praetorship and the requirement of a *biennium* between the curule aedileship and praetorship (op cit., 85).

[99] op cit., 107. The *cognomen* is so spelt on the issue of Q.(Minucius) Therm(us) M.f. (66) and also in the works of Cicero. Heurgon accepted Babelon's date for the issue of Thermus (90 B.C.) but Crawford, RRC.I.324 no.319 dates the coin in 103 B.C..

subject of dates and identities.[100] Linderski considered the existence of the *praenomen* "considerably strengthens" though "needless to say, does not prove" the identification of the aedile and the consul and in summation essayed "if we are too timid to derive a constitutional innovation from a tentative identification" L.Valerius can be made a plebeian and the college, now without a chronological peg, will be left "floating somewhere in the second half of the second century."[101] Alternatively, scepticism may lead us in another direction. Granting that the curule aedile L.Valerius is very likely to have been a patrician Flaccus, might not Valerius be identified with L.Valerius Flaccus (cos.100), or the homonymous consul suffect of 86 rather than the consul of 131 ?[102] Dziatzko's fixation with the consul of 131 is unwarranted as there are no pressing reasons to confine the college to the 130's.[103] If the consul of 100 was curule aedile, 106 - a plebeian year - is the latest possible date.[104] That very year, as we have seen, witnessed a production of Terence's Phormio and perhaps the Andria was also on the bill. Moreover, around this time the future consul of 100 and a Q.Minucius Thermus were issuing coins.[105] In what capacity did they do so ? Crawford lists them as monetals in accordance with his precept that after 118 B.C. magistrates other than monetals who issued indicated the magistracy they held on their coins.[106] Yet he accepted that Flaccus' issue is an "aedilician type" and that it belongs to a group of issues which appear abnormally late in the moneyer's career.[107] If Flaccus and Minucius issued as aediles rather than monetals, that would resolve the otherwise anomalous date of Flaccus' issue, but this cannot be pressed.[108] Equally possible is the consul suffect of 86, who is independently attested as having been curule aedile.[109] The precise date of his tenure is uncertain, but if he was aedile with a Q.Minucius Thermus, his

[100] MRR.I.490 n.5. Broughton, MRR.III.144, 211 attempted to correct the shortcomings of his original entry on Minucius and Valerius but equipped Minucius with the wrong *praenomen* and unnecessarily queried the *praenomen* of Valerius (see Linderski, Ibid., 83f).

[101] Linderski, op cit., 84, 86.

[102] As Münzer, RE.VIIIA.1.33 was aware there is no room for an aedileship in the *cursus* of L.Valerius Flaccus the praetor of 63.

[103] Even if Varro was the source of Donatus and the *didascaliae* this would not exclude a date into the First Century.

[104] Since Flaccus was praetor by 103 and we must allow for the *biennium* between curule aedileship and praetorship.

[105] Crawford, RRC.I.316 no.306 dates Flaccus' issue 108/7 and Q.(Minucius) M.f. Thermus (66) c.103 see above. Minucius is usually identified with the quaestor of 89. Alternatively, the fact that the monetal Thermus specified his filiation perhaps suggests the existence of a roughly contemporary Q.Minucius Q.f.? Thermus who might have served as aedile with Flaccus.

[106] See RRC.II.601f, 603, 606f.

[107] RRC.II.729. Like a number of aedilician issues the reverse of Flaccus' coin depicts an ear of corn. Minucius' coin shows soldiers in combat one of whom is equipped with a Roman shield which Crawford takes to refer to some ancestral act of heroism. But it might also be interpreted as a reference to a gladiatorial show staged by Minucius as aedile. According to Crawford Flaccus is one of a group of moneyers who issued within ten years of their consulship which he admits is unusually late.

[108] If Flaccus and Minucius had issued coins as aediles it is perhaps more likely they would have done so jointly not separately.

[109] Cicero, Pro Flacco 77. The years 100, 99 or 98 are all possible (see Appendix II).

aedileship belongs in 100 or 98.[110] If L.Valerius is identified with any one of the three possible Valerii Flacci, it follows, the breakdown of alternation must precede 91 as their aedileships must be dated c.137, 106, and 100/98 respectively, and the college was a mixed college.

Second, the aedile C.Rabirius listed in the preface of Donatus' commentary on the Hecyra. Geppert confessed himself baffled by the entry.[111] Wilmanns summarily dismissed it as an error, though he could not explain its origin.[112] Dziatzko thought it was not impossible that Rabirius was a corruption of the name of Cn.Cornelius Dolabella, the colleague of Sex.Iulius Caesar in 165.[113] However, he suggested it might also derive from a reproduction of the Hecyra belonging in the latter half of the Second Century.[114] In fact, as argued above, textual corruption is an improbable solution and the appearance of Rabirius is best explained by means of a reproduction. However, as Rabirius' aedileship is undatable, and his colleague is unknown, the notice cannot provide any answers on the date of the end of alternation.[115]

Third, the variants in the *didascalia* of the Heautontimorumenos. As already argued, the additional aediles recorded in a few codices are without doubt the product of scribal error, not a genuine tradition concerning later reproductions. As to the variant consuls Geppert suggested, without much conviction, that the 'Cn.Cornelius' named in the Bembinus Ms and the 'M.Iunius' named in other Mss might be put down to a reproduction in the consulship of P.Cornelius Scipio Nasica and D.Iunius Brutus Callaicus (i.e. 138).[116] That

[110] Since C.Claudius Pulcher was curule aedile in 99, if Flaccus had a Q.Minucius Thermus for colleague, his aedileship could obviously not be dated in 99.

[111] op cit., 565.

[112] op cit., 22 n.2.

[113] Dziatzko, Rh.Mus., 21 (1866) 73. Rabirius is not mentioned by Schubert, Mommsen, or Seidel, or in RE, or MRR.

[114] Ibid.. He rightly maintained the fact that we know of no curule Rabirii at this time is not surprising given the gaps in our knowledge. T.Kartsen, Mnemosyne, 22 (1894) 177 believed the appearance of the aedile Rabirius and the actor Sergius indicated a reproduction.

[115] Two possible Rabirii suggest themselves. A Delian inscription has long been known which discloses a C.Rabirius C.f. proconsul of Asia (ILLRP.399). Traditionally, the honorand has been identified as C.Rabirius Postumus held to have been proconsul of Asia in the 40's. But Syme, JRS, 57 (1967) 262-3 long ago discerned grave difficulties with this attribution and suggested instead an otherwise unknown C.Rabirius proconsul in the period c.135-104 B.C. (an argument recently endorsed by E.Champlin, CP, 84 (1989) 54 and P.White, CP, 90 (1995) 159-160). Alternatively, there is Cicero's client C.Rabirius (5). He was a senator of unspecified rank by 63 (De vir.ill., 73.12; Dio, XXXVII.26).

Speculation might be taken one step further. It might be argued Rabirius was in fact the colleague of a Sex.Iulius Caesar (which could explain the confusion with the earlier college of Sex.Caesar and Cn.Dolabella). If so, as a mixed college it would be of interest. Perhaps C.Rabirius, the later proconsul of Asia, and Sex.Caesar praetor in 123 served as curule aediles c.129. Alternatively, C.Rabirius (5) might be equipped with Sex.Iulius Caesar (151) cos.91 for colleague. However, as Caesar was praetor by 94 the college would have to be dated no later than 97 and this ill-accords with the *cursus* of Rabirius. Rabirius was still an eques in 100 (see Broughton, MRR.III.180) making it unlikely he was aedile in 97. Further, if as usual Cicero's client is identified with the 'C.Rabirius C.f. Gal.' in the *consilium* of Pompeius Strabo at Asculum in 89 it is also unlikely he had been aedile so early (see Cichorius, Röm.Stud., 151-2; MRR.II.35, 38 n.15).

[116] op cit., 560, 581-2. He himself cited a number of objections to the idea.

hypothesis was rightly dismissed by Wilmanns and Dziatzko.[117] Dziatzko was led by the appearance of Cn.Cornelius, together with the names Cornelius and Mummius in the *didascalia* of the Eunuchus, to posit a revival production of the Heautontimorumenos staged in 146 - in the consulship of Cn.Cornelius Lentulus and L.Mummius. Whether that be so or not, without the names of the aediles, the notice is unhelpful in the present context and need not detain us.

Fourth, the *didascalia* of the Eunuchus. Dziatzko was almost certainly correct to dismiss the aediles L.Piso and L.Cornelius recorded in one Ms of the *didascalia* of the Eunuchus as a corruption of the aediles L.Postumius (Albinus) and L.Cornelius (Merula) of 161 B.C..[118] More significant are the aediles M.Iunius and L.Iulius and the consul(s) 'C.Mummius' or 'Cornelius and Mummius.'[119] Now since the curule aediles in 161 were L.Postumius Albinus and L.Cornelius Merula, as Donatus and the *didascalia* for the Eunuchus (with the exception of codex A) and Phormio testify, and the consuls of 161 were M.Valerius Messalla and C.Fannius Strabo, the names M.Iunius and L.Iulius, and Mummius and Cornelius are clearly intrusive. But rather than dismiss the names as errors, Geppert and Dziatzko drew attention to the fact that L.Mummius was consul in 146 with a Cn.Cornelius Lentulus and hypothesized that the college of M.Iunius and L.Iulius belonged to a revival performance of the Eunuchus performed at the *ludi Romani* in 146.[120] That being so, as the college would appear to be a mixed college consisting of a plebeian (M.Iunius) and a patrician (L.Iulius), the breakdown in alternation must be presumed to have occurred by 146 - a notionally plebeian year.

Wilmanns accepted the aediles M.Iunius and L.Iulius belonged to a reproduction. However, he dismissed the consuls Cornelius and Mummius as errors, Cornelius as an expansion of the *praenomen* of Fannius, and Mummius as a corruption of the *gentilicium* of Minucius Prothymus. Consequently, he dated the performance at which Iunius and Iulius presided "anno incerto."[121] Seidel also rejected Geppert's and Dziatzko's hypothesis on the grounds that the manuscripts equipped Mummius with the wrong *praenomen* (C. instead of L.) and sandwiched Mummius' *gentilicium* between the names of the consuls of 161, which he judged, speaks decisively against the accuracy of the manuscript tradition concerning Mummius. He also observed no Iunii or Iulii are known who could have been aedile in 146.[122] He, therefore, concluded that if M.Iunius and L.Iulius were actually

[117] Wilmanns, op cit., 18. Dziatzko, Rh.Mus., 21 (1866) 69-70.

[118] Rh.Mus., 20 (1865) 574. The Leiden codex is said to be of inferior quality. If, on the other hand, 'L.Piso and L.Cornelius' are retained the college is evidently a mixed one - i.e. a plebeian L.Calpurnius Piso and a patrician L.Cornelius (Lentulus ?). If so, given the number of possible identifications there could be no hope of establishing a date for the college.

[119] Dziatzko, Rh.Mus., 20 (1865) 573f, Rh.Mus., 21 (1866) 65f.

[120] Geppert, op cit., 555-6, 581; Dziatzko, Rh.Mus., 21 (1866) 66, 69. Since the majority of the Mss of Terence and Donatus agree that the performance of 161 took place at the *ludi Megalenses* but codex A refers to the *ludi Romani* Dziatzko believed the revival was probably performed at the *ludi Romani* thereby accounting for the discrepancy.

[121] op cit., 10, 19.

[122] FA, 79. Other scholars accepted Geppert's and Dziatzko's argument. See for instance T.Kartsen, Mnemosyne, 22 (1894) 177, F.Leo, Geschichte der röm. lit., (1967) I.257-8; cf. Kroll, RE.XV.2.1956; Schanz & C.Hosius, Geschichte der röm.lit.[4], (1959) I.106; Jachmann, RE.V.A.1.607. Broughton, MRR.I.466 notes Dziatzko's date and Seidel's rejection of it without further comment.

aediles at a reproduction of the Eunuchus, as they were a mixed college, they belong at an unknown date after the breakdown in the principle of alternation. Münzer was brief and resolutely impartial. He reported that according to the *didascalia* Iunius and Iulius were curule aediles at a reproduction dating "vielleicht" in 146.[123] He also suggested possible identifications for Iunius and Iulius.[124] But he was careful to remark that their very existence was "unsicher"[125], the source of "zweifelhaft Wert"[126], and the possibility of a mixed college at this date "nicht unbedenklich."[127]

Yet as Dziatzko showed, Wilmanns' attempts to explain the appearance of the *nomen* Mummius are unsatisfactory.[128] And Seidel's arguments take no account of the occurrence of the *nomen* Cornelius. Further, Seidel's argument *ex silentio* against the aediles Iunius and Iulius is especially vulnerable given the miserable record of the lower echelons of senate in the absence of Livy. Despite the state of the evidence Münzer was able to adduce a few possible candidates.[129] On the other hand, the possibility ought to be considered that L.Iulius was not a patrician - possibly either a plebeian Iulius, or the *nomen* Iulius is a corruption of Tullius or Livius.[130]

Finally, the codex Bembinus preserves in corrupted form the knowledge that the Phormio was restaged in 106, but regrettably the aediles who presided are not named.

If one accepts that the aediles M.Iunius and L.Iulius and the consul C.Mummius (sic) or the consuls Cornelius and Mummius that appear in some Mss of the *didascalia* of the Eunuchus are due to a reproduction, and that that reproduction may be dated by the consuls to the year 146 and provided that L.Iulius is conceded patrician status, it must be concluded that the breakdown in alternation in the curule aedileship occurred by 146. Equally, if the aediles L.Valerius and Q.Minucius Thermus recorded in the Mss of Donatus' commentary on the Andria are held to be genuine, and Dziatzko's identification of L.Valerius with L.Valerius Flaccus (cos.131) is endorsed, the breakdown took place by 137. Alternatively, if L.Valerius is identified with L.Flaccus (cos.100) or L.Flaccus (cos.suff.86), the breakdown occurred no later than the late Second or the very early First Century. However, should one link in both chains of argument be repudiated, the evidence from the *didascaliae* for the end of alternation evaporates.

Seidel though sceptical of the arguments of Dziatzko, nevertheless, believed that

[123] RE.X.1.111.

[124] Namely, L.Iulius (29) and M.Iunius (Silanus) (22) or M.Iunius Brutus (49).

[125] RE.X.1.111, 964, 971.

[126] RE.X.1.971.

[127] RE.X.1.111.

[128] Rh.Mus., 21 (1866) 67-8.

[129] The monetals L.Iulius (29) and M.Iunius (22) are dated by Crawford c.141 and c.145 respectively (RRC.I.224-5 no.224, 259 no.220; cf. MRR.III.104, 111).

[130] The corruption of the *nomen* Livius or Tullius into Iulius is not difficult (the Mss contain an example of the corruption Tullius-Iulius in reverse. In the preface of Donatus' commentary of the Hecyra the aedile Sex.Caesar appears in codex C as 'Sexto Tullio' see Wessner, op cit., II.190). However, during the Republic plebeian Iulii and L.Livii of senatorial rank are fairly rare. After 320 the only senatorial L.Livii attested are the Livii Ocellae but they only emerge after the fall of the Republic (Mommsen suggested L.Livius Ocella (26) was aedile of the plebs c.41-27 see CIL.X.6319; L'Annee Ep., (1991) 423). Senatorial L.Tullii are unknown but for L.Tullius (9) legate in 51-50.

alternation in the curule aedileship had ended in the Second Century. Seidel claimed the proof of this contention was to be found in a letter of Cicero concerning the *cursus* of the historian C.Sempronius Tuditanus (cos.129).[131] Therein Cicero writes:

> "de C.Tuditano enim quaerebam, quem ex Hortensio audieram fuisse in decem. Eum video in Libonis praetorem P.Popilio P.Rupilio coss. Annis XIIII ante, quam praetor factus est, legatus esse potuisset, nisi admodum sero quaestor[132] esset factus ? quod non arbitror. Video enim curules magistratus eum legitimis annis perfacile cepisse."

Cicero says that Tuditanus obtained his curule magistracies "legitimis annis." However, Seidel pointed out that Cicero did not know Tuditanus' age and must therefore have based this observation on the intervals between Tuditanus' offices.[133] And as Cicero did not yet know the date of Tuditanus' quaestorship, in order to be able to judge that Tuditanus was praetor *legitimo anno,* Cicero must have known that Tuditanus was aedile, and at the minimum possible interval before his praetorship.[134] Since Tuditanus was consul in 129[135], and praetor in 132[136], it follows Seidel argued, allowing for the obligatory *biennium* between the curule aedileship and praetorship, that Tuditanus was curule aedile in 135 - a patrician year.[137] Ipso facto, the breakdown in alternation occurred by 135.[138]

That Tuditanus was aedile at the minimum interval before his praetorship would

[131] Cic., Ad Att., XIII.32.3 - 29th of May 45. The passage has been much discussed (see Seidel, FA, 41-3; Münzer, RE.XV.2.1944, RE.IIA.2.1441, RAA, 264 n.1; Astin, Latomus, 16 (1957) 590f; Shackleton Bailey, Cicero's Letters to Atticus, (1966) V.355; Badian, Hommages à Marcel Rennard, (1969) I.53f; Sumner, Orators, 156-7, 166-70; Develin, Patterns, 87-8; Linderski, AHB, I.4 (1987) 85-6). Most relevant in the present context are the discussions of Seidel, Münzer, Astin and Linderski.

[132] Seidel retained the Mss reading 'quaestor' but most scholars favour the emendation 'praetor' (see Mommsen, StR[3].II.681 n.3; Tyrrell and Purser, The Correspondence of M.Tullius Cicero[2], (1933) V.102; Astin, Latomus, 16 (1957) 591 n.3; Shackleton, Ibid.; Badian, Ibid., I.56 n.1; Sumner, Orators, 157 n.4; Linderski, AHB, I.4 (1987) 85). The Mss reading can be defended (see Seidel, FA, 42 n.1; Astin, Ibid., 591 n.3).

[133] If Cicero had known Tuditanus' age or date of birth he would not have had to speculate as to whether Tuditanus reached the praetorship late (see Seidel, FA, 42; Astin, Latomus, 16 (1957) 591; Badian, Ibid., I.56 n.1; Sumner, Orators, 157; Linderski, AHB, I.4 (1987) 85). Hence *legitimis annis* here cannot be equivalent to *suis annis* as Shackleton, Cicero's Letters to Atticus, (1966) V.351 thought.

[134] Seidel, FA, 42 remarked: "Denn hätte Cicero nur Prätur und Konsulat im Auge gehabt, so wäre seine Ausdrucksweise sinnlos, weil die Worte legitimis annis, die, wie schon bemerkt ist, nicht vom Alter des Sempronius gebraucht sind, sich hier auf das eine Intervall zwischen zwei kurulischen Ämtern beziehen müssten. Auch hätte Cicero aus der blossen Tatsache, dass Tuditanus zwei Jahre nach der Prätur Konsul wurde, nicht den Schluss ziehen können, dass er diese beiden Magistraturen so früh erreicht habe, als es nach dem Gesetze erlaubt war."

Cicero subsequently learned that Tuditanus was quaestor in 145 (see Cic., Ad Att., XIII.4.1 - of the 3rd or 4th of June 45. On the date see Sumner, Orators, 166f).

[135] For the evidence see MRR.I.504.

[136] Cic., Ad Att., XIII.30.2, 32.2; cf Josephus, AJ.13.9.2, 260; MRR.I.498.

[137] Seidel, FA, 41-3. Seidel's argument was accepted by Cichorius, Untersuchungen zu Lucilius, Berlin, (1908) 236. See also Tyrrell and Purser, The Correspondence of M.Tullius Cicero[2], (1933) V.102; Astin, Latomus, 16 (1957) 590-2; and Badian, Ibid., I.56 n.1.

For the evidence which establishes the existence of an obligatory *biennium* between the curule aedileship and praetorship at this period see Astin, Latomus, 16 (1957) 590f; and Sumner, Orators 7f, 157.

seem the obvious and natural implication of Cicero's words. Yet a number of weighty authorities demurred. Sumner, Broughton and Linderski challenged the necessity of the inference that Tuditanus was aedile.[139] Linderski noted Cicero never says that Tuditanus was aedile and suggested Cicero may have only meant that Tuditanus had reached the consulship at the earliest possible opportunity after his praetorship "and hence he held these offices *legitimis annis* with respect to each other." Whilst Münzer concluded that Seidel's argument was not decisive on the grounds that it need not be inferred that Tuditanus was curule aedile.[140] As Astin put it: "Cicero's statement permits the possibility that Tuditanus held the curule office of praetor in the minimum possible time after the plebeian aedileship."[141] In other words, Tuditanus may have been aedile of the plebs in 134. That possibility cannot be dismissed but a comparative analysis of the curule and plebeian aedileships demonstrates that plebeian *nobiles* were up to three times more likely to be curule than plebeian aedile and that plebeian curule aediles attained the consulship two to three times more often than plebeian aediles.[142] In view of these statistics, and given that Tuditanus was a wealthy plebeian *nobilis* who reached the consulship *legitimo anno* and *perfacile*, it is more likely, if he was aedile, that he was curule aedile.[143] However, since we cannot be certain that Tuditanus was aedile, much less curule aedile, the passage

[138] According to Seidel the breakdown in alternation should be dated after 156 and before 135 see above.

[139] See Sumner, Orators, 15, 46, 157 and Linderski, AHB, I.4 (1987) 85-6. Broughton initially accepted the passage implied Tuditanus was aedile (MRR.I.490 n.4) but later he stated that the aedileship was "not proved" (MRR.III.190). See also F.Ryan, Klio, 78 (1996) 86.

[140] Münzer, RE.IIA.2.1441 commented: "Nicht zwingend ist der Beweis, daß er [Tuditanus] 619 = 135 die curulische Aedilität bekleidete." So also RAA, 264 n.1, cf. RE.XV.2.1944. Unfortunately, Münzer did not expand on this pronouncement so it is unclear whether he meant it is unnecessary to suppose that Tuditanus was aedile at all or that Tuditanus was aedile but not necessarily curule aedile. Mommsen, StR^3.I.566 n.6 believed on the basis of Cicero's comments that Tuditanus was aedile but he did not specify whether curule or plebeian, nor the date.

[141] Astin, The Lex Annalis before Sulla, collection Latomus 32, (1958) 9 n.3 (cf. Sumner, Orators, 46, 157 n.7; Linderski, Ibid., 85). This statement did not appear in the equivalent place (i.e. 592 n.3) in Astin's article of the same name in Latomus, 16 (1957).

[142] In the period 217-198 88.24% of plebeian curule aediles were *nobiles* and 70.59% went on to be consul as against 48.39% and 22.58% respectively of plebeian aediles. In the period 197-160 76.92% of plebeian curule aediles were *nobiles* and 76.92% became consul, while only 28.57% of plebeian aediles were *nobiles* and only 35.71% were consul. The figures for the period 159-49 are not strictly comparable because of the deficiencies of the data but counting only the certain cases 13/20 or 65% of plebeian curule aediles in that time were *nobiles* (the seven of non-noble families were all elected in the years 75-50) and 40% went on to be consul (that unusually low figure is due to the fact that a significant number had no opportunity to stand for the consulship), whereas at most 2/11 or 18.18% of the plebeian aediles in the period were *nobiles* and only 1/11 or 9.09% was consul. These statistics are based on the figures presented in Appendix II. See also further below.

[143] Supposing Tuditanus was aedile, Cicero's reference to the "curules magistratus" of Tuditanus cannot be used as evidence that Tuditanus was curule rather than plebeian aedile. Cicero says the magistracies concerned were obtained "legitimis annis" and as Cicero did not then know the date of Tuditanus' birth or quaestorship he could not judge whether or not Tuditanus was aedile *legitimo anno* and so this statement cannot include Tuditanus' aedileship.

The wealth of Tuditanus was flaunted by his heirs. His son was a feeble-minded eccentric accustomed to shower the *plebs urbana* with coins (see Cicero, Phil., III.16; RE no.89) and his granddaughter, Sempronia (102), was the mother of Fulvia and doubtless one source of Fulvia's very considerable means (on which see Shatzman, Senatorial Wealth and Roman Politics, (1975) 299, 328, 363, 396).

cannot conclusively establish that the practice of alternation had ended by 135.[144]

Cichorius, Seidel's supervisor, accepted Seidel's argument and adduced in support a fragment from the first book of Lucilius:

"per saturam aedilem factum qui legibus solvat."[145]

Cichorius argued that the fragment indicated "daß jemand vom Volke zum Ädilen gewählt war, jedoch *per saturam*, d.h. ohne daß er alle vom Gesetze geforderten Bedingungen erfüllte und daß nun der Senat nachträglich, wie es in solchen Fallen zu geschehen pflegte, Dispens von der betreffenden Bestimmung erteilte, um ihm damit die Möglichkeit, das Amt anzutreten, zu gewähren."[146] He continued, since Seidel had demonstrated that alternation in the curule aedileship had ceased by 135, the electoral irregularity to which Lucilius here refers ought to signify "ob durch eigenmächtige Entschließung des Volkes, das einfach für ein patrizisches Ädilenjahr neben einem Patrizier einen Plebeier wählte."[147]

However, the reading and explanation of the line proffered by Cichorius have been challenged. Cichorius followed the most obvious and natural interpretation whereby *per saturam* is taken with *factum*.[148] Whereas F.Leo argued that *per saturam* was to be taken not with *factum* but with *solvat*.[149] Whilst Ullman suggested *per saturam* be taken with *legibus*.[150] Ullman denied Lucilius could be construed in the fashion advocated by Cichorius. He objected *per saturam* cannot be taken with *factum* unless it is understood figuratively - a usage he claimed is not attested before Sallust. But Ullman's case was weak; for Marx

[144] Note Sumner, Orators, 10 n.3 argued when alternation was in force plebeians born in plebeian years and patricians born in patrician years were permitted to stand for the curule aedileship one year early rather than being forced to wait a year. If so, it might be argued Tuditanus was born in 172 and was curule aedile in 136 and Cicero knowing alternation was then still in force considered this "legitimis annis" since a shorter interval between Tuditanus' aedileship and praetorship would not in the circumstances have been possible. But in order to have made this judgement Cicero would have had to have known the precise year of Tuditanus' birth which he manifestly did not.

[145] F.Marx, C.Lucilii Carminum Reliquiae, (1905) fragment I.48 = E.I.Warmington, Remains of Old Latin, vol.III, Loeb, (1967) I.47 = W.Krenkel, Lucilius Satiren, (1970) I.34.

[146] Untersuchungen zu Lucilius, Berlin, (1908) 235.

[147] Ibid., 236.

[148] Cichorius followed the grammatical exposition of the line advocated by Mommsen, StR.III.336 n.5 and F.Marx, C.Lucilii Carminum Reliquiae, (1905) II.23-4. This was also the reading advanced by Kappelmacher, RE.XIII.2.1635; N.Terzaghi, C.Lucili Saturarum Reliquiae, Florence, (1944) 3; and Gruen, Culture and National Identity in Republican Rome, (1992) 298. Warmington, Remains of Old Latin, vol.III, Loeb, (1967) III.17 suggested the translation "who may absolve from the laws an aedile elected by tacked procedure." Cichorius, however, rejected the historical explanation of the event put forward by Marx (see infra). All commentators following Marx agree that since the senate was responsible for granting such dispensations the senate is the inevitable antecedent of *qui* (see infra).

[149] F.Leo, Hermes, 24 (1889) 69 n.3. He stated emphatically "..sicher gehört per saturam zu solvat, nicht zu factum. So erledigt sich, wie es scheint, Mommsens Bedenken (StR.III.336 n.5)." See also M.Hammarström, Eranos, 25 (1927) 44.

[150] B.L.Ullman, CP, 8 (1913) 179f. For which he offered the translation: "which frees a duly elected aedile from omnibus laws." Though he does not make his interpretation of the passage explicit it would seem L.Mueller, C.Lucili Saturarum Reliquiae, Teubner, (1872) 196 was thinking along similar lines to Ullman. He considered a *lex satura* was meant but that the line was best understood if the *lex satura* indicated was not an omnibus law but a law which intentionally or otherwise deceives its audience as to its true import through ambiguous phraseology (for this definition of a *lex satura* he cited the scholiast on Persius O.Jahn, Auli Persii Flacci Satirarum Liber, (1843) 241 but see also Schol.Bob., on Pro Milone 14).

had demonstrated that *per saturam* had been used figuratively as equivalent to the adverbs *temere* and *festinanter* long before Sallust.[151] Nothing therefore precludes the interpretation advanced by Mommsen, Marx, and Cichorius. Leo's interpretation, on the other hand, faces both legal and grammatical objections. Ullman rejected Leo's reading on the grounds that the sentence so construed does not make satisfactory legal sense, as it is "hard to see how one could be exempted *per saturam* from the provisions of a law."[152] But if *per saturam* was here used figuratively, as equivalent to the adverbs *temere* and *festinanter,* a tentative defence of Leo might be ventured. The line might then be interpreted to mean the senate *per saturam*, that is ill-advisedly or rashly, granted an exemption to someone elected aedile *contra legem.* That perhaps makes tolerable sense but there are further difficulties. If *per saturam* does qualify solvat, as Leo suggested, *factum* seems logically and grammatically redundant.[153] Finally, there is Ullman's proposed reading. Though it cannot be ruled out, Ullman himself conceded Marx's interpretation (i.e. that adopted by Cichorius) was the most natural construction and only advanced an alternative due to the mistaken belief that *per saturam* could not have been used figuratively by Lucilius.[154] And even should Ullman's reading find acceptance, his explanation of the historical context that prompted Lucilius' remark must be rejected.[155]

[151] Mommsen, StR.III.336 n.5 had commented: "..es freilich unverständlich bleibt, wie dies bei einer Aedilenwahl hat vorkommen können, falls die Redensart hier nicht irgendwie metaphorisch steht." Marx, op cit., 23 adduced the words spoken by T.Annius Luscus (cos.153) in 133 - "Imperium quod plebes per saturam dederat id abrogatum est" (Festus, p.314 M, 416 L). And also Sallust, Iug.29.5 - "dein postero die quasi per saturam sententiis exquisitis in deditionem accipitur." Marx concluded: "..in Lusci oratione et in Lucilii versu *per saturam* non iam significat *lege in saturam lata* (CIL.I.198, 72) sed usurpatur ea locutio in plebiscitis temere et inconsiderate factis ut apparet: nam apud Lucilium intellegi non posse quomodo aedilis aliquis fiat a populo per legem saturam iure adnotat Mommsenus de iure p.R.III 1 (1887) p.336 n.5." Marx also cited a number of comparable later uses. Ullman, op cit., 178 n.1, 179-180, 183f denied Luscus had used the phrase figuratively contending the figurative usage is first attested in Sallust and is regularly signposted by the collocation of the words *quasi* or *tamquam*. However, the argument *ex silentio* against the figurative usage is weak given the nature of the literary record and Sallust's own use of the phrase may have been a conscious archaism as Marx suggested.

[152] op cit., 179.

[153] The inherent linguistic difficulty was the substance of Marx's objection to taking *per saturam* with *solvat* he wrote "qua coniunctione factum tantum non foras expellitur." (op cit., 23). Leo, op cit., 69 n.3 tried to circumvent this problem by arguing "factum heisst entweder 'einen in aller Form gewählten' oder legibus bestimmt factum wie solvat."

[154] op cit., 179. Ullman's reading was rejected by Hammarström, Eranos, 25 (1927) 44.

[155] Ullman argued the *lex satura* concerned is the *Lex Villia Annalis* and the event is the election of Scipio Aemilianus to the consulship in 148. Ullman suggested when the people clamoured for the election of Scipio to the consulate the presiding consul and the senate refused to accept the election, they then proceeded to the other elections in which they saw to it that Scipio was elected curule aedile (We are not told how they managed this). But the people would not relent and the senate was forced to recognize the election of Scipio as consul. A lengthy refutation of this hypothesis is unnecessary as it is self-evidently unsatisfactory. Needless to say this scenario lacks any support from the sources on the elections of 148. It is also unacceptable in point of fact. The elections were conducted in descending order of rank and it would not have been possible to proceed to the election of praetors and curule aediles without having first completed the consular elections. Nor for that matter does Livy's account of the *Lex Villia* (XL.44.1-2) give any reason to suppose the *Lex Villia* was a *lex satura*. If Ullman's reading is accepted we simply have too little information at our disposal to allow us to recover the event behind Lucilius' comment but that an aedile might have been exempted from the provisions of a *lex satura* is not implausible in itself. The incident to which Lucilius refers cannot be connected with the speech of Cato the Censor, De aedilibus vitio creatus. Though not securely dated that speech is usually linked to the mysterious abdication of the plebeian aediles of 202 (Livy, XXX.39.8. See A.Astin, Cato the Censor, Oxford (1978) 18f and Develin, Practice, 324 n.4). Even if the speech were redated as late as possible, i.e. in 149, the hypothetical event would hardly have still been

If Leo's or Ullman's reading is endorsed, Cichorius' exposition of the event that occasioned the line falls. Yet even if it is conceded that the reading advanced by Mommsen, Marx and Cichorius is to be preferred as both grammatically and historically the most natural and logical interpretation, can we hope to divine the historical circumstances behind Lucilius' verse with any claim to certainty ?[156] Cichorius' reconstruction is open to criticism. To begin with it cannot simply be assumed the aedile referred to was a curule and not a plebeian aedile. And even if one were to accept on faith that the aedile concerned was a curule aedile, the electoral irregularity hinted at might be any one of a number unrelated to the practice of alternation. Cichorius himself suggested other possibilities such as someone elected under age, or with too short an interval between offices.[157] In addition, it is not absolutely certain that the election of a plebeian in a patrician year, or vice versa, would have contravened any law.[158]

Other scholars have suggested dates for the curule aedileships or aedilician *petitiones* of various senators which presuppose alternation had been abandoned in the Second Century but none of these cases can be established with certainty.[159]

Finally, it can be argued that the later Second Century is historically the most plausible time for the breakdown in alternation to have occurred. Although the aedileship was not an obligatory prerequisite for the praetorship or consulship, it was much sought after by those who intended to go higher in the *cursus* as a valuable means of winning *urbana gratia*.[160] Cicero commented that even those who were philosophically opposed to

controversial at the time of the composition of Lucilius' first book of satires and Cato's speech concerned two aediles declared *vitio creatus* whereas Lucilius refers to one aedile whose election was apparently upheld.

[156] Warmington, op cit., 17 note c and Krenkel, op cit., I.119 argued given the line can be construed in various ways a definitive interpretation was impossible.

[157] Ibid., 235. Linderski, op cit., 86 was aware of this possibility. Cichorius suggested as another possible irregularity requiring a senatorial dispensation someone elected to an aedileship who had not previously held the quaestorship. However, that scenario should be ruled out as it is all but certain that prior to the laws of Sulla the quaestorship was not an obligatory step in the *cursus honorum* (see Astin, Latomus, 16 (1957) 611-613; Badian, JRS, 49 (1959) 85f, Historia, 11 (1962) 198; Sumner, Orators, 111). Marx, op cit., 24 had suggested that some unknown *aedilicius* who had not been praetor had been elected consul but Cichorius, op cit., 235 n.1 rightly rejected this explanation. The passage refers to an irregular aedilician election not a consular one. Gruen, Culture and National Identity in Republican Rome, (1992) 298 n.134 concluded - "Just what *per saturam* means is unfathomable."

[158] There is no indication in Livy, VI.42.12-14, VII.1.2-6 that the short-lived patrician monopoly of the curule aedileship or the practice of alternation were enshrined in law. Mommsen, StR^3.II.480 n.1 considered legisation unnecessary. However, as Badian, *Imperium Sine Fine*, Stuttgart, (1996) 188 has recently reminded us Livy is unreliable in his reporting of procedural matters. Polybius, X.4.2 when referring to the elections for the curule aedileship of 213 (a patrician year), says it was the practice (ἔθους) to elect two patricians, but gives no indication whether the practice was based on custom or law.

[159] See Appendix II on the aedileships of Q.Metellus Macedonicus/Balearicus; A.Hostilius Mancinus; Cn.Scipio Hispanus; M.Aemilius Scaurus (cos.115); and L.Licinius Crassus (cos.95) and Q.Mucius Scaevola (cos.95). And on the unsuccessful candidacies of C.Marius and Ap.Claudius Pulcher (cos.79).

[160] It has become fashionable of late, despite the overwhelming evidence to the contrary, to assert that the games celebrated by the aediles had little or no influence on their likelihood of progressing to a higher magistracy (see M.Gwyn Morgan, Philologus, 134 (1990) 27f; Gruen, Culture and National Identity in Republican Rome, (1992) 188f. Shatzman, Senatorial Wealth and Roman Politics, (1975) 87, 159f accepted the games were influential but argued that their influence should not be overstated). We are therefore to believe that the expert testimony of those who actually took part in the contest for honours and bear witness to the importance of the games is plain wrong (see for instance Cic., Pro Murena 37-41, 71-78, De Off., II.57f, Ad Att., IV.16.9. Note also Caelius' fear he would be elected with a colleague richer than he, and so

the idea thought it wise to court the people's favour with games and other forms of largesse in this manner.[161] Euergetism of this kind was entirely pragmatic.[162] Such displays declared the aedile's ambition to seek higher office and were intended as a mortgage on the future favours of the people. Nor was the belief in the importance of this office misplaced.[163] But for the would-be consul the plebeian and curule aedileships were of unequal worth - the latter was the more valuable asset. Those who held the curule aedileship were almost assured of advancement - the majority would be consul.[164] Conversely, those who failed to gain election had legitimate reason to fear their career might be blighted as a result.[165] Not that failure to hold the curule aedileship automatically precluded further advancement.[166] Indeed, some avoided the office due to the necessity for increasingly

be overshadowed - Ad Fam., VIII.3.1; cf. Cic., Ad Fam., II.6.3; Asc., 20, 88 C). That the very high rate at which aediles advanced to higher office (see infra and Appendix II) is a statistical anomaly. And that some Romans desired an aedileship although it was not obligatory and were prepared to undertake the requisite and increasingly ruinous outlays on games with no particular end in view other than an altruistic desire to please the populace. In short, the argument is patently ridiculous.

[161] Cic., De Off., II.57f. Cicero states that magnificent games had long since been expected of the aediles.

[162] Cicero, De Off., II.58 remarked "Causa igitur largitionis est, si aut necesse est aut utile."

[163] Where there is sufficient information to generate reliable statistics the figures speak for themselves (for the details of what follows see Appendix II). In the period 218-198 85% or more of the known curule aediles and 77% of the recorded plebeian aediles advanced to higher office. In the period 197-160 between 96-100% of the known curule aediles and between 71-78% of the plebeian aediles attested advanced to higher office. The figures for the period 159-49 are scarcely comparable due to the limitations of the data (see Appendix II) but for what they are worth 82% or more of the curule aediles and 72% or more of the plebeian aediles in the period 159-49 went on to hold higher offices.

[164] While 74% of the known plebeian aediles in period 218-198 were praetor only 22% would be consul. In years 197-160 between 71-78% of plebeian aediles were praetor but only 35% were consul. Whereas in period 218-198 between 60-63% of curule aediles were praetor and 66% were consul (the number of curule aediles who were praetor in these years is lower than might be expected as a number who went on to be consul were never praetor - namely Ti.Gracchus cos.215, 213; P.Scipio cos.205, 194, Q.Metellus cos.206, M.Geminus cos.202, Cn.Lentulus cos.201, L.Lentulus cos.199, Sex.Paetus cos.198 and C.Cethegus cos.197. Note also C.Valerius Flaccus cur.aed.199 pr.183 was flamen Dialis and so had little hope of a consulate). In the years 197-160 between 96-100% of the known curule aediles were praetor and 81% were consul. The figures for the years 159-49 are of limited value but in that period about 72% of the known plebeian aediles were praetor and 10% consul. Whilst in the same period between 75-78% of the recorded curule aediles were praetor and around 56% were consul (see Appendix II. The figures as calculated by I.Shatzman, Senatorial Wealth and Roman Politics, (1975) 159f are even more dramatic but note his statistics contain a number of errors; cf. Develin, Patterns, 21f, Practice, 92f, 286). It comes as no surprise therefore that the nobility exercised a virtual monopoly on the curule aedileship. The plebeian aedileship by contrast was dominated by non-consular *gentes* (see Appendix II See also Shatzman, op cit., 162f and Develin, Practice, 98f, 309).

[165] M.Iuventius Laterensis feared this would be the result of his defeat by Cn.Plancius and Cicero went to some lengths to attempt to allay his fears (Pro Plancio 51f). Ap.Claudius Pulcher (cos.79) initially failed to be elected to the aedileship (Cic., Pro Plancio 51). He considered it worth his while to wait and try again. His judgement was vindicated for although he did not reach high office *suo anno* he was elected curule aedile probably at the next attempt and later was elected consul at the first attempt. Cn.Domitius Calvinus Maximus (cos.283) also thought it worth a significant delay in order to stand again after one *repulsa* (see Broughton, T.A.Ph.Soc., 81 (1991) 41).

[166] Cicero, Pro Plancio 51, De Off.II.58-9 lists a number of men who either suffered *repulsa(e)* when seeking the aedileship or were never aedile but who nevertheless became consul - namely: a P.Scipio Nasica, either the consul of 138, or his son the consul of 111 see Appendix II; C.Marius (cos.107, 104-100, 86); L.Marcius Philippus (cos.91); L.Iulius Caesar (cos.90); Cn.Octavius (cos.87); M.Tullius Decula (cos.81); Ap.Claudius Pulcher (cos.79); Mam.Aemilius Lepidus Livianus (cos.77); C.Scribonius Curio (cos.76); C.Aurelius Cotta. (cos.75); L.Volcatius Tullus (cos.66); and M.Pupius Piso Calpurnianus (cos.61). Some of these men never sought an aedileship (viz: L.Marcius Philippus; C.Scribonius Curio; C.Aurelius Cotta and

lavish expenditure on games which could pauperize even the wealthiest men.[167] But it was a rare distinction to be able to claim to have risen to the highest offices without considerable outlays[168] and failure to hold the aedileship was apt to entail defeats and delays in the future.[169] Now as we have seen after the year 139 the number of all-plebeian consular

Mam.Aemilius Lepidus Livianus. On Philippus, Curio and Cotta see Appendix II Cicero explicitly states that Lepidus avoided the office). Others tried and failed and giving up hope of an aedileship ran for the praetorship instead (like C.Marius see Appendix II). Of the remainder Cicero says only that they suffered a *repulsa* when campaigning for the aedileship and not as is sometimes said that they were never aedile. As Martin Stone put to me "non facere" and "praeterire" refer to specific electoral defeats not to an absolute failure to hold this office (i.e. these expressions are not equivalent to 'aedilis non fuit'). This can be demonstrated conclusively in the case of Ap.Claudius Pulcher (cos.79). Although Cicero says of Appius "aedilem non esse factum" we know that Appius was curule aedile - evidently at a subsequent attempt (see Appendix II). It is possible therefore that P.Scipio Nasica, L.Iulius Caesar, Cn.Octavius, M.Tullius Decula, and L.Volcatius Tullus were elected aedile at a subsequent attempt. That M.Pupius Piso Calpurnianus was is less likely. He made an unsuccessful attempt on the curule aedileship of 74 (see Broughton, MRR.II.102, T.A.Ph.Soc., 81 (1991) 43). And Piso was praetor in 72 or 71 (MRR.II.117, III.177). If Piso was praetor in 72 he had no opportunity for a second attempt as an interval of at least one year was required between the curule and plebeian aedileship and the praetorship in this period. If Piso was praetor in 71 it is just possible he was elected aedile for 73. It is equally possible Nasica, Caesar, Octavius, Decula, Tullus and Piso gave up on the office after their initial unsuccessful attempt.

[167] Cicero, De Off., II.58 implies the very wealthy Mam.Aemilius Lepidus Livianus (cos.77) refused to hold an aedileship because of the expense. Avoidance of the aedileship due to the cost is a phenomenon attested at a later date (Dio, LIII.2.2 - 28 B.C., LV.24.9 - A.D. 5, cf. XLIX.16.2 - 36 B.C., LIV.11.1 - 19 B.C.). The following patricians were never aedile: L.Sulla (cos.88) see Plut., Sulla 5.1; Mam.Aemilius Lepidus Livianus (cos.77) see Cic., De Off., II.58; M.Messalla Niger (cos.61) see his elogium - CIL.I^2.1, p.201 = ILS.46 = Inscr.It., XIII.3.77; C.Caesar the father of the dictator see his elogia - Broughton, AJA, 52 (48) 328; and L.Valerius Flaccus, the praetor of 63 (see above). Ser.Sulpicius Galba (61) was also probably never aedile. There is no room in his *cursus* for the office unless he was aedile before 62 but as he was only praetor in 54 it is highly improbable he was aedile some eight years previously. L.Caesar (cos.90) made at least one unsuccessful attempt on the aedileship whether he tried again and if so whether he succeeded or failed is unknown (see the previous note).

C.Caesar, P.Lentulus Spinther (cos.57), and M.Scaurus junior all put themselves into debt in order to put on magnificent games as aediles (see Shatzman, op cit., 290f, 334f, 347). It may also be the aedilician games of C.Claudius Pulcher (cos.92) and Ap.Claudius Pulcher (cos.79) is the explanation of the early poverty of the Claudii Pulchri of the next generation. Both celebrated games on an impressive scale - Gaius was the first to introduce elephants (Appius must have resisted the temptation to profit from the proscriptions). M.Scaurus (cos.115) celebrated very modest games as aedile possibly as a result of his slender patrimony and concentrated on the law (De vir.ill., 72.3) which may partly explain his unexpected defeat by Q.Fabius Maximus Eburnus in the consular elections for 116 (see Bloch, Mélanges d'Histoire Ancienne, 25 (1909) 18). Ap.Pulcher (cos.54) had marshalled all his clients in order to put on games but then avoided the expense by running for the praetorship instead (see Shatzman, op cit., 322). L.Aemilius Paullus (cos.50) and Q.Fabius Maximus (cos.suff.45) outlaid vast sums to restore the *Basilica Aemilia* and the *Fornix Fabianus*. The former was probably and the latter certainly aedile at the time.

[168] Cic., De Off.II.59.

[169] The careers of a number of prominent senators of the late Republic were retarded by failure to hold an aedileship. Münzer, RE.XIV.2.1563 plausibly suggested failure to hold an aedileship may partly explain the unexpected defeat of L.Philippus (cos.91) by the *novus homo* M.Herennius in the consular elections for 93. L.Caesar (cos.90) received a *repulsa* when seeking the curule aedileship and was perhaps never aedile (see above) which may go some way to explaining the delays he endured later (he was praetor in 95 but not consul till 90). Sulla suffered a *repulsa* when competing for the praetorship as a result of having passed over the curule aedileship (Plut., Sulla 5.1). And Mam.Aemilius Lepidus Livianus was unsuccessful in his first attempt on the consulship because he had not held an aedileship (Cic., De Off., II.58). L.Volcatius Tullus (cos.66) made at least one failed attempt on the aedileship and probably only reached the consulship after a considerable delay (see above and MRR.III.223). M.Pupius Piso Calpurnianus was an unsuccessful candidate for the curule aedileship in 75 and his later career was retarded (he was praetor in 72 or 71, and consul in 61). Ser.Sulpicius Rufus (cos.51) almost certainly did not hold the aedileship (see Cic., Pro Mur.40) and his career was very drawn out. Note also Q.Pedius who made an unsuccessful attempt on the curule aedileship of or in 55 and only reached the praetorship in 48 and was consul suffect in 43 (see Broughton, T.A.Ph.Soc., 81 (1991) 42). See also the career of M.Favonius (Konrad,

colleges elected increased markedly. If, therefore, the patriciate continued to monopolize the curule aedileship in alternate years into the late Second Century the declining number of patricians elected to the consulship presents a problem. Since the statistics demonstrate that a very high percentage of curule aediles went on to be consul - if alternation persisted in the late Second Century we must suppose that the Roman electorate continued to elect patrician curule aediles but refused to allow them to progress to the consulship. Yet a sudden and dramatic increase in the number of patrician curule aediles never consul and the number of plebeian consuls never curule aedile is an implausible scenario. It is more probable that alternation had already been abandoned and fewer patricians were being elected curule aedile - which in turn will have diminished their chances of reaching the consulship. As the high incidence of all-plebeian consular colleges, which subsequently became an abiding phenomenon, first manifested itself in the 130's this suggests alternation in the curule aedileship had ceased by the late 140's.[170]

In themselves none of the many arguments that have been advanced over the years can be regarded as conclusive proof that alternation was abandoned in the Second Century. Whilst it is beyond doubt that some of the recorded variants in the *didascaliae* go back to genuine information on revival performances of Terence's plays, legitimate questions remain as to the reliability of this information given the form and nature of its transmission. Doubts also persist concerning the identities and dates proposed for the variant colleges of curule aediles. Cicero's comments regarding the *cursus* of C.Sempronius Tuditanus (cos.129) can be understood to imply that Tuditanus was curule aedile in the patrician year 135 but may also be explained without that inference. The fragment of Lucilius can be interpreted as a reference to the end of alternation but the electoral irregularity alluded to may be unrelated to the practice of alternation. It is possible that M.Aemilius Scaurus (cos.115) was curule aedile in the plebeian year 122 and that C.Marius competed unsuccessfully in 118 for the curule (and plebeian) aedileship of 117 - a patrician year. However, that Scaurus was curule aedile in 123 and Marius ran in 117 for 116 cannot be ruled out. And the later Second Century appears historically the most plausible time for alternation to have been abandoned but alternative scenarios are conceivable. Yet if only one of these arguments is approved, alternation must have lapsed in the later half of the Second Century. The balance of probability favours the likelihood that one or more of these arguments is correct and that the practice of alternation between the orders in the curule aedileship ceased in the second half of the Second Century B.C..

It is impossible to say for certain how the breakdown in alternation came about. A number of possibilities suggest themselves. Perhaps it was the result of a suffect election. That is, a plebeian suffect may have been elected to replace a defunct patrician (as happened in the consulship in 154). Once the precedent of a mixed college of curule aediles was established the system of alternation might well have collapsed. Or perhaps a sudden dearth of patrician candidates in a particular year made the innovation unavoidable. Or else plebeian agitation may have forced the change. Perhaps a popular plebeian candidate presented himself in a patrician year and demanded the people be allowed to chose

Imperium Sine Fine, Stuttgart, (1996) 108, 123f, 141f).

[170] That is, since those of the men elected to the consulship in the early to mid-130's who were curule aedile must have held that office by the late 140's. This point emerged in conversations with Martin Stone. Note also that Cicero drew all his examples of patricians who suffered *repulsae* when campaigning for the curule aedileship from the period before 91 suggesting it had become more difficult for patricians to attain the aedileship prior to 91.

whomsoever they desired.[171]

Though the cause of the change eludes us, the result of this innovation is transparent. As the curule aedileship was a valuable stepping stone for those who aspired to a praetorship or consulship, competition between patricians for the office was already intense before alternation had been abandoned. Polybius states that Scipio Africanus was initially deterred from running for the aedileship of 213 due to the number of the competitors.[172] And competition amongst patricians remained high into the early Second Century as may be judged from an anecdote related by Plutarch. Plutarch states that when L.Aemilius Paullus campaigned for the aedileship of 193 he faced competition from twelve rivals.[173] Whilst the specifics of Plutarch's account must be treated with reserve, the anecdote clearly indicates that competition for the limited number of aedileships open to patricians was fierce.[174] Once alternation had ceased and plebeians gained unfettered access to the curule aedileship the struggle must have intensified; for patrician candidates had now to contend not only with other patrician competitors but also with plebeian hopefuls. As a consequence it must have become increasingly difficult for patricians to get elected to the curule aedileship.[175] What is more, access to the curule aedileship was especially important for patricians who were denied other avenues for winning popular favour open to plebeians - namely the tribunate and aedileship of the plebs.[176] In the face of competition from plebeians

[171] Martin Stone made a very engaging conjecture in this context. He suggested as a possibility that Q.Pompeius (cos.141) or another popular plebeian took advantage of the opportunity created when Scipio Aemilianus was elected consul for 147 though he was then a candidate for the curule aedileship. Prior to the unexpected outcome of the elections of 148 Scipio must have seemed certain to be elected curule aedile for 147 which may have discouraged other patrician competitors from standing. When Scipio was suddenly and unexpectedly made consul a window of opportunity opened up. If a sufficiently popular and audacious plebeian exploited this unforeseen contingency and presented himself as a candidate for the curule aedileship of 147 - a patrician year - his daring might well have been rewarded. Q.Pompeius was praetor by 144 and thus apart from his plebeian status qualified to be curule aedile in 147.

[172] Polybius, X.4.2.

[173] Plutarch, Aemil., 3.1.

[174] See the comments of Develin, Practice, 93. Plutarch claimed all of Paullus' rivals went on to be consuls but as Develin pointed out it is difficult to identify twelve patrician consuls who might feasibly have stood for the aedileship of 193 (Develin could only find nine possible competitors). Develin concluded Plutarch's source either included the competitors for the plebeian as well as the curule aedileships of 193 or exaggerated the extent of Paullus' competition. However, Develin concluded this level of competition was "of an order which is quite credible."

[175] See Münzer, RE.VIIIA.1.33. Badian, JRS, 49 (59) 88 linked the difficulty patricians faced getting elected to the curule aedileship in the later Republic with a putative Sullan dispensation in *cursus*. But the available evidence is insufficient to establish the existence of a 'patrician *cursus*' (see Taylor, Athenaeum, 42 (1964) 18 n.17; Sumner, Orators, 7f, 137f, 156; Broughton, MRR.III.106; cf. F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 136f). Augustus recognized the difficulty patricians faced by making a tribunate or an aedileship compulsory for plebeians but allowing patricians to go from the quaestorship to the praetorship without any intervening step (see Mommsen, StR^3.I.555f; Cichorius, Römische Studien, 285-8; H.H.Pistor, Prinzeps und Patriziat, (1965) 79; Wiseman, NMRS, 159f).

Under the Republic there was never any attempt to increase the number of aediles though the number of praetors and quaestors were increased more than once. The increases in the number of praetors and quaestors were of course driven by administrative necessity and perhaps there was no perceived need for extra aediles. Caesar added two to superintend the corn supply - the so-called *aediles Ceriales* (Dio, XLIII.51.3; Suet., Caes.41, Vesp.2; Pomp., Digest I.2.2.32). Dio erroneously states that two of the aediles, presumably the curule aediles, were drawn from the patricians (εξ ευπατριδων) and the other four from the plebs (εκ του πληθους).

[176] Not that the tribunate could be considered a substitute for an aedileship since the rate at which

it was inevitable that fewer patricians would be elected curule aedile which meant more patricians were deprived of the opportunity to court the voters in the manner increasingly demanded by the electorate of the most successful senators.[177] This was bound to have an adverse impact on the level of patrician representation in the praetorship and consulship.[178] Clearly, the abandonment of alternation in the curule aedileship was a significant advance for the plebeians and an unwelcome and detrimental development for the patriciate.

None of the evidence that has been presented is of a kind that permits it to be categorically stated that the practice of alternation between the orders in the curule aedileship was abandoned in the Second Century. Nevertheless, the balance of probability favours the conclusion that alternation had ceased by the later Second Century. The system of alternation had been highly advantageous to the patriciate. In the years 218-198, when there were still only four praetorships a year, and the patricians were guaranteed one consulate *per annum,* in theory all patrician curule aediles might be praetor and consul.[179] In the same period not all plebeian curule aediles and plebeian aediles could be praetor and only one third of plebeian curule aediles and plebeian aediles could be consul.[180] Between 197 and 160 the situation improved somewhat for the plebeians, for although alternation persisted, the number of praetorships increased to six *per annum* from 197 and after 172 the patricians were no longer guaranteed one consulship a year. This meant that more plebeian aediles might be praetor and consul but in practice patricians continued to secure one consulship per year more often than not. And whilst prior to the end of alternation plebeians enjoyed access to both the plebeian aedileship and the curule aedileship in alternate years the statistics show that for those who aimed at the consulship, the plebeian aedileship was a poor substitute for the curule aedileship. Consequently, the end of alternation in the curule aedileship was an innovation detrimental to the interests of the patriciate. When alternation lapsed the level of competition will have increased significantly and it was inevitable that patricians would find it harder to get an aedileship. Those patricians who missed this opportunity to win the favours of the electorate, will as a result, have

tribunes progressed to high office was comparatively much lower. Those determined to maximize their chances or who felt the need to maximize their exposure would hold both the tribunate and an aedileship (see Shatzman, op cit., 161f; cf. Wiseman, NMRS, 159f).

[177] They might try to circumvent this by finding other pretexts for celebrating games or other means of distributing largesse to win the favour of the electorate (such as funeral games time to coincide with candidacy for office on which see Shatzman, op cit., 84ff and Appendix II on Metellus Scipio). But patricians would have no monopoly on these expedients and the opportunity for such munificence was increasingly restricted by *ambitus* laws (see for instance the provisions of the *Lex Tullia de ambitu* - Cic., In Vat., 37, Pro Sestio 133).

[178] The situation may have improved somewhat when Sulla increased the number of praetorships to eight *per annum* since then in normal circumstances only half the praetors in a given year might have been aedile and only one quarter curule aedile. This will have made it easier for non-aediles to reach the praetorship.

[179] In reality things were not this simple since before 180 a *biennium* was not necessarily observed between the curule aedileship and the praetorship and some men were elected consul without having held a praetorship. Also aediles had to compete with non-aediles for the praetorship and consulship.

[180] In a two year period between 218-198 eight aediles (four curule aediles - two patricians and two plebeians, and four plebeian aediles), eight praetors, and four consuls (two patricians, and two plebeians) were elected. There was no fixed division of praetorian places between the orders (see Chapter II above) but in this period the patricians normally got more than 25% of the available praetorships so some of the six plebeian aediles elected in a two year period had to miss out on the praetorship. In practice of course the aediles had also to compete with non-aediles for the praetorship.

found the praetorship and consulship that much more difficult to attain.[181]

[181] It was therefore a suitable finale to the gradual transformation of the curule aedileship when Sulla obliterated the symbolic distinctions between the curule and plebeian aedileships by granting the plebeian aediles the right to the *toga praetexta*, the *sella curulis* and the *ius imaginum* - formerly the preserves of the curule aediles (see Taylor, AJP, 60 (1939) 194-202; J.-C.Richard, Athenaeum, 55 (1977) 428-34). It is possible that this was a *quid pro quo* and that in return Sulla permitted those who had held the curule aedileship to seek the praetorship after observing only a one year interval - thereby eliminating the formerly obligatory *biennium* between the curule aedileship and praetorship and conceding to the curule aediles a right long enjoyed by those who had held the plebeian aedileship (see Sumner, Orators, 9-10).

V

THE *PRINCEPS SENATUS*[1]

We come now to a highly anomalous preserve of the patriciate - the position of *princeps senatus*. By the Hannibalic War the *album senatorium* compiled by the censors during the *lectio senatus* registered each senator in descending order of rank according to the offices he had held with due regard for the claims of seniority of tenure.[2] The same order of precedence was observed when it came to speaking and voting in the senate up until the last decades of the Republic.[3] Yet in both cases there was one glaring exception to the rule. At least down to the early First Century the *album senatorium* was invariably headed by the name of a patrician senator who was accorded the title *princeps senatus*. The *princeps*, though invested with no formal powers, was granted the right to speak and vote first in the senate and the position thereby conferred considerable, on an unfavourable estimate excessive, *auctoritas* on the incumbent.[4] In an hierarchical system which no longer recognized differences between the orders and had come to judge rank solely on the basis of office and seniority, the *princeps senatus* constituted a significant exception and despite the continual erosion of patrician privileges in this period, the position remained a patrician prerogative. However, in the late 70's the post was robbed of significance as the *princeps*' principal means of influence - priority in senatorial debate - was withdrawn when the ex-consuls began being consulted without regard to seniority. Yet it is a wonder, not that the position was reduced to insignificance in the first half of the First Century, but that it endured unscathed for so long.

A single passage of Livy is the only source that deals directly with the procedure followed in the selection of the *princeps senatus*.[5] It emerges therefrom that the appointment of the *princeps*, accomplished during the performance of the *lectio senatus*, was the

[1] This chapter was composed before Chr.Meier's, "Die Ersten unter den Ersten des Senats: Beobachtungen zur Willensbildung im römischen Senat", in D.Nörr and D.Simon (eds.), Gedächtnisschrift für Wolfgang Kunkel, Frankfurt, (1984) 185-204; M.Bonnefond-Coudry's, "Le *princeps senatus*: vie et mort d'une institution Républicaine", Mélanges d'Archéologie et d'Histoire de l'École Française de Rome. Antiquité, 105 (1993) 103-134; and F.X.Ryan's, Precedence in the Republican Senate, University of Pennsylvania Dissertation, (1993) became available to me.

[2] Mommsen, RF.I.258f; StR.III.967-9 and Willems, Le Sénat de la République romaine, (1968) I.122-3, 259-60 argued that down to the First Century patricians were listed in each grade before their plebeian colleagues, but that practice had evidently been discontinued by the Hannibalic War (see Appendix V).

[3] Mommsen, RF.I.256f stated that down to the dictatorship of Sulla patricians in each grade spoke before their plebeian counterparts but evidence for this assertion is lacking (see infra and Appendix V).

[4] Thus Badian, ANRW, I.1 (1972) 691.

[5] Livy, XXVII.11.9-12: "Senatus lectionem contentio inter censores de principe legendo tenuit. Sempronilectio erat; ceterum Cornelius morem traditum a patribus sequendum aiebat, ut qui primus censor ex iis qui viverent fuisset, eum principem legerent; is T.Manlius Torquatus erat; Sempronius, cui di sortem legendi dedissent, ei ius liberum eosdem dedisse deos; se id suo arbitrio facturum lecturumque Q.Fabium Maximum, quem tum principem Romanae civitatis esse vel Hannibale iudice victurus esset. Cum diu certatum verbis esset, concedente conlega lectus a Sempronio princeps in senatum Q.Fabius Maximus consul."

responsibility of one of the censors who had been designated by lot.[6] The criteria employed in the selection of the *princeps senatus* is more problematic. Livy records a dispute between the censors of 209 over the appointment of the next *princeps*. In that year it fell to the plebeian censor P.Sempronius Tuditanus (cos.204) to nominate the *princeps*. Tuditanus maintained since the gods had, by means of the lot, allocated the decision to him, he had a free hand to choose whomsoever he might, and he preceded to nominate Q.Fabius Maximus (cens.230). Tuditanus defended his choice as an objective assessment based on merit. He stated that Fabius was then undeniably "princeps Romanae civitatis." Tuditanus' patrician colleague M.Cornelius Cethegus (cos.204) denounced the choice as irregular claiming custom dictated the appointee should be 'that man among the living who had been censor first' and the senior *censorius* was T.Manlius Torquatus (cens.231) not Fabius. However, after a bitter war of words Fabius was appointed. We have no reason to doubt Cethegus' testimony that in 209 this mechanical procedure for the selection of the *princeps* was established practice. Yet it is equally clear the procedure was only a relatively recent tradition.[7] The Romans believed the post of *princeps senatus* went back to the beginning of the Republic[8] and so existed before the creation of the censorship and before the censors began to be appointed at regular intervals.[9] Thus the earliest *principes senatus*

[6] Livy, XXVII.11.10-12. That the nomination of the *princeps* fell to one censor selected by lot deserves emphasis, since this fact is often neglected and is of particular relevance when the nomination of a *princeps* is used as evidence of factional politics (see Shatzman, Anc.Soc., 5 (1974) 209f). It is stated no less than three times that in 209 the choice belonged to P.Sempronius Tuditanus (Semproni lectio erat....Sempronius, cui di sortem legendi dedissent.....lectus a Sempronio princeps in senatum Q.Fabius Maximus consul). Plutarch also repeatedly attributes the selection of the *princeps* to one of the censors (see Flam.18.2, Cato Maior 17.1, Aem.38.9).Yet on other occasions when referring to the appointment of the *princeps* Livy refers to both censors. And Livy also says in 209 the appointment of Fabius only went ahead when Sempronius' colleague, M.Cornelius Cethegus, yielded after a prolonged dispute, as if to imply his consent was required and that he could frustrate the appointment even though it was Tuditanus' responsibility. This has caused some confusion. Willems, Le Sénat, I.245 apparently believed the latter was the case. However, Mommsen, StR^3.I.43 n.1, II.358 argued that whereas in conducting the *lectio* the censors were required to agree on the expulsion or addition of senators (and that in case of dissension the veto prevailed) as regards the *princeps* only the censor designated by lot had the power to decide. More recently, Chr.Meier, op cit., 193-4 tentatively suggested the appointment was normally the responsibility of both censors and the lot was only resorted to as a means of solving the impasse if there was dissension between the censors. Meier's suggestion was taken up and argued at length by F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 366f. Ryan proposes the general statements which occur in Livy to the effect that the *princeps* was appointed *censoribus* (cf. Gell., NA.IV.10.2 omitted by Ryan) are to be preferred to explicit statements in Livy and Plutarch that the *princeps* was appointed by one of the censors (note Ryan, Ibid., 300, 368 overlooks Plut., Flam.18.2; and dismisses Livy, XL.51.1 as unhelpful, though if taken literally, that passage implies M.Lepidus was appointed by his colleague M.Fulvius Nobilior - compare Ibid., 302 vs 368). But the former kind of reference is inaccurate shorthand, most occur in the Periochae. The performance of the *lustrum* provides an instructive analogy. In Livy, as in many other sources, the *lustrum* is regularly attributed to both censors (Livy, X.9.14, 47.2, Per.XIV, XVI, XVIII, XIX, XXVII.36.6, Per.XXVII, XL.46.8, Per.XLI, XLV-XLVIII, LIV, LVI, LIX, LX, LXIII, XCVIII). Whereas in fact it was the responsibility of one of the censors selected by lot (Varro, De Ling.Lat., VI.86-7; Livy, Per.XIII, XXIX.37.7, XXXV.9.1, XXXVIII.36.10, XLII.10.1). Thus although fully familiar with the actual procedure Livy nevertheless often inaccurately credits the *lustrum* to both censors. In the majority of instances Livy displays the same nonchalant disregard for details when reporting the appointment of the *princeps senatus*, but we ought not to be fooled by his carelessness.

[7] See Willems, Le Sénat, I.115-6; and Meier, op cit., 193, 195. M.Bonnefond-Coudry, MEFR, 105 (1993) 105 considered that due to the lack of evidence on the *principes senatus* before 209 it was difficult to establish when the rule cited by Cethegus came into being.

[8] The earliest named *princeps senatus* is M'.Valerius Maximus (243), the dictator of 494, (see Appendix III).

[9] Until the later Fourth Century censors continued to be appointed only irregularly.

were not *censorii*.[10] Further, as the censorship only achieved the eminence that it was to enjoy in the later Republic subsequent to the passage of *Lex Ovinia* (passed shortly before 312),[11] and the censorship's place in the *cursus honorum* was not firmly fixed until the early Third Century,[12] the censorship can only have became a necessary prerequisite for the *princeps senatus* after the early Third Century.[13] This is confirmed by the list of known *principes senatus* which demonstrates that it remained possible into the early Third Century to nominate as *princeps* a censor who was not the senior *censorius* or even a non-censor.[14] Evidently, although the automatic appointment of the senior *censorius* as *princeps senatus* was established practice in 209 it was a comparatively recent custom.[15]

The selection criteria adduced by Cethegus also unaccountably omits one crucial prerequisite - patrician status. That omission is at once grave and difficult to explain, but the conclusion that the position was restricted to patricians is an inescapable inference from the list of known *principes senatus*.[16] It will be noted that in 209 neither Tuditanus

[10] Thus M'.Valerius Maximus (243) and M.Fabius Ambustus (44) had not held the censorship. Nor had L.Lucretius Tricipitinus Flavus (20) who also seems to have been *princeps senatus* in the early Republic (see Appendix III).

[11] On the *Lex Ovinia* see MRR.I.158-9. Willems, Le Sénat, I.115 notes that in the Fourth Century the censorship was still considered inferior in rank to the consulship.

[12] Down to 378 it was not uncommon for censors to have held no previous office and it was still possible as late as 272 to hold the censorship without having held the consulship (viz. L.Papirius Crassus (46) censor 318, possibly praetor in 332; Ap.Claudius Caecus (91) censor 312 consul 307; and L.?.Papirius Praetextatus (72) was censor in 272 and is not known to have held any other office. Some scholars finding it difficult to accept the latter case identified Papirius with L.Papirius Cursor (53) cos.293, 272 and redate the censorship of 272 to 271 see Cram, HSCP, 51 (1940) 85-6; MRR.I.198; and Suolahti, Censors, 261-2. But in view of the election of non-consular censors in 318 and 312 this is unnecessary). From 269 until the end of the Republic, but for some exceptional cases during the First and Second Punic War (see Chapter III above), the censorship was invariably held after the attainment of the consulship.

[13] See Willems, Le Sénat, I.115-6; Meier, op cit.; and Soulahti, Arctos, 7 (1972) 213 n.1. In a remarkable inversion of logic F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 232f, 343f supposes on the basis of Livy, XXVII.11.10 that "every princeps senatus appointed before 209 was the senior censorius." This premise, combined with a series of outlandish arguments, leads Ryan to the conclusion that the post of *princeps senatus* was only created c.275 (Ibid., 225f). This inherently improbable construct is contradicted by the appointments of M.Fabius Ambustus (44), who was *princeps* long before 275 and was never censor, Q.Fabius Maximus Rullianus (114), who was almost certainly not the senior *censorius* when appointed and may in fact have been appointed before he was censor, and Q.Fabius Maximus Gurges (112), for whom no censorship is attested, not to mention the possible appointments of the non-censors M'.Valerius Maximus and L.Lucretius Tricipitinus Flavus (see Appendix III). Hence Ryan is compelled to use Procrustean methods to make the evidence conform to his thesis (Ibid., 285f).

[14] See the previous note and Appendix III on the appointments of Q.Fabius Maximus Rullianus (114) and Q.Fabius Maximus Gurges (112).

[15] Meier, op cit., 193 stated that if Livy, XXVII.11.10 is credited the procedure must have been in practice for some decades prior to 209. Taken literally "morem traditum a patribus" implies the custom was at least two generations old in 209.

Bonnefond-Coudry, MEFR, 105 (1993) 109-115 argues the fact that the *princeps* was chosen from among the *censorii* imbued the post with a special dignity and moral force and that the moral stature of candidates was a criterion considered in selection. There is doubtless something in the former proposition but that the moral calibre of candidates was a guiding principle in the appointment of the *princeps* is more difficult to credit in view of some of the choices - notably L.Lentulus Lupus and M.Scaurus whose reputations were far from immaculate.

[16] That conclusion as argued by Mommsen, RF.I.92-4, Rh.Mus., 19 (1864) 455-7 and StR.III.868 n.4, 969f, was rejected by Willems, Le Sénat, I.111f. However, Willems' counterarguments were insubstantial

nor Cethegus even entertained the prospect of considering plebeian candidates.[17] More importantly, the failure to appoint plebeian *principes senatus* in the later Second and early First Century is simply inexplicable, if plebeians were eligible for consideration. In 125 and 115 a number of plebeian *censorii* were passed over in favour of patricians who had not been censor - the first such appointments in over a century.[18] The plebeian censors of 115, Cn.Domitius Ahenobarbus (cos.122) and L.Metellus Delmaticus (cos.119), preferred the patrician M.Aemilius Scaurus, who had not been censor and was only then consul, to two Metellan *censorii* at the very time when the dominance of the Metelli was at its height - a decision which defies belief had plebeians been eligible. Whilst arguments from silence are seldom compelling this case constitutes an exception. It is simply incredible that the choices made in 125 and 115 could have been made unless plebeians were ineligible for

(see Appendix III) and virtually all subsequent scholars have adhered to the view of Mommsen (see F.Zühlke, Mommsen und Willems in ihrer der Sonderstellung der Patricier in dem Senat, Insterburg, (1891) 27-8; Herzog, Geschichte und System der römischen Staatsverfassung, (1884) I.886; O'Brien Moore, RE Suppl. VI.699-700; Münzer, Rh.Mus., 61 (1906) 20-2, RAA, 11 passim; Broughton, MRR.II.130 n.1; Sumner, JRS, 54 (1964) 47-8; Suolahti, Censors, 98 passim, Arctos, 7 (1972) 207-18; Meier, op cit., 192f; and Bonnefond-Coudry, MEFR, 105 (1993) 106f. The exception being F.X.Ryan, op cit., 285ff who follows Willems but he adds no new evidence nor is he able to explain away the weaknesses of Willems' thesis). Two earlier scholars, Panvinius and Wesseling, had also posited plebeian *principes senatus* but the evidence they adduced in support was manifestly inadequate see Mommsen, Rh.Mus., 19 (1864) 455-6. And Lange's claim Römische Alterthümer[3], II.379 that the post was open to plebeians but that they to deferred to patrician candidates will persuade no one. Given the importance of as complete a list as possible of *principes senatus* I have compiled a list taking into account the work of Mommsen, Willems, Münzer, Broughton and Suolahti (see Appendix III) which forms the basis for much of the following observations. According to my analysis there are fifteen men reliably described as *princeps senatus* in the sources: M'.Valerius Maximus (243); M.Fabius Ambustus (44); Q.Fabius Maximus Rullianus (114); Q.Fabius Maximus Gurges (112); Q.Fabius Maximus Verrucosus (116); P.Cornelius Scipio Africanus (336); L.Valerius Flaccus (173); M.Aemilius Lepidus (68); P.Cornelius Scipio Nasica Corculum (353); Ap.Claudius Pulcher (295); L.Cornelius Lentulus Lupus (224); P.Cornelius Lentulus (202); M.Aemilius Scaurus (140); L.Valerius Flaccus (176); and Mam.Aemilius Lepidus Livianus (80). The fifteen appointments stretching over a period of five centuries were all made from patrician *gentes* (3 Aemilii, 1 Claudius, 4 Cornelii, 4 Fabii and 3 Valerii). The only known unsuccessful candidate - T.Manlius Torquatus (82) - was also a patrician. As was one other probable *princeps* - L.Lucretius Tricipitinus Flavus (20). As regards the failure to mention patrician status as a requirement in Livy, XXVII.11.9-12, perhaps this fact had been mentioned in one of the lost books, so it was felt unnecessary to repeat it at this juncture.

Mommsen's contention that the position was limited to representatives of the *gentes maiores* is more questionable (see Appendix IV).

[17] Cethegus claimed T.Manlius Torquatus (82) cos.235, 224, cens.231 was the senior *censorius* (Livy, XXVII.11.10-11). Neither Cethegus nor Tuditanus gave Manlius' plebeian colleague in the censorship of 231 (Q.Fulvius Flaccus (59) cos.237, 224, 212, 209) a look in, even though Flaccus was the more senior consular, and having been consul four times, was more distinguished. Ryan, op cit., 343 argued Fulvius was ignored, not because of his plebeian status, but because Manlius was the senior *censorius* - for although Manlius and Fulvius were colleagues in 231 the *Fasti Capitolini* lists Torquatus before Flaccus indicating Manlius was elected first and so was technically senior. But as Ryan admitted, the *Fasti Capitolini* is not necessarily a reliable indicator of the order of election (see Taylor and Broughton, MAAR, 19 (1949) 3-14, Taylor and Broughton, Historia, 17 (1968) 166-72; Linderski, Historia, 14 (1965) 434-5; A.Drummond, Athenaeum, 56 (1978) 80-7).

[18] In 125 the ancient P.Lentulus (cos.suff.162) was chosen as *princeps* though he had not been censor (see Appendix III) in preference to at least one plebeian censor - Q.Metellus Macedonicus (cos.143, cens.131). And in 115 M.Scaurus (cos.115, cens.109) was chosen rather than one of a number of plebeian *censorii* such as: L.Cassius Longinus Ravilla (cos.127, cens.125); Q.Metellus Balearicus (cos.123, cens.120); Cn.Domitius Ahenobarbus (cos.122, cens.115); or L.Metellus Delmaticus (cos.119, cens.115) - on the identity of the Metellan censor of 115 see MRR.I.532 n.1; Badian, Chiron, 14 (1984) 143 n.96. Why was it necessary to fall back upon the oldest living patrician consular unless the plebeian censors available were unqualified ? Likewise it would be difficult to explain why Q.Metellus Pius (cos.80) *triumphator* and *pontifex maximus* was passed over in favour of Mam.Lepidus Livianus (cos.77) in 70.

the post of *princeps senatus*.[19] The rationale behind the patrician monopoly is unclear but it is significant that unlike many others it was never overthrown.[20]

Though seldom referred to in the ancient sources - what little is said confirms the potency of this dignity. In theory the *princeps* was not appointed for life, in practice it was customary to reappoint the current *princeps* as long as he lived.[21] In rank the *princeps*

[19] The lack of evidence on the *principes senatus* of the Third Century has probably robbed us of the possibility of establishing by positive means the ineligibility of plebeians. If we knew the identity of the *principes senatus* in the years prior to 209, when it was customary to appoint the senior *censorius,* the ineligibility of plebeians might have been confirmed by demonstrating that patrician censors were being appointed over more senior plebeian candidates. However, the exclusion of Q.Fulvius Flaccus in 209 is instructive (see above).

[20] Mommsen, RF.I.258 found an explanation of the patrician monopoly and the supposed restriction of the post to representatives of the *gentes maiores* in Cicero's claim that Tarquinius Priscus consulted the *gentes maiores* first regarding their *sententia* (De Rep., II.35). But that claim is almost certainly erroneous (as rightly R.M.Ogilvie, A Commentary on Livy Books 1-5, Oxford, (1965) 148). Livy, I.35.6 says Tarquinius Priscus' purpose in creating the *gentes minores* was to gain control of the senate by flooding it with his own appointees, thereby neutralizing the influence of the *gentes maiores*. Whereas Dionysius of Halicarnassus, III.67 saw Tarquinius' creation of the *gentes minores* as a ploy to win the affection of the plebs. Zonaras, VII.8 considered Tarquinius actuated by a blend of the two motives. Yet in either case it is incredible that Tarquinius should have conceded priority in senatorial debate to the *gentes maiores*. If his intention was to undermine the influence of the *gentes maiores,* he will hardly have given the *maiores* precedence in debate and so put the *gentes minores* at a procedural disadvantage. Equally if his aim was to gratify the plebs, he is unlikely to have treated the *gentes minores* as inferior to the *maiores*. Note also according to Dionysius, II.62.1-4 the issue of priority in debate amongst the patricians preceded the creation of the distinction between *maiores* and *minores*.

Cicero's story bears all the hallmarks of dubious late Republican antiquarianism. This purported prerogative of the *gentes maiores* was probably an aetiological fiction based on the terms *maior* and *minor* gens. The distinction *maior - minor* suggested to late Republican minds a disparity of age and or power (see Festus, 152 L on the *praetores maiores* and *minores*). According to the tradition the *gentes maiores* were indeed older than the *minores* but no other source ascribes to the *maiores* any special prerogatives. However, given the possible connotations of the word *maior,* it is easy to see how the story might have come about. Of particular significance in this context is the term *maior consul*. The meaning of the term was disputed. L.Caesar suggested it meant either the consul holding the *fasces,* or the consul elected first (Festus, 154 L). Now the consuls held the *fasces* in alternate months and the consul who possessed the *fasces* probably had priority over his colleague when it came to summoning, presiding over and speaking in the senate (see Taylor and Broughton, MAAR, 19 (1949) 4f; Linderski, Historia, 14 (1965) 434-5; A.Drummond, Athenaeum, 56 (1978) 80-7; cf. F.Ryan, op cit., 152f). While the consul elected first not only held the *fasces* first and presided over the senate in the first month of the year (and odd months), but was consulted before his colleague during the *interrogatio* when consul designate and as a consular (until the 70's see infra). Thus whatever definition one subscribed to, the *maior consul* could be said to enjoy priority over his colleague in senatorial debate. The supposed priority of the *gentes maiores* in senatorial debate was probably a late Republican fiction based on their *maior* status and an analogy with the prerogatives of the *maior consul* (see further Appendices IV and V).

Furthermore, the fact that the patrician monopoly of the post was never to our knowledge even challenged, let alone overthrown, in an era when most patrician prerogatives were brought into question, suggests there was something more than mere historical precedent, real or imagined, behind the monopoly. Hence it is unlikely the monopoly was preserved simply on the basis that the patricians were thought to have enjoyed priority in the Regal senate, or because they were the original senators, or had always been appointed to the position in the past, or reasons of that kind. It is tempting to speculate the patrician monopoly was, like the other enduring patrician monopolies in the political sphere, the *interregnum* and *patrum auctoritas*, based on religious constructs. It will be remembered that senate meetings were conducted in *templa* consecrated by the augurs and began with the consultation of the auspices (see Mommsen, StR.III.926f, 934f; Willems, Le Sénat, II.157f, 173f).

[21] On the face of it Livy, XXXIX.52.1-3 and Zonaras, VII.19 are contradictory on this point. Livy suggests once nominated, the *princeps senatus* held the title for life, unless he was expelled from the senate. Zonaras, on the other hand, plainly says the *princeps* was not appointed for life. In fact, the two statements can be reconciled. It is probably true, as Zonaras stated, that strictly speaking, tenure of the position for life was not automatic. Had that been the case, it would not have been necessary for the *princeps senatus* to be

surpassed the highest magistrates, including *dictatorii*, but the position conferred no formal power.[22] The significance of the position resided in the *auctoritas* it enjoyed and the right of the *princeps* to express his *sententia* and deliver his vote first - together a powerful combination.[23] The latter prerogative was an especially potent privilege given the rigidly hierarchical structure of senatorial debate. Priority in debate gave the *princeps* a unique opportunity to set the tone of debate and influence the direction of senatorial policy.[24] The *princeps* also functioned as the paramount repository of *mos maiorum* and guardian of Republican institutions - to use Cicero's phrase "custos rei publicae."[25] That description was more than mere hyperbole as the events of 121 and 100 demonstrate.[26] When held by a dynamic personality the position was a powerful force for the direction of public policy. Cicero claimed the *princeps senatus* M.Aemilius Scaurus practically ruled the world with the nod of his head.[27]

Münzer rightly emphasized the anomalous character of the institution.[28] It bore no resemblance to the magistracies. Indeed, the fundamental principles behind the magistracies were an anathema to it. Collegiality served as a check on the actions of individual magistrates

reappointed by each successive pair of censors whilst he lived. If the position was held for life, it would only have been necessary to designate an individual *princeps senatus* once, and barring expulsion from the senate he would have remained *princeps* whilst he lived. In practice, however, it is probable that it had become customary, except in case of some grave impropriety, that the incumbent *princeps* was retained in that position as long as he lived, as Livy suggests, and reappointment by successive censors was a mere formality (cf. Shatzman, op cit., 213 n.66). There is no certain instance of a *princeps senatus* who was superseded in his lifetime - for the only possible exception see Appendix III under the appointment of L.Valerius Flaccus in 184.

[22] Zonaras, VII.19. The assertion of Willems, Le Sénat, II.27, 144, Revue Archéologique, 36 (1878) 243 that the *princeps* had the power to convoke the senate and was responsible for naming the first *interrex* is without any foundation in the sources.

[23] On the *princeps senatus'* right to express his *sententia* first see Varro apud Gellius, NA.XIV.7.9-10 (cited and discussed below) and Diodorus, XXXIV/XXXV.33.1. See also Plutarch, Camillus 32.1-2 where Plutarch probably refers to the prerogatives of the *princeps senatus* (see further Appendix III). It is interesting to note that when the title was revived in the late Empire it was once more associated with this privilege (see Vita Taciti 3; Vita Valeriani 5).

Based on the statement of Zonaras, VII.19 Becker, Handbuch der römischen Alterthümer, (1846) II.2.399-400; Willems, Le Sénat, I.111; and Madvig, Die Verfassung und Verwaltung des römischen Staates, (1881) I.137 considered the post of *princeps senatus* was largely honorific. However, one should not confuse the absence of formal (i.e. legally constituted) powers with powerlessness. U.Schlag, Regnum in senatu. Das Wirken römischer Staatsmänner von 200 bis 191 v. Chr., (1968) 165 n.7 commenting on Scipio Africanus' position in the senate in the early Second Century stated that the *princeps senatus* was "ohne einen entscheidenden Einfluß" and that it was "in der Praxis mehr ein Ehrenposten als eine wirkliche Machtstellung im Senat gewesen sei." This claim was based on the mistaken belief that the *princeps'* priority in debate "im Lauf der Zeiten mehrmals geändert habe." In fact, the *princeps* retained this privilege until the 70's.

[24] It should not, however, be assumed just because the *princeps senatus* was consulted first that his *sententia* would automatically be preferred to the opinion of the consular consulted second or third, or that it was somehow inherently more influential (see the comments of Meier, op cit., 199f; and further below).

[25] Cicero, Pro Scauro 3 (Asc., 22 C) so described M.Scaurus. It was natural that the *princeps* should fulfil this role, if as Syme, RR, 315 commented, *mos maiorum* meant in practice "the sentiments of the oldest living senator."

[26] On the role of the *princeps* in the crises of 121 and 100 see further below.

[27] Cic., Pro Fonteio 24. According to Livy, XXXVIII.51.4-5 the opponents of Scipio Africanus reproached him in very similar terms - "(apparet), unum hominem caput columenque imperii Romai esse, sub umbra Scipionis civitatem dominam orbis terrarum latere, nutum eius pro decretis patrum, pro populi iussis esse".

[28] RAA, 409f.

whereas the *princeps* was conspicuously elevated above his peers. Magistrates were restricted by a finite tenure whilst the *princeps* was effectively appointed for life. And the primacy of the *princeps* appears a denial of the oligarchic structure of the senate. With so few restraints upon his person it is little wonder the *princeps* was not given any formal powers. To these may be added two further irregularities. The method of appointment was extraordinary - nomination and appointment being conducted without reference to the people. And the position remained in defiance of reason and historical trends an exclusively patrician preserve.[29]

As is all too often the case we cannot trace the history of the institution in any detail prior to the Hannibalic War and can only sketch its evolution thereafter. It is, however, clear that the position underwent a number of important changes in the period from 209 to the fall of the Republic - the last most serious occurring in the First Century.

As was the case with a number of magistracies and priesthoods the Hannibalic War was a turning point in the history of the position of *princeps senatus*.[30] As we have seen in 209 the censor P.Sempronius Tuditanus, to the dismay of his patrician colleague, chose to ignore recent practice and exercise his personal discretion in making the appointment. Instead of appointing the senior patrician *censorius* T.Manlius Torquatus (cens.231), he chose the next most senior patrician censor Q.Fabius Maximus (cens.230). Tuditanus' motives may be variously assessed.[31] But this departure from precedent was undeniably a significant step, for it meant the position need no longer be awarded simply on the basis of seniority - it was now open to the censor responsible to choose the *princeps* on the basis of merit, of political sympathies or other criteria - provided only that the nominee fulfilled the necessary prerequisites.[32] The procedure of selection and thereby the position itself had been liberalized and politicized at one stroke.[33] The precedent created by Tuditanus in 209 stuck and on a significant number of occasions thereafter the most senior candidate was passed over in favour of another candidate.[34]

A potential threat to the position emerged in the later Second Century in the form

[29] Willems and Ryan claimed plebeians were appointed in the *lectiones* of 70, 61, 55 and 50, but the evidence on which they based this contention is unsound (see above and Appendix III).

[30] During the War a series of irregular choices and innovations were made in the selection of priests and magistrates. The first non-curule *pontifex maximus* in over a century was elected, as were the first non-consular censors since the First Punic War, a number of non-praetorian and non-curule consuls, the first plebeian *curio maximus*, and the first (abortive) all-plebeian consular college in 215. The second and third were, however, not lasting innovations.

[31] O'Brien Moore, RE Suppl. VI.699; Suolahti, Arctos, 7 (1972) 208 and Shatzman, op cit., 210-211 explained the appointment by means of personal or political ties between Fabius and Tuditanus. Münzer, RAA, 187 believed the fact that Manlius had been faultily elected censor and abdicated *vitio creatus* may have influenced the decision. Tuditanus, however, is said to have defended his choice as an objective assessment based on merit (see above).

[32] That is till 131 the *princeps* had to be drawn from among the patrician *censorii*, in 125 it sufficed to be the senior patrician consular and in 115 merely a patrician consul.

[33] The abandonment of the principle of seniority in the selection of the *princeps senatus* may be seen as a precursor of the abandonment of the principle of seniority in the determination of the order of priority in senatorial debate within the consular grade in the 70's (see infra).

[34] See Appendix III on the appointments made in 199, 184, 179, 174, 136, 131, 125 and 115. If Mommsen was right to presume only representatives of the *gentes maiores* were eligible, the *lectiones* of 184, 179, 174 and 125 may be subtracted from this list, as in the former three censorships the senior patrician censor was T.Quinctius Flamininus (cos.198), and in 125 the only patrician censor available was Cn.Servilius Caepio (cos.141), and neither the Quinctii nor the Servilii were among the *gentes maiores*.

of the evolution of the censorship. The election of an all-plebeian censorial college for the first time in 131 and intermittently thereafter posed a problem for the nomination of a *princeps senatus* - till then traditionally one of the senior patrician *censorii*. Yet the patrician monopoly of the post of *princeps senatus* remained unaffected by the shrinking numbers of patrician *censorii*. The declining numbers of patrician *censorii* after 131 did not lead to the appointment of plebeian *censorii* to the post of *princeps senatus* rather the shortage of patrician *censorii* was quickly and simply circumvented by the preferment of patrician consulars. In 125 for the first time on record in the later Republic, the senior patrician consular (P.Cornelius Lentulus cos.suff.162), though never censor, was nominated *princeps senatus*.[35] The departure from precedent was carried still further in 115 with the appointment of the patrician consul of that year (M.Aemilius Scaurus cos.115, cens.109) who had not then been censor and was not even the senior patrician consular. How this innovation was justified and why the plebeian *censorii* tamely endured such a derogation of their *dignitas* defies explanation.[36]

However, the institution was to face its most serious challenge in the First Century. Mommsen advanced two versions of the fate of the position in the period.[37] According to the earlier version, Mam.Aemilius Lepidus Livianus was appointed *princeps senatus* in the *lectio* of 70 to succeed L.Valerius Flaccus, only to die shortly thereafter.[38] Lepidus was to be the last Republican nominee as there were no *lectiones* after the censorship of 70 and the position perforce remained vacant until the principate of Augustus. But that scenario had two cardinal flaws. First, though no *lectio* was conducted in the censorships of 65 and 64, the *album senatorium* was revised in the censorships of 61, 55 and 50 and in consequence there is a need to explain what happened in those years.[39] Second, by Mommsen's own reckoning Flaccus survived till c.64, making it difficult to account for the appointment of Lepidus in 70.[40] Hence the latter version in which the tenure of Lepidus was ignored and

[35] Non-censors had been appointed *princeps* in the early Republic (see above and Appendix III). But by the late Third Century the censorship had become a necessary prerequisite and P.Lentulus was the first *princeps* in over a century who did not satisfy this requirement.

[36] On the death of Scaurus the only surviving patrician *censorius*, L.Valerius Flaccus (cos.100, cens.97), was nominated (see Appendix III).

[37] The first version appeared in an article in Rh.Mus., 19 (1864) 455-7. The second version was aired in StR.III.969-970 (1888).

[38] Based on Val.Max., VII.7.6 see Rh.Mus., 19 (1864) 455-7, and Mommsen's note in Borghesi, Oeuvres Complétes, IV.27-8 n.4.

[39] There was no *lectio* in the abortive censorships 65 and 64 (see Chapter III and Appendix III). The *lectio* was certainly performed in 61 (Dio, XXXVII.46.1) and 50 (sources MRR.II.247-8). It was probably also conducted in 55. For although the *census* was delayed (Cic., Ad Att.IV.9.1, IV.11.2), and the *lustrum* uncompleted (Cic., Ad Att.IV.17.7; RG.8.2), the censors were still in office in July 54, and hence had ample time to complete the *lectio*. That they did so is suggested by a comment Cicero made to Atticus. Cicero, Ad Att.IV.16.8 refers to a *Lex Clodia* and *iudicia* arising therefrom, connecting this with the delay of the *census*. Astin, Historia, 34 (1985) 187-8 plausibly suggested the *iudicia* referred to were hearings concerning the expulsion of senators arising from the *Lex Clodia de censoria notione* (followed by Tatum, CP, 85 (1990) 42-4. Willems, Le Sénat, I.422 had argued the anecdote reported by Val.Max., VI.2.8 was evidence for the performance of the *lectio* in 55, but the passage is not conclusive). Mommsen's error was picked up by Willems, Le Sénat, I.117f.

[40] Mommsen dated the banquet at which Lentulus Niger succeeded Flaccus as *flamen Martialis* 'not long before' 63 (RF.I.87 n.34). Followed by Münzer, RE.VIII.A.25 and IV.1391 and Klose, Römische Priesterfasten, (1910) 24. The difficulty might be resolved, if it were presumed Lepidus was appointed in Flaccus' lifetime, but this would have been highly irregular. In fact, the banquet should be dated in 70 (see below and Appendix VI).

Flaccus became the last Republican *princeps senatus*.[41] The position itself was said to have fallen victim to the new political reality attendant upon the conclusion of the First Civil War. Mommsen contended Sulla abolished the position and equipped him with the means and the motive. Sulla is said to have effected the elimination of the *princeps senatus* by 'practically abolishing' the censorship. His motive being that the position had become politically inconsistent with the "vollendete Optimatenherrschaft" which could not tolerate the even nominal leadership of a single senator.[42] Thus Mommsen conjectured after Sulla the *album senatorium* was compiled on the basis of office and age, with the senior consular listed first. He was not, however, accorded the title *princeps senatus,* nor did he enjoy any priority over the other consulars. Virtually all subsequent commentators have concurred.[43]

Mommsen based the latter reconstruction on a statement of Varro preserved by Gellius. Gellius, NA.XIV.7.9-10 drawing on a letter of Varro which recalled statements Varro had made in his Εἰσαγωγικός, writes that when explaining the ways to produce a *senatus consultum* Varro commented:

> "senatusque consultum fieri duobus modis: aut per discessionem, si consentiretur, aut, si res dubia esset, per singulorum sententias exquisitas; singulos autem debere consuli gradatim incipique a consulari gradu. Ex quo gradu semper quidem antea primum rogari solitum, qui princeps in senatum lectus esset; tum autem, cum haec scriberet, novum morem institutum refert per ambitionem gratiamque, ut is primus rogaretur quem rogare vellet qui haberet senatum, dum is tamen ex gradu consulari esset."[44]

But Mommsen's second scenario, which has become orthodox, has flaws as critical as those which invalidated the first hypothesis. Mommsen's thesis is fundamentally at odds with the account of Varro - our sole authority on the change - both concerning the nature of the change, and regarding the question of responsibility for it. As to the nature of the change, Mommsen inferred from Varro that the position of *princeps senatus* had been abolished and that this was given formal expression in the *lectio* of 70 when the senior consular was listed first on the *album senatorium*. However, as Willems and Sumner realized Varro neither says, nor implies, the position was abolished - only that it no longer

[41] StR.III.969-970.

[42] Or, as Badian, ANRW, I.1 (1972) 691 put it, the position ran counter to Sulla's endeavours to make the senate "an organ of collective leadership" and so was done away with.

[43] Thus O'Brien Moore, RE Suppl. VI.700; Badian, ANRW, I.1 (1972) 691; Suolahti, Arctos, 7 (1972) 209f; and Shackleton Bailey, Cicero Back from Exile: Six Speeches Upon His Return, (1991) 94. Broughton's position was ambiguous (MRR.II.130 n.1). The dissenting voices were those of Willems, Le Sénat, I.118 and Sumner, JRS, 54 (1964) 47-8. Willems, now followed by F.X.Ryan, Precedence in the Republican Senate, Diss., (1993), erroneously argued plebeian *principes* were appointed in the period after Sulla (see Appendix III). The most recent commentator on the subject M.Bonnefond-Coudry initially accepted Mommsen's account (Le Sénat de la République romaine de la guerre d'Hannibal à Auguste: Pratiques délibératives et Prise de décision, Rome (1989) 706f, 772f) but later rejected it in favour of her own explanation (MEFR, 105 (1993) 122f) vide infra.

[44] Gellius, NA.IV.10.3-4 also comments: "Ante legem quae nunc de senatu habendo observatur, ordo rogandi sententias varius fuit. Alias primus rogabatur qui princeps a censoribus in senatum lectus fuerat, alias qui designati consules erant; quidam e consulibus, studio aut necessitudine aliqua adducti, quem is visum erat honoris gratia extra ordinem sententiam primum rogabant. Observatum tamen est, cum extra ordinem fieret, ne quis quemquam ex alio quam ex consulari loco sententiam primum rogaret."

enjoyed its former status.[45] It is vital that the import of Varro's comment is correctly understood. Custom dictated that when the presiding magistrate requested senators deliver their *sententia,* he consulted members according to their grades in descending order of rank.[46] The consulars were the first rank to be called upon, and within this grade (as in all other grades) the order of precedence was determined by seniority.[47] The one exception to

[45] Willems, Le Sénat, I.118; Sumner, Ibid., 47 n.74; see also Meier, op cit., 196; Bonnefond-Coudry, MEFR, 105 (1993) 122f; and F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 279f, passim. Like Willems, Sumner thought a *princeps senatus* continued to be appointed but that after 70 the *princeps* no longer possessed the right to speak first.

[46] See Mommsen, StR.III.966f; Willems, Le Sénat, II.180f; Madvig, Die Verfassung und Verwaltung des römischen Staates, (1881) I.314; Herzog, Geschichte und System der römischen Staatsverfassung, (1884) I.920-1; R.A.Talbert, The Senate of Imperial Rome, (1984) 240f.

[47] Willems, Le Sénat, I.64-7, 257-8, II.180-1 argued that when the dictatorship was still in use the order of priority on the *album senatorium* and in senatorial debate was *dictatorii*, *censorii*, *consulares*, *praetorii, ex-magistri equitum*, *aedilicii curules*, *aedilicii plebeii*, *tribunicii* and *quaestorii*. But that after the dictatorship fell into disuse the *censorii* came first and probably retained priority on the *album* into the Ciceronian epoch although following the reform described by Varro the order in debate no longer corresponded to the order observed on the *album* (cf. M.Gwyn Morgan, Athenaeum, 69 (1991) 359-70 and Bonnefond-Coudry, Le Sénat de la République romaine, (1989) 618-20 and MEFR, 105 (1993) 109-110). Mommsen, StR.III.966-7, 970-1, on the other hand, argued it was unknown where the *dictatorii* fitted in but that the *consulares* were the first to be called upon, though among the *consulares* those who had also held the censorship were given precedence until Sulla abolished the category of *censorii* and the *consulares* became "die vornehmste senatorische Kategorie." But only two pieces of evidence were advanced to support the priority of *censorii* over *consulares*: the fact that the censor M.Claudius Marcellus (cos.196, cens.189) is listed above the more senior consular Q.Minucius Rufus (cos.197) in the *senatus consultum de Bacchanalibus*; and the choice of the *princeps senatus* from among the *censorii*. Neither is to be relied upon. The notion that witnesses to *senatus consulta* were invariably listed in strict order of rank is dubious (see Appendix V). Further, as Meier, op cit., 198 observed, if as Mommsen argued, the *censorii* among the *consulares* took precedence over the mere *consulares*, and patricians came before plebeians - with members of the *gentes maiores* ahead of representatives of the *gentes minores* and all were ranked according to seniority, there was down to 209 no need to select a *princeps senatus* for the senior patrician censor of the *gentes maiores* already stood at the top of the *album senatorium*. That being so, the title *princeps senatus* was an empty honour for it conveyed no privileges that the nominee did not already possess. Rather it would appear *censorii* did not constitute a separate grade from the consulars in the senate, and that the consulars were ranked in the *lectio,* and in debate, according to seniority, regardless of whether they had, or had not, held the censorship. Already by the second quarter of the Third Century it was only in very exceptional circumstances that non-consuls were elected to the censorship (between 269 and 49 only four non-consular censors were elected and all were subsequently consul). As a consequence from quite early all *censorii* will have already been, or would become *consulares*, making any distinction between the two in the senate superfluous. That no such distinction was made is reflected by the statements of Varro and Cicero. Varro says the presiding magistrate began the *interrogatio* with the consular grade - hence *censorii* were apparently subsumed under that rubric (apud Gell., NA.XIV.7.9-10, cf. Gell., NA.IV.10.1-5). Varro also classified the *princeps senatus* as 'ex gradu consulari' even though from sometime before 209 until 125 they were invariably *censorii*. Moreover, Cicero explicitly states that the *consulares* were the "altissimus gradus" in the senate (Cic., Phil.I.14, cf. Phil.X.4 - "summus gradus"). And when enumerating each grade of the 'Pompeian senate' in 49, Cicero began with the consulars, although those named included the censor Ap.Claudius Pulcher (Phil.XIII.28-30). This cannot be put down to Sulla's supposed eradication of the category of *censorii* which is a phantom (see infra). It should also be remembered that in the official hierarchy of magistracies the censors ranked beneath the consulars (see the *lex Bantina* - FIRA, chp.III no.9 p.54 line 15; the *lex agraria* of 111 - FIRA, chp.III no.11 p.80 line 35; and the *s.c.* of 177 - Livy, XLI.9.11). Whether *dictatorii* were given priority over consulars must remain uncertain. The evidence adduced by Morgan is not decisive. The testimony of Zonaras, VII.19 is of questionable value as it contains a number of errors and in any case refers only to the relative rank of the 'occasional magistrates.' While the role played by Q.Metellus in 179, in the absence of a *princeps senatus,* is explicable on the grounds that he was almost certainly the senior surviving consular. Note too, that after 249 no *dictatorii* were appointed who had not already served as consul - eliminating the need to distinguish between *dictatorii* and *consulares* in the senate. F.Ryan, Precedence in the Republican Senate, Diss., (1993) 62, 115f also argues against the alleged priority of the *censorii* but some of his arguments are unsatisfactory.

On seniority as the factor which determined priority within each grade see Mommsen, StR.III.968-9;

this rule was the *princeps senatus,* who spoke first, regardless of whether he was in fact the senior *consularis*.[48] The point of Varro's lament is that the established procedure was overturned in the late 70's.[49] Varro states that at some date, not long before 71, unidentified consuls, motivated by *ambitio* and *gratia,* ignored the former prerogative of the *princeps senatus,* and defied the principle of seniority within the consular grade, and began calling upon the consulars in any order they wished.[50] Varro's complaint was that the hallowed

Willems, Le Sénat, I.260-1, plus II.183. Dio is the only source which explicitly enunciates this principle. Dio, LIX.8.6 states that Caligula abolished the procedure whereby the consulars were consulted in any order according to the predilections of the presiding magistrate (i.e. the reform adverted to by Varro which had been maintained by Augustus and Tiberius see infra) and reverted to the former practice whereby the consulars were consulted in the order in which they had held office. In the case of senators elected to magistracies in the same year the order of precedence was determined by the order in which they were elected (Mommsen, StR.III.969; Willems, Le Sénat, I.261. This serves to explain the significance attributed to the order of *renuntiato* in election - see the sources cited by Mommsen, StR.III.414 n.3 - to which may be added Cicero, Pro Sulla 91, cf. De Off., II.59, De leg.ag., II.4, Ad Fam., XV.12.1; Plut., Marius, 5.2, Sulla 34.5, Pompey, 15.1-2. Priority of election was not merely a source of personal satisfaction it was a matter of practical importance. Priority of election seems also to have played a role in the allocation of some other consular prerogatives see Taylor and Broughton, MAAR, 19 (1949) 3-14, Historia, 17 (1968) 166-172, Taylor, Historia, 17 (1968) 173-193; and Linderski, Historia, 14 (1965) 423-42. But cf. A.Drummond, Athenaeum, 56 (1978) 80-7).

In the latter part of the year the magistrates designate took precedence within each grade (Mommsen, StR.III.972-3). Thus in December 63 D.Silanus one of the consuls designate was called upon first (Sall., Cat.50.4; Plut., Cic.20.4; App., BC.II.5. As Taylor and Broughton, Historia, 17 (1968) 166 argued the consul designate who had been returned at the head of the poll was probably called upon before his colleague). Likewise, late in 57, Cn.Lentulus Marcellinus, consul designate for 56, spoke first (Cic., Ad Att., IV.2.4 - October) and L.Aemilius Paullus (cos.50) as consul designate was consulted first in the later half of 51 (Caelius, Ad Fam., VIII.4.4 - August). See also Cic., Phil.V.35, VI.8 and De Har.Resp.11. Willems, Le Sénat, II.181-2 apparently believed that as a result of the reform described by Varro, the priority accorded the consuls designati was annulled, but this is incorrect as the above instances demonstrate. Ryan, Ibid., 202f argued, contra Mommsen, that the consuls designati had always exercised this privilege even before the *princeps senatus* lost the right to speak first. However, he provides no evidence for this assertion. Moreover, if the consuls designati enjoyed priority before the Sullan era, it will have been a comparatively fleeting prerogative, since before Sulla transferred the elections to July, the consuls designate entered office very shortly after their election. Down to 154 when the consular year started on the Ides of March the elections were held in January. From 153 (until 82) when the consuls entered office on the 1st of January the elections were conducted between late September and December (see Mommsen, StR^3.I.583-4 and Appendix III on M.Scaurus).

[48] Mommsen, RF.I.254-84, StR.III.967-9 and Willems, Le Sénat, I.122-3, 259-60, 708, 712 contended that although the order of priority in senatorial debate and in the compilation of the *album senatorium* was determined principally by rank and seniority, within each grade patricians spoke and were listed before their plebeian counterparts, with patricians of the *gentes maiores* having priority over members of the *gentes minores*. If this was ever the case the practice had lapsed by the Hannibalic War when rank and seniority alone determined the order of precedence (see above and Appendix V).

[49] That Varro disapproved of the innovation is evident from the negative motives he assigned to the consuls responsible for introducing the new practice - *ambitio* and *gratia*. So it may be presumed did Livy and Dionysius who associated this kind of procedure with the tyranny of the Decemvirs (see infra).

[50] Gellius, NA., XIV.7.9-10; IV.10.3-4; cf Cic., Phil.V.5. See Willems, Le Sénat, II.183-4; Mommsen, StR.III.975-6 (but disregard the attribution of the change to Sulla); and Bonnefond-Coudry, Le Sénat de la République romaine, (1989) 488f.

The evidence of Varro is corroborated by what we know of procedure in the 60's and 50's. In 61 M.Pupius Piso called upon C.Piso (cos.67), then Cicero (cos.63), followed by Catulus (cos.78) and Hortensius (cos.69) see Cic., Ad Att.I.13.2. In 59 Caesar also consulted four consulars *extra ordinem* but only the first two are named. Crassus (cos.70) spoke first and Pompey (cos.70) second, despite the existence of a number of more senior consulars (Suet., Iul.21; Gell., NA.IV.10.5. As Meier, op cit., 197 n.44 noted Caesar appears to have offered to consult Cicero third see Cic., Ad Att., II.3.3, Prov.Cons. 41. Note also M.Tullius Tiro knew in detail the order followed in 59 and derived his information from Cicero - Gell., NA.IV.10.6-7. Whether Cicero accepted the offer is unknown). Similarly, in 58 L.Piso placed Cicero third (Cic., In Pis.11, Post Red. in Sen.17) though he was not at the time the third most senior consular. And on the Kalends of

principle of seniority, which had governed the order in which the consulars spoke, had been abandoned in favour of an inferior procedure which smacked of cronyism. As part and parcel of this reform the *princeps senatus*' traditional *ex officio* right of priority was withdrawn. Varro's testimony concerning the new procedure does not prove the post of *princeps senatus* had been abolished, or that that was the intended result of the reform. The measure was aimed not only at the *princeps* but also at the other senior consulars - all alike were deprived of the deference that had previously automatically been their due. From then on the order of priority in debate within the consular grade was a matter for the determination of the presiding magistrate. In sum, Varro describes the process whereby the *princeps senatus* (along with the other senior consulars) was deprived of his right of priority in debate - there is no intimation the post of *princeps senatus* had been abolished.

Mommsen was wrong to suggest Sulla abolished the office, but was Sulla behind the change in senatorial procedure which undermined the position of the *princeps* ? The answer, it seems, is no. Varro did not ascribe the innovation to Sulla. The *novus mos,* so he averred, was sponsored by unidentified consuls - scarcely the expected way to designate and indict the Dictator Sulla.[51] Likewise the time to which Varro assigns the change is inconsistent with the notion Sulla was responsible.[52] Varro represents the demotion of the *princeps* as a recent and *ad hoc* development when he was composing his pamphlet on senatorial procedure for the young consul designate Cn.Pompeius Magnus - that is in 71.[53] Similarly, the motives attributed to the anonymous consuls responsible for the reform, *ambitio* and *gratia*, point as Sumner put it, to "the politics of the post-Sullan period."[54]

January 57 the consul P.Lentulus Spinther called upon L.Cotta (cos.65, cens.64) before Pompey (cos.70) see Cic., Pro Sestio 73-4. So too in 43 C.Vibius Pansa Caetronianus consulted his father-in-law Q.Fufius Calenus (cos.47) first though he was not the senior consular (Cic., Phil. X.1-6). Initially it was accepted practice for the consuls to observe throughout the year the order of consultation established on the Kalends of January. In 59 Caesar was the first to alter the order, originally consulting Crassus before Pompey, he later reversed the order after Pompey married Iulia (Suet., Iul.21; Gell., NA.IV.10.5). Augustus extended the new procedure, varying the order of consultation from one session to the next (Dio, LIV.15.4-7; Suet., Aug.35.4) but the principle of seniority was restored by Caligula (Dio, LIX.8.6. See Talbert, op cit., 241f).

It was considered an honour to be chosen to speak ahead of more senior consuls (Cic., Ad Att., I.13.2; cf. Dion.Hal., XI.7.1; Livy, IX.8.3) and conversely an insult to be consulted after more junior consuls (Dio, LIV.15.4-7; Suet., Claud.9; cf. Cic., Ad Att., X.8.3).

Mommsen, StR.III.975 thought the consuls had to agree on the choice of consulars. However, as Meier, op cit., 196 objected it seems highly unlikely that Bibulus consented to Caesar's decision to consult Crassus and Pompey first (see infra). Either, therefore, both consuls made independent choices and the order of consultation alternated from month to month as the presidency of the senate rotated between them as O'Brien Moore, RE Suppl.VI.713 suggested (cf Meier, Ibid., 196 n.42). Or else it was a prerogative of the consul who presided in January to set the order of consultation for the year (as per Ryan, Precedence in the Republican Senate, Diss., (1993) 161-3 - though he failed to produce conclusive proof).

It is interesting as Willems, Le Sénat, II.183 n.1 noted that Livy, III.40.8 and Dionysius, XI.7.1, 16.1 ascribe to the Decemvirs a procedural reform akin to that described by Varro. He represents the Decemvirs as ignoring standard procedure and introducing an invidious practice whereby they consulted friends and relatives first. They apparently thought the innovation lapsed with the fall of the Decemvirs (see Dionysius, XI.56.4, XIX.15.3).

The principle of seniority was apparently maintained in the grades below the *consulares* (see Mommsen, StR.III.975; Willems, Le Sénat, II.183; Dio, LIV.15.4-7, LIX.8.6).

[51] The phrase used by Gellius, NA.XIV.7.9 is "qui haberet senatum" - a standard periphrasis for the presiding magistrate who after the reforms of Sulla would normally be one of the consuls. At IV.10.3-4 the initiative for the change is explicitly attributed to unnamed consuls.

[52] Varro apud Gellius, NA.XIV.7.9-10.

[53] Gellius, NA.XIV.7.9-10: "tum autem, cum haec scriberet, novum morem institutum." See also the comments of Bonnefond-Coudry, MEFR, 105 (1993) 123f.

[54] Sumner, op cit., 47 n.74. For speculation as to the identity of the consuls who sponsored the

Moreover, Sulla had no reason to tamper with the institution. The motive assigned Sulla by Mommsen is not persuasive. Mommsen was doubtless correct to suggest the position suffered from changed political circumstances.[55] Yet the realization the position of the *princeps* was somewhat incongruous was not a new phenomenon in the First Century. The authority of the *princeps* had earlier occasioned disquiet in some quarters. There were those who had complained of Africanus' "regnum in senatu."[56] Whilst the *potentia* of Scaurus elicited the approval of some,[57] and aroused the indignation of others.[58] Nevertheless, the prerogatives of the position had not been circumscribed for the pre-eminent *auctoritas* of the *princeps senatus* was balanced by a complete vacuum of powers. The leadership of the *princeps* was based entirely on consensus. The *princeps* had no power to compel or punish, and no means to dominate the senate other than by persuasion.[59] Senators were free to, and did, reject the counsel of the *princeps* when it was out of step with the *communis opinio*.[60] Hence there was no pressing need to abolish the position or to amputate its prerogatives, particularly as Sulla's restored senate was to be flooded with his own appointees, enabling him to rely on the votes of the majority which made the opinion of the *princeps*, even if adverse, incidental.

In addition, the suggestion that Sulla was culpable does not accord with the facts of his relationship to the incumbent *princeps senatus* - L.Valerius Flaccus. Sulla did not suppress the institution despite, perhaps, a personal distaste for Flaccus. As Sumner noted the *princeps senatus* was a traditional part of the senatorial regime Sulla was intent on

innovation see further below.

[55] The time had passed when the ancient P.Lentulus, who possessed such slender resources that he could only equip his daughter with a nominal dowry (Gran.Lic., Bk.XXVIII p.9-10 Flemisch), was able to command respect on the grounds of his age and moral rectitude alone. By the late Republic those who aspired to play a leading role in politics required more tangible authority - namely money and arms. According to the infamous axiom of M.Crassus to be *princeps civitatis* required wealth capable of supporting a private army (Cic., De Off., I.25).

[56] Notably the Petillii tribunes of the plebs see Livy, XXXVIII.54.6. The Petillii are said to have complained of the 'regnum Scipionum' - i.e. of the influence wielded by Africanus and his brother but it is clear that Africanus was always the real driving force and that the *auctoritas* of Lucius Scipio was never on par with that of Africanus.

[57] Cic., Pro Fonteio 24; cf. De vir.ill., 72.9. Asconius, 20 C also states when M.Scaurus junior was on trial in 54 his references to the *auctoritas* of his father favourably impressed the jurors (cf. Cic., Ad Att., IV.16).

[58] Sall., Iug., XV.4, XXX.2.

[59] Note when in 159 the M.Lepidus was defied by a praetor on a matter pertaining to religion Lepidus, though *princeps*, could not force his opinion on the praetor as he had no secular power with which to chasten the errant magistrate, so he used his authority as *pontifex maximus* to fine the praetor (Livy, Per.XLVII).

[60] Thus for instance when in 205 Q.Fabius Maximus Verrucosus strenuously opposed assigning Scipio the province of Africa, in which opinion he was supported by some of the senior ex-consuls including Q.Fulvius Flaccus (cos.237, 224, 212, 209, cens.231), Scipio convinced the senate to reject Fabius' advice (see Livy, XXVIII.40). Likewise, in the following year the motion proposed by Fabius regarding the Locrian affair was considered too severe and was rejected in favour of the milder proposal of Q.Metellus (see Livy, XXIX.19-20). Similarly, M.Scaurus' support of M.Livius Drusus was ultimately ineffectual in the face of the determined opposition of L.Marcius Philippus. Ryan, Precedence in the Republican Senate, Diss., (1993) 390-409 attempts to collect all the instances where *principes senatus* spoke in the senate and calculate how often their *sententia* was accepted or rejected but the evidence proves inadequate for any meaningful analysis (nor can his facile arguments Ibid., 393-8 alter this fact). Contra Ryan, Ibid., 390-2 Fabius' intervention on behalf of the Tarentines in 208 was clearly influential. We are told the majority of the senate was hostile to the Tarentines and favoured treating them like the Capuans, but Fabius defended them and they escaped the fate of the Capuans. Evidently, Fabius persuaded the majority against immediate and severe recriminations.

restoring.[61] Flaccus' position may have seemed precarious as Sulla's victory approached. He had been a prominent Marian, in the judgement of a hostile source, more Marius' slave than his colleague in 100.[62] He had collaborated with the Marian-Cinnan regime in Sulla's absence and had been appointed, or reappointed, *princeps* in the blatantly partisan *lectio* of 86 when notable adherents of Sulla had been struck off the senatorial role.[63] But the truth as ever is more complex. In 84 contrary to the wishes of the consuls Cinna and Carbo, Flaccus spoke in the senate on the theme of *concordia* and persuaded the senate to send envoys to Sulla to discuss peace.[64] He was probably also behind the ineffectual *senatus consultum* following Cinna's death which decreed that all parties should disband their forces.[65] And on Sulla's return Flaccus was among those who made a successful transition to the victorious cause. He no doubt made much of his attempts at mediation. Ever a cunning strategist, Sulla turned the situation to his own advantage. Rather than spurn Flaccus as might have been expected, he conspicuously deferred to Flaccus' position in so far as it served his own ends. As *interrex* Flaccus presided over Sulla's appointment as dictator and was nominated by Sulla as his magister equitum in which capacity he served until Sulla's resignation of the dictatorship in 80.[66] Sulla doubtless appreciated that by obtaining the imprimatur of the aged *princeps senatus* his own unprecedented authority acquired a semblance of legitimacy. Sulla, it may confidently be stated, did not abolish the position of *princeps senatus,* nor was he responsible for its emasculation. Nor is there any reason to suppose that Flaccus' Marian associations compromised his position to such an extent that the Sullan consuls of the early 70's shunned his opinion thereby leading to the loss of his former prerogative.[67] Varro explained the relegation of the *princeps senatus* as the result of the desire on the part of the consuls to enhance their own position, not as a means of undermining that of the *princeps*.

Mommsen's reconstruction also founders on points of detail. Firstly, his schema and chronology are incompatible. Lucius Valerius Flaccus is last attested when serving as

[61] op cit., 48. So also Bonnefond-Coudry, MEFR, 105 (1993) 124.

[62] That was the verdict of Rutilius Rufus (Plut., Marius 28.8).

[63] It is possible Flaccus was first appointed *princeps* in the *lectio* of 89 (see Appendix III). On the role Flaccus played under Cinna see Cicero, Ad Att., VIII.3.6. With respect to the *lectio* conducted by the censors of 86 L.Marcius Philippus, the colleague of M.Perperna, even consented to the removal of his uncle Ap.Pulcher from the senatorial roll (Cic., Domo 84).

[64] Livy, Per.LXXXIII.

[65] Livy, Per.LXXXIV. Note also that Flaccus apparently did not speak up in opposition to Sulla's *hostis* declaration in 88. That duty was left to the senior surviving consular Q.Mucius Scaevola (cos.117) see Val.Max., III.8.5. Flaccus could not have voted in favour of the measure or else he would likely have been one of the victims of Marius' purge in 87. He must have abstained from voting, or else he avoided attending the senate meeting when the matter was discussed.

[66] See MRR.II.67f, III.74-5.

[67] This was the explanation of the *princeps*' loss of prerogative advanced by Bonnefond-Coudry, MEFR, 105 (1993) 124-6. She argued the change in senatorial procedure initially came about as a result of the contempt in which Flaccus was held by the Sullan consuls of the 70's and that the custom stuck due to the longevity of Flaccus and the changed political milieu of the First Century. However, the scenario ill-accords with the facts. As Bonnefond-Coudry admitted, Sulla himself made a point of working closely with Flaccus after his victory, so it is unclear why the consuls of the 70's should have found Flaccus so repugnant that they were unable to tolerate his position. Moreover, the innovation cannot have taken hold as a result of the longevity of Flaccus, for Flaccus died in 79 or 78, not in 63, as Bonnefond-Coudry, following Mommsen, believed (see below).

magister equitum to the Dictator Sulla between 82 and 80.[68] Nevertheless, Mommsen dated Flaccus' demise not long before 63 and that date appears in the standard works of reference.[69] Now since Mommsen argued the post of *princeps senatus* did not survive the dictatorship of Sulla whilst Flaccus lived on into the 60's it follows that Flaccus was stripped of the title by Sulla and by the censors of 70. Yet according to Livy it was customary for the *princeps senatus* to retain the title for life unless he was expelled from the senate,[70] and it is most improbable Sulla would have deprived Flaccus of the title whilst he lived,[71] particularly in view of the deference he had shown Flaccus. Had he done so it would surely have aroused comment. And if Flaccus was still alive in 70, as the senior *consularis* and *censorius,* he must in any case have been registered at the head of the *album senatorium* in the *lectio* of that year. Secondly, the notion that Sulla achieved the elimination of the *princeps senatus* by 'practically abolishing' the censorship is equally insupportable. To begin with Sulla did not suppress the censorship.[72] The need for a censorship in 81 was largely obviated as Sulla performed many of the most important censorial duties in virtue of his dictatorial powers.[73] Indeed, one of the censorial tasks carried out by Sulla was the revision of the *album senatorium.*[74] And contrary to the

[68] Sulla resigned the dictatorship in 80 not in 79 (see MRR.III.74-5 contra II.67f). Flaccus will thus have stepped down as magister equitum in 80.

[69] RF.I.87 n.34. Followed by Münzer, RE.VIII.A.25 and IV.1391 and Klose, Römische Priesterfasten, (1910) 24. This was the date Mommsen assigned to the banquet at which Lentulus Niger succeeded Flaccus as *flamen Martialis* but the banquet should be dated in 70 (see Appendix VI). Broughton, MRR.II.134-5 and Sumner, op cit., 47 n.72, Orators, 83 acknowledged Mommsen was wrong and dated the death of Flaccus c.70. F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 315f also realized the inauguration of Lentulus Niger proves that Flaccus was dead by 69 at the latest. But Ryan went on to suggest Flaccus was probably dead by 74 since he dated Messalla Niger's entry into the pontifical college around that time and argued on the basis of Dio, XXXIX.17 that two Valerii ought not to have served in the college simultaneously ! The latter argument is inadmissible. Whether the alleged rule even applied to the pontifical college is questionable, for as Ryan was aware, *gentiles* demonstrably served together as *pontifices* on a number of occasions. Furthermore, no one has ever suggested the rule extended to the *flamines*.

[70] Livy, XXXIX.52.1-3 (discussed above).

[71] So rightly Borghesi, Oeuvres Complétes, IV.27; Broughton, MRR.II.629; Badian and Sumner, JRS, 54 (1964) 48.

[72] A fact admitted by Mommsen elsewhere (StR^3.II.336). See also Willems, Le Sénat, I.408f; Gabba, Athenaeum, 34 (1956) 135f (cited with approval by Badian, Historia, 11 (1962) 233 n.126) and Republican Rome: The Army and the Allies, trans. P.J.Cuff, Oxford, (1976) 148f; L.R.Taylor, The Voting Districts of the Roman Republic: The Thirty-Five Urban and Rural Tribes, Papers and Monographs of the American Academy in Rome, 20 (1960) 119f; Bonnefond-Coudry, MEFR, 105 (1993) 124f; cf. F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 279f, Rh.Mus., 139 (1996) 189-191. Had it been Sulla's intention to do away with the censorship we should expect to find included in Sulla's program of reforms legislation reallocating the powers formerly exercised by the censors to the consuls or other magistrates (see the comments of Willems, Le Sénat, I.409-10, and Mommsen , StR^3.II.336 n.3).

[73] Sulla revised the *album senatorium* (see next note), let contracts for the upkeep of public buildings (Cic., Verr.II.1.130), and for the *vectigalia* of Asia (see Gabba, Ibid.). The one outstanding matter of importance was the revision of the *census*. Zumpt and Tibiletti erroneously credited Sulla with the performance of a *lustrum* (see Mommsen, StR^3.II.342 n.3; Wiseman, JRS, 59 (1969) 63).

[74] Sall., Cat.XXXVII.6; Dion.Hal., V.77.4; Livy, Per.LXXXIX; App., BC.I.100. See Willems, Le Sénat, I.239, 401-415, esp. 408f; Gabba, Republican Rome, 142f, esp. 144f; A.Keaveney, Sulla the Last Republican, (1982) 161, 174-5. By 81 the senatorial role was in urgent need of revision not only in order to remove the names of the victims of the Civil War and the proscriptions (Appian, BC.I.95, 103 puts the number of senators killed in the years 83-2 alone at ninety) and enrol new senators to fill the vacancies but also so that the names of those senators who had been passed over for political reasons in the *lectio* of 86, including Sulla himself and many of his most prominent supporters (see Cic., De Domo 84; App., BC.I.73,

claims of Mommsen, it is an inescapable conclusion that when he revised the senatorial role in 81 Sulla himself registered Flaccus as *princeps senatus*.[75] Further, Sulla can hardly be held responsible for the fact that no censors were elected for eight years after his death. Even had Sulla set out to do away with the *princeps*, suppressing the censorship would at best have been a temporary expedient and he had no guarantee that his directives would be posthumously obeyed. By 70 his own partisans had already overturned some of his reforms and others were under threat.[76] In any event Mommsen's introduction of the censorship is a red herring as the temporary lapsing of the censorship was not the ultimate cause of the procedural reform described by Varro. As demonstrated above the *princeps senatus* was demoted (not abolished) and this was affected by the consuls not the censors.

Thus both of Mommsen's scenarios were fatally flawed. It is necessary to begin again and to separate fact from conjecture. First it is crucial to establish the date of Lucius Flaccus' death.

As it happens, there is good evidence that Flaccus was dead by early 77.[77] In that year when the revolt of Lepidus came to a head it was not the *princeps senatus* Flaccus, but the senior *consularis* L.Marcius Philippus (cos.91), who galvanized a reluctant senate into action. It was Philippus who proposed the *senatus consultum ultimum* and cajoled the senate into entrusting Catulus with the suppression of the revolt.[78] In the past when the authority of the senate had been challenged the *princeps senatus* had played a leading role. In 121 the elderly *princeps* P.Lentulus not only enjoined action against a seditious tribune, but participated in the suppression of the rebels, receiving a serious wound in the mêlée.[79] In 100 Scaurus followed Lentulus' example and actively supported the enforcement of the *senatus consultum ultimum*.[80] The precedent for Flaccus to follow could not have been clearer. That this role should have devolved upon Philippus in 77 should have suggested that the *princeps* Flaccus was no longer among the living. But conjecture of this kind is unnecessary for a fragment of Sallust implicitly affirms Flaccus was already dead. In the context of the revolt of Lepidus, Sallust compared Philippus to the other senators of the

77, 79, 81), could be restored. Sulla could appeal to the precedent of the extraordinary *lectio* conducted in 216 by the dictator M.Fabius Buteo.

[75] So Borghesi, Oeuvres Complétes, IV.27; and Willems, Le Sénat, I.114, 408 (disregard his erroneous attribution of the triumph of C.Valerius Flaccus (cos.93) to the *princeps* L.Flaccus at I.114 n.6, 408 n.5).

[76] In 75 C.Cotta returned to the tribunes of the plebs the right to hold higher offices (MRR.II.96). In 70 the powers of the tribunate were restored by Pompey and Crassus (MRR.II.126) and L.Cotta overturned the senatorial monopoly of juries (MRR.II.127).

[77] The discrepancy between the date of Flaccus' death (before 77) and the date of the inauguration of his successor Lentulus Niger as *flamen Martialis* (in 70) is accounted for by the absence of the *pontifex maximus* in Spain between 79 and 71 (see Appendix VI).

[78] See the speech of Philippus in Sallust, Hist.I.77 Maurenbrecher. Maurenbrecher, C.Sallustii Crispi Historiarum Reliquae, Stuttgart, (1893) II.249 and P.McGushin, Sallust: The Histories Volume I Books i-ii, Oxford, (1992) I.132 erroneously call Philippus *princeps senatus*. Philippus had to propose the *s.c.u* as there were then no consuls in office. Lepidus was also declared a public enemy by the senate (Florus, II.11.7).

[79] See Cic., Phil., VIII.14; Val.Max., V.3.2.

[80] See Cic., Pro Rab. Perd., 21; De vir.ill., 72.9; Val.Max., III.2.18. On Scaurus' part in the events of 100 see Badian, Chiron, 14 (1984) 119f. And on the role of the *princeps* in 121, 100 and 84 see Bonnefond-Coudry, MEFR, 105 (1993) 118f.

time.[81] Sallust declared Philippus "aetate et consilio ceteros anteibat." Value judgements aside, the implication of the phrase "aetate anteibat" is obvious and incontrovertible. If Philippus (cos.91) surpassed all the other senators in age, it is an inescapable conclusion that the *princeps* L.Valerius Flaccus (cos.100), unquestionably some years older than Philippus, was dead.[82] Sallust's claim cannot be faulted.[83] Flaccus must, therefore, have died sometime in 79 or 78.[84] It follows, as there was no censorship between 86 and 70, that the post of *princeps senatus* remained vacant from c.79/8 at least until the censorship of 70.

Next it is necessary to determine what happened in the *lectio* of 70.

The inopportune death of Flaccus in 79/8 might seem to accord well with Mommsen's notion that the *princeps senatus* ceased to exist in the post-Sullan period. It might be theorized that the hiatus which followed Flaccus' death caused the institution to falter -

[81] Sall., Histories, frg. I.75 Maurenbrecher = I.66 McGushin. The fragment was preserved by Servius, Ad Aen., IX.244: Sallustius de Philippo "qui aetate et consilio ceteros anteibat." Servius did not give a book reference for the fragment but there is no doubt as to the appropriate placement of the fragment. Kritz, Dietsch, Maurenbrecher and McGushin all place the fragment before Philippus' speech in 77. "Ceteros" must refer to the other senators and perhaps more specifically to the other consulars.

[82] Sumner, Orators, 83, 102 argued Flaccus was born by 143 and Philippus c.136 (as Münzer, RE.XIV.2.1562-3). Münzer, RE.XIV.2.1566 commented that in 78 after Sulla's death, Philippus "stimmte, wahrscheinlich als Erster im Senat um seine Meinung befragte" and also that "er erscheint in der nächsten Zeit als der führende Mann im Senat." Münzer was also aware of the above cited fragment of Sallust but none of this caused him to reassess his argument as to the date of Flaccus' death.

[83] That M.Perperna (cos.92) was alive in 77 does not disprove Sallust's statement. Dio, XLI.14.5 says Perperna died early in 49 and Pliny, NH.VII.156 states Perperna died at the age of 98 giving him a birth date of 147 (accepted by Münzer, RE.XIX.1.896). Perperna was therefore consul at 55 - a rather surprising age for a *nobilis*. It is worth noting the Mss of Pliny differ as to Perperna's age at death (see C.Mayhoff, C.Plinius Secundus Naturalis Historia, Teubner, (1906) II.54): - one Ms has 98; four have 97; one has 88; and one 86 plus (the latter part of the numeral is damaged LXXXVI///). If Perperna was 88 not 98 in 49 he was born in 137 making him consul at 45 - a less anomalous age. What of Philippus ? Sumner, Orators, 102 calculated Philippus was born c.136 based on the presumption that his unsuccessful consular candidacy in 94 (Cic., Brutus 166, Pro Murena 36) was his first attempt. But note Cicero, Brutus 230 described Philippus as "iam sene" in 86 when if born c.136 he was only 50. In view of these doubts, the respective ages of Philippus and Perperna might be queried. However, the age of Perperna's progeny suggests he was in fact born in the 140's. His son Marcus (RE no.6) was praetor in 82 and was thus born c.122. Perperna also had a daughter who was a Vestal by 70. Further, there was at least one other child, who had married and produced a son old enough to join his uncle in Spain in 77. As the nephew must have been in his late teens or early twenties, his parents' marriage can be no later than the early 90's - suggesting Perperna's otherwise unattested child was born in the early 110's, if not before. Given the approximate date of the birth of his children, it would seem likely that Perperna himself was born in the 140's, lending credence to a birth date of 147 and making him almost certainly some years older than Philippus. His delayed consulship may have been the result of the repeated consulships of Marius. Nonetheless, Sallust's statement is accurate. For although Perperna was alive in 77 and older than Philippus, he was probably no longer attending the senate. He and his son had been intimately connected with the Marian-Cinnan regime. Both obtained preferment under its auspices, the former was censor, the latter praetor. And unlike others, the Perpernae did not attempt to sever their connections with the regime when Sulla's victory seemed inevitable. Indeed, Perperna's son held out even after Sulla's victory - first joining the revolt of Lepidus and latter joining forces with Sertorius. It is probable that M.Perperna senior, discredited in the eyes of the Sullani by his past and by his sons actions, retired from politics after Sulla's victory, making Philippus the oldest serving senator (Willems, Le Sénat, I.427; Syme, AA, 25).

As Philippus was praetor no later than 96, he was also older than L.Gellius Poplicola (cos.72), who was alive in 77, but was praetor in 94. Sumner, Orators, 102-3 without taking into account the statement of Sallust, argued Gellius was born c.137/6. None of the other *consulares* or *praetorii* senior to Philippus are attested alive at the time (see R.J.Evans, Athenaeum, 61 (1983) 521-528).

[84] That is, after Flaccus stepped down as magister equitum in 80 and after Metellus' departure for Spain in 79, but before the passage of the *s.c.u.* in early 77.

supposing that when the censors of 70 came to revise the *album senatorium* they judged the post superfluous (particularly as the reform described by Varro had now robbed the *princeps* of much of his influence) and declined to appoint a new *princeps senatus* to fill the vacancy. But the theory is unsustainable. For one thing, neither the prolonged hiatus between the death of Flaccus and the censorship of 70, nor the *princeps'* loss of status would inevitably have led to the extinction of the position. In the past the post had been vacant for extended periods when the *princeps* died between *lectiones* but the institution endured.[85] For another, there is good evidence, as Mommsen was well aware, that the position of *princeps* continued after the death of Flaccus and well into the post-Sullan period. Valerius Maximus expressly states Mam.Aemilius Lepidus Livianus was *princeps senatus* and we have no reason to doubt his testimony.[86] Mommsen never gave an explanation why the appointment of Lepidus, which he had initially championed, was later abruptly repudiated.[87] What is more, the date of Lepidus' nomination is beyond dispute. As Lepidus was dead by late 63, and there were no *lectiones* in the censorships of 65 and 64, Lepidus can only have been appointed to that position in the censorship of 70 B.C..[88] It is thus patent that Sulla did not abolish the position, and the lapsing of the censorship between 86 and 70 ultimately had only an ephemeral impact on the post of *princeps senatus*.

It is worth pursuing the agency behind the demotion of the *princeps senatus*. Since Sulla was not responsible who was behind the change ? Precisely when the change occurred is not known - the date of Varro's, Εἰσαγωγικός (i.e. 71) provides the *terminus ante quem*. Clearly, it took place after Scaurus' demise, for the influence of the *princeps* endured undiminished whilst he lived.[89] On Flaccus' tenure there is precious little information. However, we are told that he was behind the (ultimately ineffectual) peace initiatives in 85 and 84, the former in defiance of the wishes of the consuls, which suggests his authority remained intact. In 77 the leading role played by the senior *consularis* L.Marcius Philippus (cos.91) also suggests the senior *consulares* then still retained their pristine authority and the reform described by Varro was not yet in effect. The introduction of the innovation can consequently be narrowed down to the years 76-71. Which of the consuls between 76 and 71 was responsible for the innovation cannot be ascertained with certainty, but conjecture is not altogether idle. A significant clue is provided in the motives Varro ascribed to the consuls responsible - *ambitio* and *gratia*. Of the consuls in this period, one was especially notorious for precisely these qualities, C.Aurelius Cotta (cos.75). Sallust characterized Cotta as: "ambiti<on>e tum ingenio largito<re>t cupiens gratiae

[85] Thus for instance Q.Fabius Maximus Cunctator died in 203 and the position remained vacant until the next *lectio* in 199. There was similarly no *princeps* between the death of M.Aemilius Lepidus in 152 and the appointment of Scipio Nasica Corculum in the *lectio* of 147. And if L.Valerius Flaccus was only appointed in 86, the post was also vacant between the death of M.Scaurus late in 89, or early in 88, and the *lectio* of 86 (see Appendix III).

[86] Val.Max., VII.7.6. See Appendix III.

[87] In his article in Rh.Mus., 19 (1864) 455-7 Mommsen had emphatically defended Valerius Maximus' claim that Lepidus was *princeps senatus* but in StR.III.970 Lepidus' tenure is completely ignored.

[88] On the date of Lepidus' appointment and death see Appendix III.

[89] Scaurus retained his *auctoritas* unabated to the very end. In 90 Scaurus appeared in public despite his advanced age and infirmity to repudiate the charges of the tribune Q.Varius. Note his response: "Q.Varius Hispanus M.Scaurum *principem senatus* socios in arma ait convocasse; M.Scaurus *princeps senatus* negat; testis nemo est: utri vos, Quirites, convenit credere ?" (Asc., 22 C; cf. De vir.ill., 72). Scaurus' pronouncement was sufficient to destroy Varius' case.

singulorum."[90] The correlation is remarkable. Cotta would seem the obvious candidate as author of the innovation.[91] His colleague L.Octavius was described as "languidus" and "incuriosus."[92] Perhaps he did not actively support Cotta's initiative, but neither can he have opposed it. If Cotta was responsible, there may have been another dimension to the change. Cotta had been a supporter of M.Livius Drusus and as a result was among those forced into exile by the *Lex Varia de maiestate*.[93] Now the leading opponent of the *factio* of Drusus was none other than L.Marcius Philippus.[94] Philippus was still alive in 76 and was at that time the senior serving *consularis*.[95] If Philippus was alive in the following year, during Cotta's consulship, the innovation may have been partly intended to settle an old score; for the change in procedure would have deprived Philippus of the right as senior consular, in lieu of a *princeps senatus*, to express his *sententia* first. Cotta would be free to disregard Philippus and consult others of the ex-consuls in his stead. In other words, the innovation was not only inspired by Cotta's ambition but was a calculated slap in the face for Philippus.[96] That Cotta was responsible for the innovation is not unlikely but this must for the time being remain speculation until further evidence can confirm or deny its validity.[97]

With the misapprehensions cleared away, it is now possible to reconstruct the fate of the institution in the First Century. Flaccus was appointed *princeps* at the latest in the

[90] Sall., Histories, frg.II.42 Maurenbrecher = II.40 McGushin. The line is corrupt. This is the restoration advocated by McGushin which he translates: [Cotta was] "through ambition and by nature a briber, desirous of the favour of individuals" (op cit., 49, 206). For other suggested restorations, all tending to the same effect, see G.Perl, Actes de la XII[e] Conférence internationale d'Études classiques Eirene, (1972) 317-337, especially 325f and McGushin, Ibid., 206. Note also Sallust, Histories, frg.II.47.4 Maurenbrecher = II.44.4 McGushin has Cotta say in his own defence that he was "avidissimus privatae gratiae." The author of the Commentariolum Petitionis, 47 likewise dubbed Cotta an "artifex in ambitione."

[91] During 75 Cotta also passed two laws permitting the consuls to subsume some of the responsibilities of the censors, both of which were repealed in the next year (see MRR.II.96 and E.Gabba, Republican Rome: the Army and the Allies, trans. P.J.Cuff, Oxford, (1976) 148f). According to Gabba, the aim in so doing was to postpone the need to elect censors in order to prevent the registration of new citizens.

[92] Octavius was so described by Sallust, Histories, frg. II.42 Maurenbrecher = II.40 McGushin.

[93] Late in 91 Cotta suffered a *repulsa* "per invidiam" in his campaign for the tribunate of the plebs of 90, and he was driven into exile in the following year (see Cic., De Or. I.25, III.11; Alexander, Trials, 55-6; and C.F.Konrad, *Imperium Sine Fine*, Stuttgart, (1996) 109-110).

[94] See Cic., De Or. I.25; Asc., 69 C; and Münzer, RE.XIV.2.1563-6.

[95] Münzer, RE.XIV.2.1567 has Philippus as alive in 76 based on Cic., De Off., III.87 and De leg.ag.II.42, but dying shortly thereafter. J.Van Ooteghem, Lucius Marcius Philippus et sa famille, Brussels, (1961) made no attempt to date Philippus' demise. The only more senior *consularis* M.Perperna (cos.92) was living in retirement vide supra.

[96] This would have been understood as a slight to Philippus' *dignitas* (see Cic., Ad Att., I.13.2; Dio, LIV.15.4-7; Suet., Claud.9).

[97] The reconstruction advanced above is not the only credible explanation of the change in procedure. Two scenarios suggested to me by Martin Stone are equally plausible. Philippus openly supported Pompey, a stance which was not approved by all his fellow consulars, and this might have encouraged one of the consuls to initiate the change in favour of one of the ex-consuls less favourable to the *adulescentulus carnifex* - such as Q.Catulus (cos.78). Alternatively, if Philippus died c.76-75 the vacuum created by his passing might have proved the catalyst for change. With Philippus dead, the senior consulars were perhaps Cn.Cornelius Dolabella and M.Tullius Decula (coss.81) - such a pair as might readily inspire a decision to subvert the principle of seniority.

lectio of 86 and held that post until his death in 79/8.[98] As the next censors were not elected until 70, the position remained vacant for the better part of a decade. In the early 70's, in the absence of the *princeps,* the senior *consulares* stepped into the breach and took on the leading role, as was customary.[99] However, sometime after 77 and before 71 (perhaps in 75), in default of a *princeps,* and in accordance with the temper of the times, the *novus mos* described by Varro was instituted and the post of *princeps senatus* (then vacant), together with the senior *consulares,* were deprived of their former automatic right to priority in debate. In the *lectio* of 70 the senior patrician consular Mam.Aemilius Lepidus Livianus was appointed to the then largely decorative position. Unlike the scenarios generated by Mommsen this sequence of events takes into account and agrees with all the available evidence.

In practice, the innovation described by Varro was tantamount to abolishing the position, for the *princeps senatus* was thereby effectively reduced to the rank of an ordinary ex-consul and became all but indistinguishable from the other *principes civitatis*. It is not therefore surprising the position thereafter lapses from the record. Having lost his privileged position in senatorial debate, the title *princeps senatus* became a purely formal honour, but it endured as such at least until the death of Livianus. But in truth it mattered little who, if anyone, was accorded the hollow title and the *princeps senatus* played no discernible role in the last three decades of the Republic. Lepidus happens to be the last *princeps senatus* on record and what happened after his death sometime late in 65 or shortly thereafter remains obscure.[100] Since no *lectio* was completed between the death of Lepidus and the censorship of 61, the post remained vacant at least until 61. However, the *lectio* was accomplished in the censorships of 61, 55 and 50 and in those years someone still had to be registered at the head of the *album senatorium.* Either the title, by then an empty honour, continued to be conferred on one of the patrician *censorii,* or in lieu thereof, one of the patrician ex-consuls.[101] If so, the name of the person, or persons, so designated in the last years of the Republic has not come down to us.[102] Or, as seems more likely, the title

[98] Flaccus was possibly first appointed in 89 (see Appendix III).

[99] Note in 179, after the death of the *princeps senatus* L.Valerius Flaccus (cos.195, cens.184) and prior to the appointment of his successor M.Aemilius Lepidus (cos.187, 175, cens.179), Q.Caecilius Metellus (cos.206), then the only surviving *dictatorius* and the senior *consularis*, took the lead in reconciling the feuding censors M.Fulvius Nobilior (cos.189, cens.179) and M.Lepidus (see Livy, XL.45.6-46.16). When the *princeps senatus* was available that role belonged to him. Thus in 208 when the *inimicitia* of the consuls was causing concern, it was the *princeps senatus* Q.Fabius Maximus who affected the reconciliation (see Livy, XXVII.35.6-9).

[100] For date of Lepidus' demise see Appendix III.

[101] There is no reason to assume the criteria for appointment were suddenly changed. If a *princeps senatus* was appointed in these years the pool of candidates was fairly limited (see infra).

[102] This would not be surprising since the post is poorly attested in the extant literature. The majority of the references that survive take the form of brief notices of appointments (in Livy) or passing mention of an individual who bears the title (in Plutarch and Dio). Cicero seldom mentions the position, naming only P.Lentulus and M.Scaurus. Though Cicero not infrequently refers to Q.Fabius Maximus, Scipio Africanus, M.Lepidus (note especially Phil., XIII.15), Scipio Nasica Corculum and L.Flaccus (cos.100), he never reveals that each was *princeps senatus*. And Cicero's references to Lentulus and Scaurus as *princeps* usually concern the suppression of C.Gracchus and Saturninus and are cited in defence of his own actions against the Catilinarians and of Rabirius' involvement in the death of Saturninus. Sumner, op cit., 47 n.74 thought the "practical unimportance" of the office in the Ciceronian period enough to account for the lack of references.

If a *princeps* continued to be appointed after the death of Lepidus Livianus, the pool of possible candidates in the *lectiones* of 61, 55 and 50 was fairly limited. A number of possible candidates may be

fell into desuetude (until being revived by Augustus in 28) and the *album senatorium* was thenceforth compiled purely on the basis of seniority with the senior *consularis* registered first.[103] Either way, the position was to all intents and purposes defunct by the time

eliminated from consideration. M.Messalla Niger (cos.61, cens.55) might have made a good claim but his *elogium* (CIL I^2.1 p.201 no.XC = ILS.46) survives and does not mention the post of *princeps senatus* which could hardly have been omitted had he held it. It is also surpasses belief that C.Caesar (cos.59) could have been appointed without our knowledge. M.Messalla Rufus (cos.53) never had the opportunity to be nominated - he finally reached the consulate in 53 but was convicted in the courts in 51 before the first *lectio* at which he might have been considered. That leaves the following possible candidates in 61: M'.Lepidus (cos.66); L.Torquatus (cos.65); and L.Caesar (cos.64, cens.61). If either Lepidus or L.Caesar was appointed in 61 as both survived the fall of the Republic they presumably retained the position in 55 and 50. In 55 in addition to M'.Lepidus and L.Caesar, P.Lentulus Spinther (cos.57) might have been considered. L.Torquatus (cos.65) and Cn.Lentulus Marcellinus (cos.56) were perhaps already dead. In 50 Lepidus, L.Caesar and Lentulus Spinther might have been candidates as well as Ap.Pulcher (cos.54, cens.50), Metellus Scipio (cos.52), Ser.Sulpicius Rufus (cos.51), and L.Paullus (cos.50). Scipio is included since he retained his patrician status after his adoption by Metellus Pius (see Appendix I). Of these it seems unlikely Cicero's good friends L.Torquatus or Lentulus Spinther could have been appointed without our hearing of it. In addition, if Mommsen's contention that the position was restricted to representatives of the *gentes maiores* is given credence L.Caesar, C.Caesar, and Ser.Sulpicius Rufus must also be eliminated, leaving only one candidate in 61 - M'.Lepidus - who if appointed that year will presumably have been retained as *princeps* in 55 and 50. But Lepidus is not a very credible choice. He lacked distinction (see Sumner, JRS, 54 (1964) 45f). If we disregard Mommsen's contention concerning the *gentes maiores* L.Caesar appears more promising. He was one of the senior patrician consulars in the period 61-50, had been censor, and Cicero called him "princeps senator" (Phil.II.15) in 44 and "praestantissimus senator" (Phil., VI.14) in 43. But "princeps senator" is not equivalent to "princeps senatus." Nor despite repeated references to L.Caesar in the most complimentary terms (see Phil.II.15, Phil.VI.14, Phil.VIII.1, Fam., XII.2.3, cf. Fam., X.28.3, XII.5.2) did Cicero ever accord him the title *princeps senatus* (see further next note).

[103] Taylor and Broughton, Historia, 17 (1968) 166 n.3 stated there was no *princeps senatus* between 63 and 50 since the consuls designati were called upon first in senate in the years 63, 57 and 51 but as the *princeps* had lost the right of priority in the 70's this cannot prove the office was vacant (though it must have been vacant between the death of Lepidus and the *lectio* of 61). However, the fact that in 57 Cicero, De Domo 38 omitted the *princeps senatus* from the list of extant patrician monopolies suggests the post was already defunct (had it been merely vacant the title ought still to have received mention). Note also that from as early as 55 (In Pisonem, 6) Cicero was playing with the title, perhaps indicating it was no longer in use. And in 43 Cicero declared himself willing to play the role of 'princeps senatui populoque Romano' (Fam., XII.24.2) a claim which would have been insulting to the actual *princeps* if there was one. It may also be significant that Cicero did not apparently envisage any role for the *princeps senatus* in his idealized Republic (there being no mention of the *princeps senatus* in the extant portions of the De Republica and De Legibus). Though his ideal orator sounds like an archetypal *princeps senatus* in another guise (see De Or.III.63).

According to Mommsen's original version of events the position was reckoned vacant after the death of Lepidus Livianus, which he erroneously dated sometime not long after his nomination as *princeps* in 70, until the appointment of Augustus in 28 (apud Borghesi, Oeuvres, IV.27-8 n.4, Rh.Mus., 19 (1864) 457). Later Mommsen argued after Sulla abolished the position the *album senatorium* was thenceforth compiled purely on the basis of seniority with the senior *consularis* listed first (StR.III.966-7, 970-1). If so, the senior *consularis* (and senior *censorius*) in the censorships of 61, 55 and 50 was M.Perperna (cos.92, cens.86) who died in 49. Though he ceased attending the senate after Sulla's victory, he was not expelled from the senate (see Asc., 28 C) and so according to Mommsen's thesis belonged at the head of the *album*.

Bonnefond-Coudry, MEFR, 105 (1993) 125-6 concluded that it is unknown whether the censors of the end of the Republic (i.e. those subsequent to the death of L.Flaccus which she placed c.63) "plaçaient en tête de la liste celui à qui sa qualité de patricien, son rang et son ancienneté conféraient automatiquement la premiere place, ou bien un sénateur de leur choix ! Voilà qui atteste bien que cette place était sans valeur." The former proposition might seem to draw support from Cicero. If Cicero's description of L.Caesar (cos.64, cens.61) as "princeps senator" (Phil.II.15) and "praestantissimus senator" (Phil., VI.14) were taken literally, this ought to mean that a patrician censor continued to be registered first on the *album senatorium,* though he was not accorded the title *princeps senatus*. If Caesar was the 'first senator' in 44, as there was no *lectio* between 50 and 44, this would mean he had occupied that position at least since the censorship of 50. Now L.Caesar was not the senior *consularis* or *censorius* in 50, since at that time there were living four more senior consulars, two of whom were in addition more senior *censorii*, (viz. M.Perperna cos.92, cens.86 who died in 49 - Val.Max., VIII.13.4; Dio, XLI.14.5; P.Servilius Vatia Isauricus cos.79, cens.55 who died in 44 - Cic., Phil., II.12; Dio, XLV.16.1; M'.Aemilius Lepidus cos.66 who was still alive in 49 - Cic., Ad Att., VIII.9.3, IX.1.2, 10.7; and L.Aurelius Cotta cos.65, cens.64 who survived at least until late in 44 - Cic., Ad

Lepidus was accorded the title.

As fortune would have it the post of *princeps senatus* was deprived of its traditional role at the very time the position should have been assuming a renewed importance. The Social and First Civil Wars had taken a murderous toll on the *principes civitatis*. Sulla's victory revealed the upper ranks of the senate had been drastically depleted. Only four consulars could be mustered in 81, of whom, only three were to take their place in the restored senate.[104] Only the passage of time could make amends and the consuls of the 70's were a disparate group in character and ability. When the erratic M.Lepidus challenged the establishment in 78-77 there were as yet still only a small number of *consulares* but the untimely death of Flaccus meant the *princeps senatus* played no role in this crucial period.[105] The numbers of the *consulares* grew steadily whilst the position of the *princeps*, then vacant, underwent a corresponding decline in influence until its traditional prerogative was usurped altogether. By the end of the decade when the post of *princeps* was once again filled, the number of ex-consuls had risen to twelve and the *princeps senatus,* through the reform of senatorial procedure, had been reduced to a figurehead.[106]

It remains to assess the significance of the decline of the post of *princeps senatus*. In practical terms the change will have had minimal impact on the patriciate as an order. They can have suffered little as the position had not conferred any concrete advantages on the order as a whole and had never been used to advance the narrow sectional interests of the patriciate. The importance of the position to the patriciate was largely symbolic in that despite the existence of outstanding plebeian statesmen for centuries none save a patrician might be *princeps senatus*. The monopoly must have seemed increasingly indefensible after 172 and 131, but the position was maintained, and though stripped of significance in the 70's, continued at least until c.64 B.C. as a reminder of the gulf between the orders.

Fam., XII.2.3, Phil., II.13), but L.Caesar was the senior *patrician* censor in 50. If L.Caesar could be listed first in the *lectio* of 50, despite the existence of more senior plebeian *censorii,* and more senior patrician and plebeian *consulares,* it might be argued he was registered first in the *lectio* of 61, when he was already perhaps the only patrician *censorius* living (Cn.Lentulus Clodianus cos.72, cens.70 was dead by 63 see Sumner, Orators, 124-5. Unless L.Cotta's unknown colleague in 64 was a patrician, and was still alive in 61), ahead of numerous more senior plebeian *censorii* and *consulares* (M.Perperna; P.Servilius Vatia Isauricus cos.79, cens.55; Q.Lutatius Catulus cos.78, cens.65; C.Scribonius Curio cos.76, cens.61?; L.Gellius Poplicola cos.72, cens.70; M.Licinius Crassus cos.70, 55, cens.65; L.Aurelius Cotta cos.65, cens.64), and that he retained that position in the censorships of 55, 50 (and 42?). But as Shackleton Bailey, Cicero Philippics, (1986) saw the phrase 'princeps senator' may mean nothing more than "a leading senator." The latter proposition, that the censors were free to choose from among the consulars without regard for seniority, is not impossible. As we have seen the principle of seniority was not invariably observed in the selection of the *princeps senatus* after 209 and it had been abandoned in determining the order of precedence in the consular grade in senatorial debate in the 70's.

On the appointment of Augustus in 28 see Appendix IV.

[104] The four does not include Sulla himself. They were in order of seniority: L.Valerius Flaccus (cos.100, cens.97) then *princeps senatus*; C.Valerius Flaccus (cos.93), cousin of the *princeps* and first and foremost a soldier (last attested in 81); M.Perperna (cos.92, cens.86); and L.Marcius Philippus (cos.91) see Willems, Le Sénat, I.427; Syme, AA, 25, Diogenes, 141 (1988) 60; R.J.Evans, Athenaeum, 61 (1983) 521-528. Perperna retired from politics on Sulla's victory vide supra.

[105] The following consulars were certainly alive in 77: L.Philippus (cos.91); Cn.Dolabella (cos.81); Q.Metellus Pius (cos.80); P.Servilius Vatia (cos.79); Ap.Pulcher (cos.79); Q.Catulus (cos.78); M.Lepidus (cos.78). In addition, M.Tullius Decula (cos.81) was possibly alive though he is not attested after his consulship. Of these Pius was absent in Spain and Vatia in Cilicia. Pulcher, though allotted the province of Macedonia, had probably been detained in Rome due to ill health (he rather than his son was presumably the *interrex* of 77 see MRR.II.92 n.4). Dolabella had returned from Macedonia by 77. Thus in 77 there were only four, possibly five, consulars in Rome to steer senatorial policy during Lepidus' revolt.

[106] For the names see Syme, AA, 25.

The decline should not be interpreted as evidence of the declining prestige of the patriciate, it is rather a sign that the institution itself had outlived the milieu that had generated it and had inevitably to yield to changed circumstances. The real impact of the relegation of the *princeps senatus* was of more general application. The decline of the *princeps* enhanced the *auctoritas* of the consuls in the senate - they chose the order in which the ex-consuls would be consulted.[107] Various personal factors influenced the consuls' choice, Varro singled out *ambitio* and *gratia,* but kinship and friendship were also prominent among them.[108] Above all, the consuls doubtless accorded priority to those consulars known to hold political ideals most in harmony with their own. And there was an expectation that those whom they so honoured would conform to the consuls' expressed opinion.[109] Or else, they might be encouraged to express an opinion which the consul favoured, but was unwilling to voice himself.[110] Consequently, the innovation had potentially detrimental effects on the direction of senatorial policy in the event of incompetent or autocratic consuls - unless there existed a determined and effective opposition. The *princeps senatus*, on the other hand, had, prior to his demotion, expressed his opinion first as a matter of course and could speak his mind without fear or favour. The potential vacuum created by the lack of a *princeps senatus* and the deficiencies of the new procedure are perhaps in evidence in 63 when the established order faced a serious challenge from within its own ranks. On the *Nones* of December 63, in the absence of a *princeps senatus,* the presiding consul (Cicero), supported vociferously by one of the senior ex-consuls (Catulus), lacked the authority to carry the debate to the desired conclusion.[111] The consuls designate and the

[107] In normal circumstances the order established on the Kalends of January determined the order of consultation for the remainder of the year (saving the elevation of the consuls designate in the latter half of the year). Since it would have a bearing on the consuls' entire year of office, the choice will not have been made lightly. In 59 Caesar was the first to alter the order of consultation during the course of the year (see Suet., Iul.21; Gell., NA.IV.10.5). It is unknown whether this innovation caught on thereafter.

[108] Varro apud Gell., NA.XIV.7.9 (quoted above). Gellius, NA.IV.10.3-4 (quoted above) speaks of the influence of "studium" and "necessitudo." Kinship seems also to have influenced some of the known choices. M.Pupius Piso (cos.61) consulted C.Piso (cos.67) first and Cicero second (Cic., Ad Att., I.13.2). M.Piso was certainly related in some fashion to C.Piso but the nature of the relationship is unknown (it has been suggested they were brothers, but most scholars consider them cousins see Syme, JRS, 50 (1960) 14; Meier, op cit., 197; Badian, Chiron, 20 (1990) 393, 395). Cicero's daughter Tullia was married to M.Piso's nephew C.Piso Frugi (see Syme, Ibid., 14, 16). The decision of L.Piso Caesoninus (cos.58) to put Cicero third also seems to have been partly influenced by Tullia's marriage (Cic., Post Red. in Sen.17). Note also Caesar's decision to consult Pompey before Crassus in the latter half of 59 was defended on the basis of their newly established *adfinitas* (see Suet., Iul.21; Gell., NA.IV.10.5). Finally, C.Vibius Pansa consulted his father-in-law Q.Fufius Calenus (cos.47) first in 43 (Cic., Phil. X.1-6).

[109] See the comments of Cicero, Att., I.13.2. As Badian, ANRW, I.1 (1972) 691 n.61 noted Cicero's claim the man chosen second was not so bound sounds suspiciously like special pleading. That is not to say that the expectation was invariably realized. M.Pupius Piso (cos.61) gave Cicero second place but Cicero disapproved of Piso's attempts to protect Clodius and attacked Piso's stance in the senate, getting him stripped of his province in the process (see Ad Att., I.13.2, 16.1, 16.8). And Cicero, Phil.X.3 claims that Q.Fufius Calenus never agreed with his son-in-law C.Vibius Pansa (cos.43) though Pansa consulted Calenus first.

[110] Thus in the debate on the fate of the Catilinarian conspirators though Cicero admitted he had already made up his mind as to the appropriate course of action (see In Cat., IV.6, Ad Att., XII.21) he played a balanced role in the debate both because he was afraid to be held solely responsible for the fate of the conspirators and because he knew he could rely on Q.Catulus (cos.78) to push for their execution (see Plut., Cic.21.4). This tactic was impressed upon me by Martin Stone.

[111] On the debate see Cic., In Cat., IV.6-11, Ad Att., XII.21; Sall., Cat., L-LV; App., BC.II.5-6; Plut., Cic.20.4-21.5.

fourteen ex-consuls present unanimously agreed upon the appropriate course of action, but the majority were to change their minds following the intervention of a praetor designate, and only reverted to their original stance after the harangue of an ex-quaestor. That senatorial opinion should be so pliable and such a pivotal role was permitted to junior senators bespeaks a vacuum of *auctoritas* at the pinnacle of senatorial ranks.[112] In 63, as in 77, in the absence of a *princeps senatus* no one of the consulars could command sufficient *auctoritas* in the senate and the senate, as in 77, proved reluctant to act until compelled to do so by the circumstances.

Ironically, one of the conspirators, P.Lentulus Sura (cos.71), but for his expulsion from the senate in 70 would by the time of the conspiracy have been one of the senior *consulares*.

[112] As M.Gwyn Morgan, Athenaeum, 69 (1991) 361 n.16 commented Badian's statement that the Catilinarian debate was not unusual is disingenuous.

VI

THE PATRICIATE AND THE STATE RELIGION: SUCCESSION AND THE BALANCE OF THE ORDERS IN THE MAJOR PRIESTLY COLLEGES

By the close of the Fourth Century the plebeian assault on the patrician monopoly of political office had been spectacularly successful but the onslaught on patrician religious prerogatives was only just beginning and the plebeians were not destined to meet with the same success in the religious as in the political sphere. In 367 the *Lex Licinia Sextia de decemviris sacrorum* gained for the plebeians admittance to the least of the three great priestly colleges.[1] But it was not until the very end of the Fourth Century that the plebeians felt ready to tackle the twin bastions of religious authority - the pontifical and augural colleges. Jealously guarded by the patriciate, these colleges remained closed to plebeians until the passage of the *Lex Ogulnia* in 300 and it would be a further forty years before the first plebeian *pontifex maximus* was appointed.[2] What is more, it appears that even in the last years of the Republic the patriciate continued to occupy approximately half the available places in the major priestly colleges. How is it that the patriciate was able to maintain its hold on the major colleges so successfully for so long ? The answer to that question depends on another puzzle, namely - what were the rules relating to the division of places between the orders and the practice of succession in the major priestly colleges during the Republic ?

Owing to the limitations of the sources we know only the barest details concerning the admission of the plebeians to the major priestly colleges. We are told that the *Lex Licinia Sextia de decemviris sacrorum* added eight places (*decuriae*) to the college of *duumviri sacris faciundis* and the *Lex Ogulnia* is said to have added four *decuriae* to the pontifical college and five to the augural college, bringing the total number of *decuriae* in those colleges to eight and nine respectively.[3] But not even this is entirely free from

[1] During the Republic only the pontifical, augural, and decemviral-quindecimviral colleges ranked as major (Cic., De Leg., II.20; Varro apud Aug., De Civ. Dei, VI.3). The college of *tresviri*, later *septemviri epulones*, instituted in 196, was raised to the status of a major college in the Principate of Augustus when we first hear of the *quattuor amplissima collegia* (Res Gestae, 9; Suet., Aug., C; Dio, LIII.1.5; see M.Hoffman Lewis, The Official Priests of Rome under the Julio-Claudians, Rome, (1955) 7, 11).

[2] The first plebeian *pontifex maximus*, the great new man Ti.Coruncanius, was appointed c.254 (Livy, Periochae XVIII). The patriciate also retained a significant number of sacerdotal monopolies beyond the fall of the Republic. Only patricians could serve as *flamines maiores*, *salii*, or *rex sacrorum* and until the Hannibalic War the *curio maximus* had also been a patrician monopoly.

[3] Livy, VI.37.12: "Novam rogationem promulgant [Sextius and Licinius], ut pro duumviris sacris faciundis decemviri creentur ita ut pars ex plebe, pars ex patribus fiat." Livy, VI.42.2: "Refecti decumum iidem tribuni, Sextius et Licinius, de decemviris sacrorum ex parte de plebe creandis legem pertulere." Livy, X.6.6: "Rogationem ergo promulgarunt [Q. and Cn.Ogulnius] ut, cum quattuor augures, quattuor pontifices ea tempestate essent placeretque augeri sacerdotum numerum, quattuor pontifices, quinque augures, de plebe omnes adlegerentur." Livy, X.8.3: "Nec aut tum patriciis ulla iniuria facta est, cum duumviris sacris faciundis adiectus est propter plebeios numerus, et nunc tribunus, vir fortis ac strenuus, quinque augurum loca, quattuor pontificum adicit, in quae plebeii nominentur, non ut vos, Appi, vestro loco pellant sed ut adiuvent vos homines plebeii divinis quoque rebus procurandis, sicut et ceteris humanis pro parte virili adiuvant." Livy, Periochae X: "Collegium augurum ampliatum est, ut essent novem, cum antea quaterni fuissent." Joannes Lydus, De Magistratibus Populi Romani, I.45: "καὶ πάλιν ὁ δῆμος προεχειρίσατο πέντε μὲν οἰωνοσχόπους, τέσσερας δὲ ἱεροφάντας" On the *duumviri - decemviri - quindecimviri sacris faciundis*

controversy.[4] Moreover, this leaves some important questions unanswered. With the admission of the plebeians to the priestly colleges there arose the question of succession to vacancies. Did the *Leges Licinia Sextia* and *Ogulnia* designate some of the *decuriae* in the major priestly colleges patrician and the rest plebeian ? So that when a patrician or plebeian priest died a candidate from the same order had to be chosen to fill his place - thereby maintaining a balance of orders in the colleges ? Or were some or all of the *decuriae* open to both orders ? Furthermore, when Sulla increased the number of places in the major priestly colleges to fifteen in 82/1, what did his ordinances have to say regarding the division of *decuriae* between the orders ? The paucity of evidence is acute and modern scholars have had to offer reconstructions based on a few scattered references in the sources and from a limited knowledge of the practice of succession derived from literary and epigraphic sources.[5] The result has been the evolution of at least four competing models.

According to von Kittlitz the *Lex Licinia Sextia de decemviris sacrorum* decreed that five places in the newly created decemviral college be filled by patricians and five by plebeians.[6] However, von Kittlitz proposed that the five places added to the augural college by the *Lex Ogulnia* (all of which were filled by plebeians in 300) were not reserved for plebeians, so that when a plebeian *augur* died nothing prevented the appointment of a patrician in his place.[7] von Kittlitz argued that the tribunes Licinius and Sextius

see also Ser., Aen., VI.73; Dion.Hal., IV.62.4-6.

[4] Livy's claim that the *Lex Ogulnia* added four places to the pontifical college making a total of eight *pontifices* is problematic. C.Bardt, Die Priester der vier grossen Collegien aus römisch-republikanischer Zeit, (1881) 32-4 demonstrated the information Livy provides on succession in the college in the period 216-167 proves that by the Hannibalic War there were nine *pontifices* - four patricians and five plebeians. Various explanations of the discrepancy have been ventured. For a recent review of the question see K-J.Hölkeskamp, Rh.Mus., 131 (1988) 51-67.

[5] The only explicit references to the procedure of succession in the extant sources are unhelpful. Dionysius of Halicarnassus, Roman Antiquities, II.73.3, writing after Augustus had restored co-optation, describes the process in the pontifical college: "ἐκλιπόντος δέ τινος αὐτῶν τὸν βίον ἕτερος εἰς τὸν ἐκείνου καθίσταται τόπον οὐχ ὑπὸ τοῦ δήμου αἱρεθείς, ἀλλ' ὑπ' αὐτῶν ἐκείνων, ὃς ἂν ἐπιτηδειότατος εἶναι δοκῇ τῶν πολιτῶν. παραλαμβάνει δὲ τὴν ἱερατείαν ὁ δοκιμασθείς, ἐὰν εὐόρνιθες αὐτῷ τύχωσιν οἰωνοὶ γενόμενοι." Unfortunately, Dionysius does not elaborate on what qualifications were looked for in prospective candidates. The Auctor, Ad Herennium, I.20 also says nothing directly relevant. He merely states: "lex iubet augurem in demortui locum qui petat in contione nominare." Nor can much benefit be gained from Cicero, Ad Brut., I.5.3-4, Brutus 1, or Phil., II.4. And the regulations relating to priestly elections in the *Lex colonia Iulia Genetiva* shed no light on the matter (see Bruns, Fontes Iuris Romani Antiqui[7], Tübingen, (1909) no.28 chps.66-8; Mommsen, Gesammelte Schriften, (1904) I.248f). Surprisingly the subject was not dealt with by L.Mercklin, Die cooptation der Römer. Eine sacralrechtliche Abhandlung, Mitau and Leipzig, (1848); or A.Gemoll, De cooptatione sacerdotum Romanorum, Berlin, (1870). Nor was the matter raised by Borghesi, Oeuvres Complètes, (1864) III.391-460 in his treatment of the sacerdotal *fasti* of the empire; or by K.Latte, Römische Religionsgeschichte, Munich, (1960).

[6] R.L.von Kittlitz, De rerum auguralium potentiae post legem Ogulniam facta mutatione, Liegnitz, (1858) 5.

[7] Ibid., 6-7: "Eo quidem tempore quinque plebeji adjecti sunt, ut tum patricios augures numero sane superarent, sed quum lege Ogulnia non esset constitutum, ut semper quinque plebeji in collegio essent, mihi quoque persuadeo, evenire potuisse, ut augure plebejo mortuo, quum studium et voluntas reliquorum ad rem optimatium inclinaret, in illius locum patricius cooptaretur." Compare Münzer's claim that the *augur* T.Veturius Gracchus Sempronianus co-opted in 174 to succeed the plebeian Ti.Sempronius Gracchus was a patrician (RAA, 130-1). As in 174 the augural college already contained four patricians (C.Claudius Pulcher, L.Aemilius Paullus, L.Quinctius Flamininus, and P.Cornelius Scipio), this presupposes, as von Kittlitz argued, that the *Lex Ogulnia* had not made a plebeian majority in the college mandatory (but this contradicts Münzer's own statement that the *Lex Ogulnia* reserved five *decuriae* in the augural college for plebeians -

when drafting their legislation on the consulate were mindful of the fact that in spite of plebeian eligibility for the consular tribunate, patricians had nonetheless predominated.[8] As a result they were careful to prescribe 'ut consulum *utique* alter ex plebe crearetur' so as to ensure the election of one plebeian consul, whereas the tribunes Quintus and Gnaeus Ogulnius failed to stipulate 'ut *utique* quinque augures de plebe allegerentur.' Consequently, the members of the augural college were not obliged by the terms of the *Lex Ogulnia* to see to it that the five new augural *decuriae* were always filled by plebeians.[9]

Mommsen, on the other hand, contended that the *Leges Licinia Sextia de decemviris sacrorum* and *Ogulnia* admitted plebeians to the priestly colleges in such a way that five of the ten places in the college of *decemviri*, five of the nine augural *decuriae* and four of the eight pontifical *decuriae* were legally reserved for plebeians whilst the remaining *decuriae* were open to both orders.[10] Later, acknowledging that Bardt had "irrefutably demonstrated" that by the Hannibalic War the pontifical college consisted of nine, not eight, *decuriae* of which five were held by plebeians and four by patricians, Mommsen considered either Livy had erred in his account of the *Lex Ogulnia,* or an additional *decuria* had been added to the pontifical college between 300 and 218.[11] Mommsen argued the *Lex Licinia Sextia de decemviris sacrorum* and the *Lex Ogulnia* were thus analogous to the *Leges Licinia Sextia* and *Publilia* which reserved places in the consulship and censorship for plebeians but not for patricians and he suggested these laws may have served as a model for the disposition of the priesthoods.[12] Mommsen based his reconstruction on two pieces of evidence. First, he adduced three instances of interordinal succession in the colleges in the First Century - viz. the plebeian *pontifex* C.Aurelius Cotta was succeeded in 74/3 by the patrician C.Iulius Caesar, the plebeian *pontifex* Q.Metellus Pius Scipio was succeeded in 46 by the patrician Ti.Claudius Nero, and the patrician *augur* Ap.Claudius Pulcher succeeded in 48 by the plebeian P.Vatinius.[13] Mommsen stated this eventuality was only possible if a number of the *decuriae* in the colleges were open to both orders. Second, he drew attention to De Domo 37 where in the course of describing the disadvantages entailed by patrician status Cicero says:

"Cur enim quisquam vellet tribunum plebis se fieri non licere,

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see RAA, 83).

[8] Ibid., 7 citing Livy, IV.6, VI.35, 37. von Kittlitz noted according to Livy, VI.37.4-5 Licinius and Sextius insisted this clause was necessary because despite plebeian eligibility the patriciate had monopolized the consular tribunate until 400 when the first plebeians were elected (Livy, V.12.11-12, VI.37.8) and even after 400 there continued to be a preponderance of patricians. Livy's claim that no plebeian consular tribunes were elected prior to 400 is of course problematic but that the patriciate dominated the consular tribunate is not in doubt.

[9] von Kittlitz repeatedly speaks of the augural college and gives no indication that he believed the same situation pertained in the pontifical college. He did not specify what happened when Sulla expanded the priestly colleges (see Ibid., 10-11).

[10] Mommsen's account appears in RF.I.80-90. Curiously, none of what follows features in Römisches Staatsrecht. Not even in the section dealing with the qualifications of priests and the procedures of appointment (StR^3.II.24-36).

[11] Mommsen, StR^3.II.22 n.1 believed the latter scenario was "nicht unmöglich" and suggested the addition of a place might reasonably be connected with the introduction of election for the *pontifex maximus*.

[12] RF.I.81.

[13] For the details of these and all the other recorded instances of succession in the major colleges, as well as the names of unsuccessful candidates, from the Republic to the Triumviral era see Appendix VII.

angustiorem sibi sese petitionem consulatus, *in sacerdotium cum possit venire, quia patricio non sit is locus, non venire*."

Mommsen argued Cicero's comment only has meaning if in the priestly elections, as in the consular elections, the plebeians were not restricted like the patricians but could compete for all places. However, Mommsen observed that although the *Leges Licinia Sextia* and *Ogulnia* had paved the way for plebeian domination of the major priestly colleges, in fact this had not occurred and the balance of the orders in the colleges had in large measure been preserved.[14] Thus Mommsen noted all the cases of succession in the three major priestly colleges recorded by Livy in the period 216-167 were strictly ordinal.[15] Mommsen considered this circumstance was also confirmed by the only recorded instances from the late Second Century when two plebeians, C.Fannius and Q.Mucius Scaevola, vied for a place in the augural college and Cn.Domitius Ahenobarbus hoped to succeed to the vacancy in the pontifical college created by the death of his father.

Furthermore, Mommsen maintained we could not be certain what arrangements were made by Sulla when he increased the three major colleges to fifteen in number. However, since Cicero testifies even in his day patricians provided half of the members of the major priestly colleges, Mommsen conjectured Sulla had reserved seven or eight places for the plebeians and left the remaining *decuriae* open to both orders.[16] Despite which, the patriciate continued to exercise a *de facto* hold on approximately half the available places. Mommsen stressed this accords with what we know of the priestly colleges in the last years of the Republic when, apart from the three instances of interordinal succession noted above, successors tended to be drawn from the same order as their predecessor and competitors usually belonged to the same order. Mommsen was able to produce a series of examples: Ap.Claudius Pulcher and L.Pinarius Natta competed with one another for a pontificate, the young C.Octavius succeeded L.Domitius Ahenobarbus in the pontifical college; Sex.Pompeius Magnus succeeded his father the Triumvir as *augur*; Metellus Nepos, Cicero and P.Vatinius contested the vacancy in the augural college created by the demise of Q.Metellus Celer; Cicero, C.Lucilius Hirrus and M.Antonius sought the augurate of P.Licinius Crassus; Cn.Domitius Ahenobarbus and M.Antonius stood for the augurate of Q.Hortensius; and L.Calpurnius Bibulus sued for Pansa's place in the augural college.[17] Moreover, Mommsen continued, the ordinal division of the colleges stands out most clearly in the membership lists of the colleges. A partial list of the pontifical college in the period c.74-63 reveals six *pontifices* - two patricians and four plebeians.[18] Whilst in

[14] RF.I.82, 90.

[15] RF.I.81, 83-7. See Appendix VII. Mommsen followed the lists constructed by Mercklin, Die cooptation der Römer, (1848) 101, 216-7 from Livy.

[16] RF.I.85-6. Cicero, De Domo 38 says if the *pontifices* allow patricians to get themselves adopted into plebeian families whenever they please: "populus Romanus brevi tempore neque regem sacrorum neque flamines nec Salios habebit *nec ex parte dimidia reliquos sacerdotes*."

[17] RF.I.86-7. For the details see Appendix VII and below.

[18] Macrobius, Sat.III.13.11: "refero enim pontificis vetustissimam cenam quae scripta est in indice quarto Metelli illius pontificis maximi in haec verba: *ante diem nonum kalendas Septembres, quo die Lentulus flamen Martialis inauguratus est, domus ornata fuit, triclinia lectis eburneis strata fuerunt, duobus tricliniis pontifices cubuerunt, Q.Catulus, M.Aemilius Lepidus, D.Silanus, C.Caesar, rex sacrorum, P.Scaevola Sextus*." Mommsen reckoned the anomalous 'Sextus' which follows the name of P.Scaevola was a corruption of the *gentilicium* of P.Servilius Vatia Isauricus.

57 the fifteen places in the pontifical college were divided between seven patricians and eight plebeians.[19] Mommsen explained the discrepancy between the legal entitlements of the plebeians and the level of patrician representation in the colleges in two ways - conservatism and co-optation.[20] He argued that just as the patricians had maintained their presence in consulship and censorship long after their monopoly had been legally overturned, this concern for *mos* likewise enabled the patricians to maintain their hold on the priesthoods for two and half centuries after their position had been legally eroded. Finally, Mommsen alleged that patrician representation in the priestly colleges was facilitated by co-optation and that it was the *Lex Domitia* which replaced co-optation with popular election that upset the *de facto* balance of the orders in the priestly colleges.

Willems addressed the issue obliquely.[21] Willems asserted that in the Ciceronian epoch the *decuriae* in the priestly colleges were no longer reserved either for patricians or plebeians.[22] He cited in support two pieces of evidence. First, the fact that the plebeian *pontifices* C.Cotta and Metellus Scipio were succeeded by the patricians C.Caesar and Ti.Nero and the patrician *augur* Ap.Pulcher by the plebeian P.Vatinius. Second, he claimed that the pontifical college in 57 was composed of at least nine plebeians and at most six patricians.[23] Willems therefore concluded it is impossible to sustain the argument that the law fixed the division of places among patricians and plebeians.[24]

Other scholars, though they advanced no argument, maintained that the *decuriae* in the major priestly colleges were designated patrician or plebeian and remained so into the late Republic.[25] It is not impossible to construct an argument to this effect. According to

[19] Namely: C.Iulius Caesar; P.Cornelius Lentulus Spinther; P.Servilius Isauricus; M.Terentius Varro Lucullus; Q.Caecilius Metellus Creticus; M'.Acilius Glabrio; M.Valerius Messalla Niger; P.Sulpicius Galba; Q.Caecilius Metellus Pius Scipio; C.Fannius; M.Aemilius Lepidus; M.Aemilius Scaurus; M.Licinius Crassus; C.Scribonius Curio; and L.Pinarius Natta. Mommsen obtained a figure of eight plebeians because he reckoned Metellus Scipio a plebeian. The list comes from Cicero, De Har.Resp. 12.

[20] RF.I.82, 85-6, 90.

[21] P.Willems, Le Sénat de la République romaine, Darmstadt, (1968) II.56-7. Willems did so as part of his argument that the De Domo should be attributed not to Cicero but to an 'imperial rhetor' who was ignorant of constitutional matters (see Le Sénat, II.22f, 56-7 and Chapter I).

[22] Willems, Ibid., II.56 says: "à l'époque de Cicéron, la moitié des places dans ces colléges [i.e. the pontifical, augural and quindecimviral colleges] *n' était plus* réservée aux patriciens, ni l'autre moitié aux plébéiens."

[23] Willems arrived at the figure of nine plebeians by arguing that Metellus Scipio and P.Lentulus Spinther were plebeian (Le Sénat, I.444, 478, II.56, 57 n.1). The qualification 'at least nine plebeians and at most six patricians' was added because Willems considered the patrician status of L.Pinarius Natta "fort incertain" (Le Sénat, I.79, II.57 n.1).

[24] Though he did not go into the provisions of the *Leges Licinia Sextia* and *Ogulnia* Willems seems to have thought this was an innovation of the late Republic since he says in Cicero's day the *decuriae* in the colleges were *no longer* reserved ("*n' était plus* réservée") suggesting he believed they once had been.

[25] Niebuhr's account of the *Leges Licinia Sextia* and *Ogulnia* amounts to a précis of Livy but Niebuhr seems to have thought the *decuriae* in the colleges were designated patrician or plebeian (see The History of Rome, W.Smith and L.Schmitz trans., (1842) III.28, 305-3). So too Marquardt, Römische Staatsverwaltung[2], III.242-3, 380-1, 398 who apparently believed the balance of the orders was maintained till the end of the Republic. The stance of Madvig, Die Verfassung und Verwaltung des römischen Staates, (1881-2) I.86, II.607, 613, 634, 644 is not entirely clear but he seems to have thought the *decuriae* were designated patrician or plebeian (see I.86, II.607, 644). In RE.XVII.2.2065 Münzer gave nothing but the bare Livian account of the *Lex Ogulnia*. But in Römische Adelsparteien, 83 he stated that the new places added to the pontifical and augural colleges by the *Lex Ogulnia* were to be filled exclusively by plebeians. Whilst in

Livy, P.Decius Mus (cos.312) spoke forcefully in support of the *Lex Ogulnia* in response to Ap.Claudius Caecus' denunciation of the measure. In the course of the speech assigned to him Decius remarks:

> "Nec aut tum patriciis ulla iniuria facta est, cum duumviris sacris faciundis adiectus est propter plebeios numerus, et nunc tribunus, vir fortis ac strenuus, quinque augurum loca, quattuor pontificum adicit, in quae plebeii nominentur, *non ut vos, Appi, vestro loco pellant* sed ut adiuvent vos homines plebeii divinis quoque rebus procurandis, sicut et ceteris humanis pro parte virili adiuvant."[26]

Decius is made to stress that the admission of plebeians to the duumviral college had not entailed the dispossession of the patricians. Rather the college had been expanded to accommodate the plebeians. Equally, the admission of the plebeians to the pontifical and augural colleges was not a threat to the patricians. The patricians would not be driven from their places, as additional places were to be created for the plebeians. That line of argument is difficult to reconcile with the notion the *Leges Licinia Sextia* and *Ogulnia* allowed the plebeians access to all the *decuriae* in the colleges and reserved none for the patricians. Had that been the case, Appius' fears that the patricians would be supplanted were well founded and Decius' assurances that the patricians would not be displaced were not likely to allay his concerns. If, however, the *Leges Licinia Sextia* and *Ogulnia* reserved half of the places in the decemviral college and the four existing *decuriae* in the pontifical and augural colleges for patricians, whilst setting aside the remainder for plebeians, Decius' argument is perfectly comprehensible and showed Appius' fears were unjustified.[27]

The contention that some *decuriae* in the colleges were reserved for patricians is also perfectly compatible with the testimony of Cicero. Mommsen asserted that Cicero, De Domo 37 can only mean that plebeians were eligible for all the places in the colleges, but patricians only for some *decuriae*.[28] If that were so, it would follow that no *decuriae* in the colleges were set aside for patricians. But whilst the passage demonstrates that in Cicero's day patricians were excluded from some *decuriae*, it does not necessitate the assumption that plebeians were eligible for all places. Cicero's reasoning is as follows. Patricians suffer certain disabilities as a consequence of their status, and if the *pontifices* allow them to overcome these limitations by means of adoption, patricians will get themselves adopted into plebeian families whenever it is expedient for them to do so. As a result,

Hermes, 52 (1917) 153 Münzer suggested the first *decuria* of the augural college was reserved to patricians down to the year 40 B.C.. Though he also conceded the latter might not be so (Ibid., 153 n.1). See also R.G.Nisbet, M.Tulli Ciceronis de domo sua ad pontifices oratio, Oxford, (1939) 101. Others have unequivocally stated that some *decuriae* remained reserved to patricians in the late Republic. See E.Rawson, Phoenix, 28 (1974) 211; A.Drummond, C.A.H.^{2}, (1989) VII.2.343; J.A.North in J.Andreau and H.Bruhns (eds.), Parenté et stratégies familiales dans l'Antiquité romaine: actes de la table ronde des 2-4 Octobre 1986, Paris, (1990) 534, 538; cf. T.J.Cornell, The Beginnings of Rome, Routledge, (1995) 342. Drummond and Cornell both ignore the expansion of the colleges by Sulla and state the ratio of plebeians to patricians in the augural and pontifical colleges remained constant at 4:4 and 5:4 till the end of the Republic.

[26] Livy, X.8.3.

[27] Mommsen, RF.I.311-3 dismissed Ap.Claudius Caecus' opposition to the *Lex Ogulnia* as unhistorical. However, even if this were so, and the speech assigned to Decius is an entirely Livian creation, Livy will not have given Decius arguments that were in blatant contradiction of the facts (but see further n.82 below).

[28] "Cur enim quisquam vellet tribunum plebis se fieri non licere, angustiorem sibi sese petitionem consulatus, *in sacerdotium cum possit venire, quia patricio non sit is locus, non venire*."

there will soon be no patricians left. For why should any patrician accept his ineligibility for the tribunate of the plebs, a restricted candidacy for the consulate, or forgo a priesthood just because this *decuria* is not for a patrician. That is, according to Cicero's alarmist scenario, if the *pontifices* permit it, patricians will begin to transfer to the plebs in droves in order to seek the tribunate, or to maximize their chances of a consulate, or whenever a *decuria* in the colleges becomes available which is only open to plebeians. Pace Mommsen, it need not be inferred from this that plebeians suffered no such disability and that there were no places in the colleges from which plebeians were disqualified.[29] Cicero was not attempting a comparative assessment of the advantages and disadvantages of patrician and plebeian status. His perspective was one sided as his intention was to elucidate the dire consequences for the state if patricians followed Clodius' example *en masse* and were adopted into plebeian families. Cicero pointedly refers to a single hypothetical vacancy - "is locus" - which happens to be to a plebeian place. If, as Mommsen would have it, Cicero intended to convey that the patricians also suffered an *angustior petitio* with respect to the priestly colleges, he chose a curious and cumbersome way to express a simple point.

Sulla, it might be supposed, preserved the balance of the orders in the major priestly colleges when increasing their membership to fifteen places by stipulating that three of the six places added to the pontifical and augural colleges, and three of the five places added to the decemviral, now quindecimviral, college, were reserved for plebeians, and the remainder for patricians - so that each college consisted of eight plebeians and seven patricians.

The hypothesis that the *Lex Licinia Sextia de decemviris sacrorum*, the *Lex Ogulnia*, and the *Lex Cornelia de sacerdotiis* reserved *decuriae* in the major priestly colleges for patricians and plebeians alike is also in accordance with what actually occurred. In 367 the eight new places in the decemviral college were divided between three patricians and five plebeians - so that there were five patrician and five plebeian *decemviri sacris faciundis*.[30] And there are indications that that ratio was perpetuated into the Second Century.[31] While the four *decuriae* in the pontifical and augural colleges that were not reserved for plebeians were monopolized by patricians in the late Third and early Second Century.[32] Moreover, even in the last years of the Republic a balance of the orders persisted in the major colleges. On the 29th of September 57 Cicero stated before the assembled pontifical and augural colleges[33] that the patricians continued to supply not only the *rex sacrorum*, the

[29] See R.G.Nisbet, M.Tulli Ciceronis de domo sua ad pontifices oratio, Oxford, (1939) 101.

[30] Livy, VI.42.2 says that following the passage of the *Lex Licinia Sextia de decemviris sacrorum* five patricians and five plebeians were appointed. However, this must be an error. There were already two existing patrician *duumviri* and they will not have been removed and cannot have suddenly died since they will have been responsible for co-opting the new members in accordance with the law. Hence in reality three not five patricians and five plebeians must have been co-opted to fill the eight new *decuriae*.

[31] Unfortunately, Livy provides only a partial record of the ten *decuriae* in the college in the years 213-169 (see Bardt, op cit., 28f; G.Radke, RE.XXIV.1143-5; and Appendix VII). Note also that when the *ludi saeculares* were celebrated for the third time in 236 the college had two *magistri* - the patrician M'.Aemilius (Lepidus Numida), and the plebeian M.Livius Salinator (see Bardt, op cit., 28; MRR.I.223) - suggesting that at that time the ten available places continued to be divided equally between the orders.

[32] See Bardt, op cit., 9ff, 21-2, 33 and Appendix VII.

[33] De Domo 34 - "Dico apud pontifices: augures adsunt."

flamines maiores, and the *salii* but also "*ex parte dimidia* reliquos sacerdotes."[34] That is, as late as 57 approximately half the *decuriae* in all the three major priestly colleges were occupied by patricians.[35]

Thus it can be argued that the evidence indicates a balance of the orders was maintained in the three major colleges throughout the Republic and that ordinal succession remained the norm - the attested exceptions being few and late. Therefore, rather than supposing with Mommsen that interordinal succession had been permissible since the Fourth Century but was not practised until the First Century, it might be argued that the *decuriae* in the colleges were legally designated patrician or plebeian and the law was contravened in the last years of the Republic.

The reconstructions advanced above cover virtually every conceivable scenario. Yet all of these hypotheses entail problems and none satisfactorily accounts for all the evidence.

The argument of von Kittlitz is vulnerable on a number of fronts. Not the least of its defects is a conspicuous lack of historical plausibility. According to von Kittlitz the Ogulnii failed to absorb the lessons to be learnt from the plebeian experience with the consular tribunate and they were content to make plebeians eligible for the pontifical and augural colleges without taking steps to ensure plebeian representation. This is most improbable. The Ogulnii can scarcely have been ignorant of the need to spell out precisely the entitlements of the plebeians. The election of all-patrician consular colleges in the 350's and 340's will have served as a reminder that plebeian claims to office could not be taken for granted. This was even more vital in the case of the three major priestly colleges since prior to the *Lex Domitia* vacancies in the colleges were filled by co-optation without reference to the people. This meant that unless the *Lex Licinia Sextia de decemviris sacrorum* and the *Lex Ogulnia* specified that five of the *decuriae* in the decemviral college and all of the new *decuriae* in the pontifical and augural were to be filled by plebeians nothing would have prevented the existing patrician members of the colleges in 367 and 300 from appointing patricians to fill some or all of the new places. And in default of regulation, vacancies in the colleges might have occasioned unseemly disputes as to whether a patrician or a plebeian should be appointed - an eventuality which everyone would have wanted to avoid. Nor is it credible that after Licinius and Sextius had been careful to ensure plebeian representation in the decemviral college that the Ogulnii should have taken so retrograde a step as to fail to guarantee plebeian representation in the pontifical and augural colleges. Consequently, it is inconceivable that the Ogulnii framed their *rogatio* in such a way that plebeian membership of the pontifical and augural colleges was negotiable - leaving the patriciate a loophole which could be exploited to the detriment of the plebs.

Moreover, von Kittlitz's thesis was founded on the presupposition that Livy, X.6.6 is a verbatim account of the wording of the *Lex Ogulnia*. That, it need hardly be said, is a naïve and fragile presumption. But for what it is worth, Livy's testimony does indicate the

[34] De Domo 38.

[35] Cicero's "dimidia" cannot of course literally mean half since the three major colleges consisted of fifteen members and must therefore mean seven or eight *decuriae* (vide infra). Cicero's claim is corroborated in part by the composition of the pontifical college in 57. The claim cannot be verified as regards the augural and quindecimviral colleges since the record of the membership of those colleges at this date is faulty (but see infra on the membership of the augural college in 49). Yet Cicero clearly cannot have made this statement before this audience if it was patently untrue.

Lex Ogulnia stipulated that the newly created *decuriae* were to be filled exclusively by plebeians. We are told not only that the newly created pontifical and augural *decuriae* were to be added on account of the plebeians[36] but that the *Lex Ogulnia* prescribed that they were to be filled "de plebe omnes."[37] It is absurd to suggest that means the *Lex Ogulnia* decreed the additional *decuriae* should all be filled by plebeians in the first instance but thereafter appointments might be made *promisce ex patribus ac plebe*. We happen to know that C.Marcius Rutilus, who was co-opted into the pontifical and augural colleges in 300 as a result of the *Lex Ogulnia*, was succeeded in one college by a plebeian.[38] Furthermore, in the period 216-167 when Livy enables us to observe the *Lex Ogulnia* in operation we see that succession in the augural college was invariably strictly ordinal. The *Lex Ogulnia* patently specified that the new places in the pontifical and augural colleges were closed to patricians. This conclusion may also be indirectly confirmed. In Cicero's day some *decuriae* in the three major priestly colleges were set aside for plebeians.[39] Evidently, this was a provision of the *Leges Licinia Sextia de decemviris sacrorum* and *Ogulnia* and perhaps of Sulla's *Lex Cornelia de sacerdotiis*.[40]

Mommsen's thesis has won widespread acceptance.[41] Yet even superficial scrutiny reveals that his argument has a number of flaws - some of a minor nature, some of more serious import. To begin with, the evidence Mommsen produced relating to succession in the late Republic was not altogether accurate. The following modifications are requisite.

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[36] Livy, X.6.6, 8.3.

[37] X.6.6.

[38] See infra and Appendix VII.

[39] Cicero, De Domo 37 - "patricio non sit is locus" (cited in full above).

[40] Since De Domo 37 implies patricians were excluded from some places in all three major colleges this must have been a provision of the *Lex Licinia Sextia* and the *Lex Ogulnia*, and/or the *Lex Cornelia*. But that the *Lex Cornelia* reserved additional *decuriae* for the plebs is uncertain (see below).

Cicero delivered the De Domo after the passage of the *Lex Labiena* but it is unlikely such matters came within the compass of the *Lex Labiena*. The *Lex Labiena* restored popular election to the priestly colleges (i.e. re-enacted the *Lex Domitia*) but like the *Lex Domitia* left the nomination of candidates for vacancies in the priestly colleges up to the colleges themselves and so will not have addressed the issue of succession.

[41] Mommsen was followed by: C.Bardt, Die Priester der vier grossen Collegien aus römisch-republikanischer Zeit, (1881) 35 (note, however, Bardt, Ibid., 21, 22, 33, 34 somewhat incongruously spoke of patrician *decuriae* and on occasion conjectured successors on the basis that plebeian must succeed plebeian and patrician must follow patrician); A.Bouché-Leclercq, Les pontifes de l'ancienne Rome, Paris, (1871) 323 and in C.Daremberg and E.Saglio, Dictionnaire des antiquités grecques et romaines, Paris, (1896) I.1.552 (though this seems at variance with his account at IV.1.567); G.Wissowa, RE.II.2319, RKR, 422; L.Lange, Römische Alterthümer[3], (1876) II.98; J.Lengle, Untersuchungen über die sullanische Verfassung, Diss. Freiburg im Breisgau, (1899) 1-2; Klose, Römische Priesterfasten, (1910) 3; R.M.Geer, AJP, 60 (1939) 466-7; L.R.Taylor, AJP, 63 (1942) 386-7, 395, 404, 407-8; M.Lewis, The Official Priests of Rome under the Julio-Claudians, Rome, (1955) 9; Broughton, MRR.I.407 n.5 (but note he assumed even in 50 the augural college was divided between eight plebeians and seven patricians - II.255); G.J.Szemler, The Priests of the Roman Republic, Brussels, (1972) 29 n.1; I.Shatzman, CQ, 23 (1973) 70; Shackleton Bailey, ICS, 2 (1977) 226; E.S.Staveley, Historia, 32 (1983) 34-5; F.Ryan, Athenaeum, 82 (1994) 517; Konrad, *Imperium Sine Fine*, Stuttgart, (1996) 127. Herzog, Geschichte und System der römischen Staatsverfassung, (1884) I.226 n.2 accepted Mommsen's thesis as regards the *Lex Licinia Sextia de decemviris sacrorum*. However, on the *Lex Ogulnia* he expressed some degree of doubt. He thought the patrician *decuriae* "zünachst wohl noch den Partriciern reservierte" (I.279). And continued: "Ob die vier Stellen den Patriciern gesetzlich reserviert wurden, wird nicht gesagt, das Gesetz kann nach dem Vorgang des Gesetzes über das Konsulat von 342 kaum darüber geschwiegen haben" (I.279 n.1).

Metellus Scipio never abjured his natal patrician status. It has been conclusively demonstrated that Scipio's testamentary 'adoption' by Metellus Pius did not affect a change of agnatic status and that he was never tribune of the plebs.[42] Scipio remained a patrician as is patent from his service as *interrex* in June 53.[43] Consequently, when Scipio's place in the pontifical college was taken by the patrician Ti.Claudius Nero this was not an instance of interordinal succession. That leaves only two attested cases of interordinal succession in the major priestly colleges (Caesar's co-optation in 74/3 and the appointment of P.Vatinius in 47).[44] It was not Ap.Claudius Pulcher (cos.54), but his brother Gaius, who competed unsuccessfully against another patrician (L.Pinarius Natta) for a place in the pontifical college in 59.[45] Sex.Pompeius did not succeed his father as *augur*. The plebeian C.Octavius succeeded a plebeian Domitius in the pontifical college in 47, but the deceased was L.Ahenobarbus (cos.54), not a Cn.Domitius. Metellus Nepos, P.Vatinius and Cicero all expressed an interest in Metellus Celer's place in the augural college, but Nepos did not contest the vacancy. Nor it seems did Vatinius or Cicero. Yet the fact remains that Celer and all the parties interested in his place were plebeian. And M.Antonius did not stand against Cicero and Hirrus for the augurate of P.Crassus. Some years after the event he claimed to have waived his candidacy in order to clear the way for Cicero's election. Finally, the partial list of the pontifical college preserved by Macrobius, which is to be dated most probably in 70 not c.74-63, contains the names of five, not six *pontifices* (two patricians and three plebeians), and as the college by this time consisted of fifteen members this tells us little about the overall composition of the college.[46] Cicero's list is more significant as it reveals the names of all fifteen of the *pontifices* in 57. However, as Metellus Scipio was a patrician, it follows that the pontifical college in 57 consisted of eight patricians and seven plebeians, not vice versa as Mommsen contended.

Nor was the evidence Mommsen produced exhaustive. In the list of appointments culled from Livy, Mommsen overlooked two cases. In 209 C.Laetorius succeeded Q.Mucius Scaevola in the decemviral college.[47] And in 173 A.Postumius Albinus succeeded the *decemvir* L.Cornelius Lentulus. We may also add the evidence of the *fasti sacerdotum*. The remnants of the *fasti* disclose that C.Marcius Rutilus, co-opted into the pontifical and augural colleges in 300, was succeeded in 260/59 or 254 by a Mamilius Turrinus. While in

[42] See Appendices I and II.

[43] See Chapter I.

[44] Contra Münzer, RAA, 130-1 the *augur* T.Veturius Gracchus Sempronianus, co-opted in 174, was a plebeian and hence this was not a case of interordinal succession (see Appendix VII).

[45] For the details of what follows see Appendix VII.

[46] On the date see Appendix VI. Mommsen's argument that the 'Sextus' of the Mss represents a corruption of the *gentilicium* of a sixth *pontifex* (P.Servilius Vatia Isauricus) is to be rejected (see Appendix VI). Clearly, 'Sextus' is the *praenomen* of another priest. However, the proposition of Taylor, AJP, 63 (1942) 402, 411 that Sextus is an otherwise unattested *pontifex* Sex.Quinctilius Varus is equally unacceptable (see Appendix VI). However, as the *pontifex maximus* Q.Caecilius Metellus Pius must be added to the *pontifices* in Macrobius' list we may identify six of the fifteen *pontifices* in 70 - two patricians (Mam.Aemilius Lepidus Livianus and C.Iulius Caesar), and four plebeians (Q.Metellus Pius, Q.Lutatius Catulus, D.Iunius Silanus, and P.Mucius Scaevola). If the arguments of Taylor, AJP, 63 (1942) 385-412 are endorsed we can name eleven - eight plebeians (Metellus Pius, Q.Catulus, D.Silanus, P.Scaevola, P.Servilius Isauricus, M.Terentius Varro Lucullus, Q.Caecilius Metellus Creticus, M'.Acilius Glabrio) and three patricians (Mam.Lepidus, C.Caesar and M.Valerius Messalla Niger).

[47] For the details of what follows see Appendix VII.

88 M.Aemilius Scaurus (cos.115) was succeeded in the augural college by L.Cornelius Scipio Asiagenes (cos.83).[48] It will be noted that all four cases are instances of ordinal succession. Further, we know that in 51 P.Cornelius Dolabella was elected to a vacancy in the college of *quindecimviri* defeating L.Cornelius Lentulus Crus. And that in 50 in addition to M.Antonius and L.Domitius Ahenobarbus, M.Calpurnius Bibulus had hoped to secure the augurate of Q.Hortensius for his son L.Bibulus - though it is uncertain whether Bibulus actually stood. That is, the only known contenders for the vacancy in the quindecimviral college in 51 were both patricians and L.Bibulus, like the deceased Q.Hortensius, and his prospective rivals M.Antonius and L.Ahenobarbus, was a plebeian. Furthermore, we are able to name the majority of the members of the augural college in March 49. Eleven of the fifteen members of the college can be identified with certainty, and a further three with varying degrees of probability.[49] Of those eleven - five were plebeians and six were patricians. Whilst if the three possible cases are admitted, eight of the fifteen were plebeians, six were patricians and one remains unknown. It would appear therefore that a strict balance of orders was maintained in the augural college as late as the year 49.[50]

[48] The *fasti sacerdotum* also reveal that L.Sempronius Atratinus (cos.suff.34) was co-opted into the augural college in 40 B.C. Unfortunately, the name of his predecessor, who entered the college in 88 or 80, has not been preserved (for speculation as to his identity see Appendix VII). Atratinus was in turn succeeded by the plebeian P.Petronius P.f. (cos.suff.19 A.D.) in A.D. 7.

[49] The following were certainly augurs in March 49: M.Antonius (30); Q.Cassius Longinus (70); (Q.Mucius) Scaevola (23); Cn.Pompeius Magnus (31) cos.70, 55, 52; M.Tullius Cicero (29) cos.63; Ap.Claudius Pulcher (297) cos.54; P.Cornelius Lentulus Spinther (239); Faustus Cornelius Sulla (377); L.Iulius Caesar (143) cos.64; Ser.Sulpicius Galba (61); and M.Valerius Messalla Rufus (268) cos.53. The remaining four members of the college are uncertain but there are three possible candidates. C.Claudius Marcellus (214) was still alive in early 50 (see Cic., Ad Fam., XV.8, 11). But he is not attested subsequently and was dead by 44 (see Cic., De Div., II.75; MRR.II.314). P.Servilius Isauricus (67) was an *augur* by 46 (see Cic., Ad Fam., XIII.62.4; MRR.III.196) and may have entered the college by 49. And a 'Philippus' issued coinage c.56 bearing the *lituus* (see Crawford, RRC I.448-9 no.425). He is usually identified as L.Marcius Philippus (77) tr.pl.49, pr.44, cos.suff.38. That being so, as 56 is considered rather early for him to have become an *augur* the *lituus* is sometimes taken as a reference to the priesthood of an ancestor (see MRR.II.255, III.138. His homonymous grandfather, the consul of 91, was an *augur*). But note, among other examples of *nobiles* made priests in early youth, that P.Lentulus Spinther (239), the son of the consul of 57, was elected *augur* in 57 in the same year he assumed the *toga virilis* (see Cic., Pro Sestio 144; Schol.Bob., 143-4 St; MRR.II.207).

[50] We can also partially reconstruct the membership of the augural college for the years 133 and 91 and of the pontifical college for the year 91 (for the evidence see Bardt, Die Priester der vier grossen Collegien aus römisch-republikanischer Zeit, (1871); MRR; and Szemler, The Priests of the Roman Republic, (1972)). Broughton, MRR.I.495-6 listed the members of the augural college in 133 as: Ap.Claudius Pulcher (295) cos.143; P.Scipio Aemilianus (335) cos.147, 134; M Aemilius Lepidus Porcina (83) cos.137; Q.Caecilius Metellus Macedonicus (94) cos.143; C.Laelius (3) cos.140; D.Iunius Brutus Callaicus (57) cos.138; Ti.Sempronius Gracchus (54); and Q.Mucius Scaevola (21) cos.117. Of these Scipio, Laelius, Macedonicus, Gracchus, and Brutus may be regarded as certain. As to the others. Klose, Römische Priesterfasten, (1910) 52-3 and Broughton, MRR.I.495, 503, III.56 argued Ap.Pulcher was an *augur* on the basis of Plut., TG 4.1. This was considered uncertain by Münzer, Hermes, 52 (1917) 154-5 and Szemler, Ibid, 146 (that Appius was a *salius* in no bar see Klose, Ibid, 50-4). Lepidus was an *augur* by 125 and perhaps, as Broughton surmised, had been for many years (MRR.I.511). Scaevola was a member of the college at the death of Aemilianus i.e. in 129 (Cic., De Amic., 8) but for how long is unknown. The possible remaining member of the college, missed by Bardt and Broughton, was Ser.Sulpicius Galba (58) cos.144 (Cic., De Rep., III.42). Galba predeceased Scipio (Cic., De Rep., III.42) and is last attested in 138 (Cic., Brutus 85-8. The Cretan inscription cited by Münzer, RE.II.4A1.764-5 only establishes that Galba was alive in 141 see Sherk, RDGE, 83-4). But Galba may have been alive in 133. If the uncertain cases are accepted the augural college in 133 consisted of four patricians and five plebeians. In 91 the following were certainly members of the pontifical college: Cn.Domitius Ahenobarbus (21) cos.96; C.Iulius Caesar Strabo (135); M.Livius Drusus (18); and Q.Mucius Scaevola (22) cos.95. And it is probable that Q.Caecilius Metellus Pius (98) cos.80 was also a *pontifex* by 91 (see Appendix VII). Taylor, AJP, 63 (1942) 393 n.22, 404, 411 suggested C.Aurelius Cotta

These modifications prompt two observations bearing on Mommsen's argument. First, all the evidence seems to indicate that the incidence of interordinal succession was very low. In the period 216-167 Livy records forty-four cases of succession spread across the three colleges - in every instance ordinal succession was faithfully observed. And as Mommsen himself observed even in the First Century ordinal succession and competition appears to have predominated. Five of the seven attested cases of succession in the period 88-46 were ordinal. In three cases a plebeian succeeded to the place of a plebeian (Cicero succeeded P.Crassus, M.Antonius succeeded Q.Hortensius, and C.Octavius succeeded L.Ahenobarbus). In two instances patricians succeeded patricians (L.Scipio succeeded M.Scaurus, and Ti.Nero succeeded Metellus Scipio). Whilst there were two cases of interordinal succession (the patrician C.Caesar succeeded the plebeian C.Cotta, and the plebeian P.Vatinius succeeded the patrician Ap.Pulcher).[51] Further, in all the known cases where individuals expressed an interest in, or contested a vacancy in the colleges, they belonged to the same order as their predecessor and/or their rivals. Even allowing for our limited knowledge of the practice of succession after 167, the interordinal appointments of Caesar and Vatinius seem to be exceptional. If, as Mommsen argued, the appointment of patricians was customary, but not obligatory, we would expect the incidence of interordinal succession and competition to be significantly higher.

Second, the patrician status of Metellus Scipio may be reconciled with Mommsen's thesis for Mommsen stated Sulla reserved either seven or eight *decuriae* for plebeians in the three major colleges.[52] Yet despite Mommsen's willingness to countenance a patrician majority in the priestly colleges, the fact that there were eight patricians in the pontifical college in 57 remains problematic. It is unlikely that the *Lex Cornelia de sacerdotiis*

(96) cos.75 was already a *pontifex* in 91 on the basis of Cic., De Nat.Deor., III.80 but this is questionable (on the use of *sodalis* see MRR.II.25 n.12, 256 n.2; cf. infra). The following were certainly members of the augural college in 91: Q.Mucius Scaevola (21) cos.117; C.Marius (14) cos.107; L.Marcius Philippus (75) cos.91; and L.Licinius Crassus (55) cos.95. M.Aemilius Scaurus (140) cos.115, who was more probably an *augur* than a *pontifex*, was also still alive in 91. The remaining members of the college in 91 are unknown but a number of possibilities can be named. C.Sulpicius Galba (51), presuming he was an *augur*, might have survived in exile until 91 (especially if he was only of quaestorian age in 109 see Chapter II). Servilius (12) the *augur* was possibly alive in 91 (Badian, Klio, 66 (1984) 301f dated the unsuccessful prosecution of Servilius in 91 rather than 100 but his argument is not decisive. Badian argued the Luculli cannot have undertaken the prosecution when aged 18 and 16 respectively but L.Sempronius Atratinus made his début in the courts aged 17 - Jerome, Chron., p.165 Helm. And the violence associated with the trial fits better in 100 than in 91). Metellus Numidicus survived until 91 or 90 (see Badian, Chiron, 14 (1989) 140) but his augurate is conjectural (see Taylor, AJA, 48 (1944) 352-6; Badian, Arethusa, 1 (1968) 27-8; and Linderski, *Imperium Sine Fine*, Stuttgart, (1996) 178f, 181-2). Sulla was a priest before 84 and since the rule reported by Dio, XXXIX.17 was flouted in the augural college (see Appendix VII on the *augur* T.Otacilius Crassus), it is possible he was an *augur* by 91. A thought also goes to C.Claudius Marcellus (214) who will have entered the college long before 51 (see J.A.North in J.Andreau and H.Bruhns (eds.), Parenté et stratégies familiales dans l'Antiquité romaine, Paris, (1990) 540 n.26). Q.Hortensius joined the college early, conceivably by 91 (see MRR.II.256 n.2).

[51] Note that if the pontifical college contained eight plebeians and seven patricians prior to Caesar's appointment, as there were still only eight patricians and seven plebeians in the college in 57, either Caesar's appointment was the only case of interordinal succession between 74/3 and 57, despite the large number of appointments made in that period, or else there had been other interordinal appointments but they had cancelled each other out.

[52] RF.I.86. Some of Mommsen's followers have tended to tacitly modify his thesis in this respect - stating that Sulla reserved eight *decuriae* for plebeians (see Wissowa, RKR, 422; Taylor, AJP, 63 (1942) 395, 407; Lengle, op cit., 2; and F.X.Ryan, Athenaeum, 82 (1994) 517 n.84).

conceded to the patriciate access to a majority of the places in the priestly colleges.[53] If, as Mommsen contended, Sulla reserved some *decuriae* for the plebs it is *prima facie* more probable that when he raised the number of places in the colleges to fifteen Sulla reserved the majority (i.e. eight places) for the plebs and allowed patricians access to the remainder (i.e. seven places). By 82 the principle of a plebeian majority in the odd numbered augural and pontifical colleges was well established. The plebeians had been awarded the majority in the augural college by the *Lex Ogulnia* and they had enjoyed a majority in the pontifical college at least since the Hannibalic War - perhaps since 300. Sulla is unlikely to have taken so reactionary and perverse a step as to deny them a majority of one in the newly expanded colleges. Plus the notion that Sulla reserved only seven *decuriae* for plebeians faces the additional complication that the augural college in March 49 possibly contained eight plebeians.

And there are other difficulties with Mommsen's thesis.

In De Domo 38 Cicero sets out the dire consequences for the state should the patriciate disappear:

> "populus Romanus brevi tempore neque regem sacrorum neque flamines nec salios habebit nec ex parte dimidia reliquos sacerdotes neque auctores centuriatorum et curiatorum comitiorum auspiciaque populi Romani, si magistratus patricii creati non sint, intereant necesse est, cum interrex nullus sit, quod et ipsum patricium esse et a patriciis prodi necesse est."

Mommsen recognized the passage posed something of a problem since Cicero's statement that the patriciate provided "ex parte dimidia reliquos sacerdotes" occurs, as Willems noted, in the course of a disquisition on the "priviléges légaux, constitutionnels du patriciat."[54] Mommsen's explanation was that the election of patricians to half the places in the colleges was in reality merely a customary observance which Cicero misrepresented as a legally binding obligation. Cicero is said to have resorted to this subterfuge because he was acting as an advocate in his own interest. That explanation will not stand up. No one will deny that in the De Domo Cicero was acting in his own interest, or that as an advocate he was capable and willing to manipulate and misrepresent the truth when it suited him. But this generalization does not entitle us to dispose of the passage *a priori*. Moreover, whereas when speaking to a lay jury Cicero had some licence to massage the truth, Cicero delivered the De Domo before the pontifical and augural colleges - an audience whose expertise in the matters at hand will have left him little or no room for distortion of the facts. If Mommsen's reconstruction is to be defended the answer lies elsewhere. Were there in fact any laws stating that the *rex sacrorum*, *flamines maiores*, *salii*, *interreges*, or *patres auctores* had to be patrician ? Or were all these patrician monopolies founded on immemorial practice ? This is not the place for an extended discussion of the issue but a related example is instructive.[55] The patriciate monopolized the post of *curio maximus* until 209 B.C.. When in that year a plebeian put his name forward the patricians declared his

[53] This was recognized by Taylor, AJP, 63 (1942) 395, 407 and Ryan, Athenaeum, 82 (1994) 517 n.84. But they were led by this observation into the erroneous assumption that Metellus Scipio must be a plebeian. Konrad, *Imperium Sine Fine*, (1996) 127 exposed the error of Taylor's and Ryan's argument, but the notion that Sulla allowed for a patrician majority in the colleges nevertheless remains doubtful.

[54] See Mommsen, RF.I.85 n.28 and Willems, Le Sénat, II.56.

[55] See for instance the discussion of E.S.Staveley, Historia, 32 (1983) 34ff. However, not all of his arguments are to be approved.

candidacy illegitimate "quia nemo ante eum nisi ex patribus id sacerdotium habuisset."[56] The matter was referred to the tribunes, who referred it to the senate, which put it to the people. The plebeian was appointed. Evidently, the patrician monopoly had rested entirely on a long established custom. If, similarly, the patrician privileges in Cicero's list were merely customary, Mommsen's thesis that the appointment of patricians to half the places in the priestly colleges rested on *mos* not *lex* may be upheld without impugning Cicero's testimony.

In addition, Mommsen's explanation of the breakdown in ordinal succession was predicated on a misconception. Mommsen argued it was the introduction of popular election that upset the balance of the orders in the priestly colleges. He argued the *Lex Domitia* disrupted the customary balance which co-optation had tended to perpetuate. If that is so, it is curious that the first and only known Republican case of interordinal succession occurred in 74/3 after Sulla had repealed the *Lex Domitia* and reinstated co-optation. Whereas in the period when popular election was in force (104-82 and 63-49) the information that we have indicates that ordinal succession continued to be the norm. In fact, there is little evidence to suggest the introduction of popular election disrupted the balance of the orders in the colleges. Rather it appears that even in last years of the Republic a balance of orders persisted. Furthermore, the *Lex Domitia* would not necessarily or inevitably have led to a change in the practice of succession since it left the nomination of candidates within the control of the colleges.[57] When a vacancy arose the existing members of that college nominated candidates and it was from this list that the people chose. Consequently, the institution of popular election cannot, *ipso facto,* have subverted the practice of ordinal succession. If the members of the colleges continued to nominate only patricians to succeed patricians and plebeians to succeed plebeians the people, despite the franchise, could do nothing to upset the balance of orders in the colleges.

Mommsen also failed to consider the possible relevance of adoption. A number of priests were adoptees. But the majority were adopted before they acquired their priesthood and by a person belonging to the same order.[58] However, one such case is of particular

[56] See Livy, XXVII.8.1-4.

[57] See L.Mercklin, Die cooptation der Römer. Eine sacralrechtliche Abhandlung, Mitau and Leipzig, (1848) 131ff; A.Gemoll, De cooptatione sacerdotum Romanorum, Berlin, (1870) 12ff; Linderski, HSCP, 76 (1972) 191-3, 197-8 esp. n.66.

[58] The following *pontifices* were adopted: Q.Fabius Maximus Servilianus; P.Licinius Crassus Mucianus; Mam.Aemilius Lepidus Livianus; M.Terentius Varro Lucullus; and Q.Servilius Caepio Brutus. And the following augurs were adopted: T.Veturius Gracchus Sempronianus; P.Scipio Aemilianus; Q.Caecilius Metellus Celer; P.Cornelius Lentulus Spinther; C.Vibius Pansa Caetronianus; L.Sempronius Atratinus. The only known *decemviri* or *quindecimviri* who were adopted were P.Clodius Pulcher and Cicero's son-in-law P.Cornelius Dolabella. Of these all but Dolabella, and perhaps Clodius, were adopted before they acquired their priesthood. In addition, all but Lepidus Livianus, Clodius and Dolabella were adopted by persons belonging to the order into which the adoptees had been born. Two other *pontifices* were 'adopted' by testament namely - Metellus Scipio and C.Iulius Caesar Octavianus. Whether Metellus Scipio's 'adoption' occurred before or after he entered the pontifical college is unknown. But since 'testamentary adoption' could not alter an individual's status (see Appendix I) Metellus Scipio retained his natal status after the 'adoption.' Octavian entered the college prior to his adlection *inter patricios* and 'adoption' (see infra). It is worth noting that although Taylor, AJP, 63 (1942) 395, 405 reckoned M.Brutus a patrician after his adoption it is a distinct possibility that the adoption of Brutus was testamentary and that he remained a plebeian (see Münzer, RAA, 337, RE.II.A.1779; Gelzer, RE.X.976, N.Jahrb.klass.Altert., 45 (1920) 440, Caesar: Politician and Statesman, P.Needham trans., (1968) 80 n.1; Syme, Hermes, 92 (1964) 410, AA, 53 n.34. But see also Cichorius, Festgabe Friedrich von Bezold, Bonn, (1921) 70-1; J.Geiger, Anc.Soc., 4 (1973) 143-56; and L.Vones, Historisches Jahrbuch, 97-98 (1978) 15-16).

interest. In 57 the young patrician P.Lentulus Spinther was adopted by a patrician Manlius Torquatus so that he might contest a vacancy in the augural college.[59] If, as Mommsen argued, all the *decuriae* in the colleges were open to plebeians but only some to patricians, it would have made more sense for Spinther to seek adoption into a plebeian family, since even if the deceased *augur* Spinther hoped to succeed in 57 was a patrician, plebeian status would be no impediment and had he failed in 57, Spinther could run again later, even if the vacancy was for a place reserved for plebeians. But then perhaps Spinther was reluctant to eschew his patrician status. More intriguing still, are instances where an individual obtained a priesthood as a patrician or plebeian but subsequently underwent an interordinal adoption. There are two certain cases. The patrician P.Cornelius Dolabella became a *quindecimvir* in 51. Yet in order that he might become tribune of the plebs, he was adopted by a plebeian Lentulus in 48.[60] Octavian was made a *pontifex* in 47 whilst still a plebeian but in 45 he was adlected into the patriciate under the *Lex Cassia* and from 44 he claimed patrician status in virtue of his testamentary adoption by the Dictator.[61] There is also one possible Republican instance. Clodius made his abortive attempt at a *transitio ad plebem* in 60 before being adopted in 59 by the plebeian P.Fonteius.[62] Clodius was already a *quindecimvir* when he presided over the *ludi Megalenses* as curule aedile in 56.[63] Since the *ludi Megalenses* were celebrated in early April (from the 4th to the 10th in the Augustan calendar) Clodius can have entered the college no later than the elections of the preceding year - i.e. around July 57. But a number of Cicero's references to Clodius as *sacerdos* might suggest he was a *quindecimvir* during his tribunate - i.e. already in 58.[64] If these early references to Clodius as *sacerdos* are not merely Ciceronian sarcasm[65], Clodius may have been a *quindecimvir* prior to his adoption. Similarly, consider individuals, like Octavian, who entered the priestly colleges as plebeians but were subsequently adlected

[59] Dio, XXXIX.17; MRR.II.207; Shackleton Bailey, Two Studies, 113-4; and North, Parenté et stratégies familiales dans l'Antiquité romaine, Paris, (1990) 527f. Dio says this was necessary in order to circumvent a rule prohibiting *gentiles* from serving together but the rule is problematic (see Mommsen, RF.I.89; Bardt, op cit., 34f and Festgabe für Wilhelm Crecelius, (1881) 37-40; Badian, Arethusa, 1 (1968) 36f; Szemler, op cit., 190; North, loc.cit.; and Appendix VII on the augur T.Otacilius Crassus).

[60] See W.von Voigt, Philologus, 64, (1905) 341-366; Shackleton Bailey, Two Studies, 29-32, 112; Sumner, Orators, 125f, 133-4, CP, 73 (1978) 160, 163; and more recently M.J.Slagter, Transitio ad Plebem: The Exchange of Patrician for Plebeian Status, Diss., (1993) 256f

[61] On the testamentary adoption of Octavian see W.Schmitthenner, Oktavian und das Testament Cäsars: Eine Untersuchung zu den politischen Anfängen des Augustus[2], (1973); Shackleton Bailey, Two Studies, 93f, 117-8 and Appendix I. On the *Lex Cassia* and the adlection of Octavian see Heiter, De patriciis gentibus quae imperii Romani Saeculis I, II, III fuerint, (1909) 40-1 and H.H.Pistor, Prinzeps und Patriziat in der Zeit Augustus bis Commodus, (1965) 8f.

[62] See the discussion and bibliography of Slagter, op cit..

[63] Cic., De Har.Resp. 26-7. See Broughton, MRR.III.58; J.O.Lenaghan, A Commentary on Cicero's Oration De Haruspicum Responsis, Paris, (1969) 77, 128-9; Szemler, op cit., 165. Note that Cicero elsewhere repeatedly refers to Clodius as *sacerdos* see De Har.Resp. 9 - *religiosissimus sacerdos*, and 14 - *antistes sacrorum*, De Domo 103 - *castissimus sacerdos*, In Pisonem 89 - *ille sacerdos*, Pro Sestio 39 - *stuprorum sacerdos*, and 66 - *ille popularis sacerdos*.

[64] See Cic., De Har.Resp. 9 and De Domo 103 which might suggest Clodius was a priest when he consecrated Cicero's house. And Pro Sestio 66 which may indicate Clodius was a priest when he was tribune.

[65] As plainly are De Domo 111 - *religiosus sacerdos Libertatis*, and Ad Att., II.4.2 - *iste sacerdos Bonae Deae*, and perhaps De Domo 103 - *castissimus sacerdos*, and Pro Sestio 39 - *stuprorum sacerdos*.

into the patriciate in 45 or 29.[66] We do not hear of any legal or religious difficulties caused by priests transferring from one order to the other. If that is not simply a reflection on the sources it could be explained in a number of ways. Mommsen might have argued these priests held *decuriae* open to both orders making their change of status irrelevant. Alternatively, perhaps the *pontifices*, who were accustomed to tolerate the fiction known as testamentary adoption and specious adoptions like those of Clodius and Lentulus Spinther, produced some expedient solution to any difficulties that arose.[67] Or else, as these men had already entered the colleges and priests could not be removed except in certain specific circumstances, perhaps nothing could be done to stop them.[68]

Willems' notion that none of the *decuriae* in the major colleges were designated patrician or plebeian in the Ciceronian epoch is untenable. Indeed, it is only possible to adopt this stance if the De Domo is repudiated as an inaccurate forgery, since it is explicitly stated therein that some places in the colleges were closed to patricians - i.e. were reserved for plebeians.[69] However, in rejecting the De Domo, Willems was relying largely on the arguments of Wolff which were shown to be baseless by Madvig, among others, and since the late Nineteenth Century the authenticity of the speech has rarely been doubted.[70] Further, in the Pro Scauro Cicero notes when C.Claudius Pulcher stood for a vacancy in the pontifical college, he did so as a patrician.[71] Yet if Willems' proposition is endorsed,

[66] A few cases apart from Octavian are known or may be surmised. M.Antonius, elected *augur* in 50, was adlected into the patriciate by the *Lex Cassia* of 45 (Lewis, op cit., 39; Heiter, op cit., 40; Pistor, op cit., 9). His brother Gaius was also possibly adlected in 45 but perhaps before he was made a *pontifex* (Lewis, op cit., 29; MRR.II.314). It is unlikely that Cicero was raised to the patriciate by Caesar (Willems, Le Sénat, I.122; Pistor, op cit., 199 n.9). The following were probably priests before they were adlected into the patriciate by the *Lex Saenia* of 29: T.Statilius Taurus (cos.37, 26) was an *augur* perhaps since 38 (Lewis, op cit., 40; Heiter, op cit., 54-5; Pistor, op cit., 25-6); M.Iunius Silanus (cos.25) and L.Iunius Silanus (165) were augurs, perhaps since the 30's (Lewis, op cit., 41; Heiter, op cit., 49f; Pistor, op cit., 22); M.Vipsanius Agrippa was a *quindecimvir* by 38 (Lewis, op cit., 48; Heiter, op cit., 55; Pistor, op cit., 26); M.Cocceius Nerva (cos.21) was probably made a *quindecimvir* in 38 (Lewis, op cit., 50; Heiter, op cit., 47-8; Pistor, op cit., 21). There is also M.Appuleius possibly an *augur* by 45 (see MRR.II.314; Szemler, op cit., 156) and Sex.Appuleius (cos.29) an *augur* by 26 (Lewis, op cit., 40; MRR.II.425). The Appuleii may have been elevated by Caesar, but more probably by Augustus (Heiter, op cit., 42-3; Pistor, op cit., 17). Note also L.Scribonius Libo (cos.34) *septemvir* probably in 38 and patrician after 29 (Lewis, op cit., 56; Heiter, op cit., 53; Pistor, op cit., 23-4).

[67] This possibility was suggested by Martin Stone.

[68] We are told that augurs could not be deprived of their priesthood (see Plut., QR 99; Pliny, Ep., IV.8). Badian, Arethusa, 1 (1968) 37f argued this rule was a late development but for no very good reason (Linderski, ANRW, II.16.3 (1986) 2251 n.412 was rightly not persuaded). However, members of the pontifical and quindecimviral colleges were not assured of lifelong tenure of their priesthood (see Plut., QR 99; Cassiodorus, Variae VI.2).

[69] De Domo 37.

[70] F.A.Wolff, M.Tulli Ciceronis quae vulgo feruntur orationes quattuor, Berlin, (1801); J.N.Madvig, Adversaria Critica, (1871-4). Mommsen, StR.III.1037 n.2 declared that no scholar and no historian any longer questioned the authenticity of the speech. See especially C.Rück, De M.Tulli Ciceronis oratione de domo sua ad pontifices, (1881); T.Zielinski, Das Clauselgesetz in Ciceros Reden, (1904); and A.Klotz, Ciceronis orationes post reditum, Teubner, (1915) - all of whom argued forcefully that the speech was authentic. See also R.G.Nisbet, De Domo, (1939) xxix-xxxiv; and Shackleton Bailey, Cicero Back from Exile: Six Speeches Upon His Return, (1991) 3-4.

[71] Pro Scauro 34: "Qui [C.Claudius Pulcher] sive patricius sive plebeius esset - nondum enim certum constituerat, - cum hoc [M.Aemilius Scaurus] sibi contentionem fore putabat, Appius [Ap.Claudius Pulcher] autem hoc maiorem etiam, *quod illum in pontificatus petitione, in saliatu, in ceteris meminerat*

that statement is meaningless, for if all the *decuriae* in the colleges were open to both orders the status of C.Pulcher would have been of no consequence. Whereas in fact, Cicero evidently considered the patrician status of C.Pulcher relevant to his pontifical *petitio* which corroborates his testimony in De Domo. Nor can the two recorded instances of interordinal succession prove that none of the *decuriae* in the colleges were reserved for patricians or plebeians. Finally, there is no substance to Willems' claim that there were at least nine plebeians in the pontifical college in 57.[72] In fact, we may observe that into the last decade of the Republic a balanced representation of the orders was maintained in both the pontifical and augural colleges.[73] And we have also seen that even in Cicero's day, in the vast majority of instances, competition was confined to members of the same order. Neither circumstance is easily reconciled with the suggestion that competition was completely free from regulation.

The suggestion that the *decuriae* in the colleges were all designated patrician or plebeian also encounters difficulties. Once again, the patrician majority in the pontifical college in 57 is awkward. If Sulla reserved places for patricians and plebeians we would expect the majority to have been set aside for plebeians. Further, it is difficult to account for the occurrence of interordinal succession if this was in contravention of the law. The appointment of Vatinius might readily be dismissed as yet another Caesarian irregularity in the midst of civil war.[74] But how are we to explain the co-optation of Caesar when the Republic was intact ? It is improbable the Sullani who dominated the pontifical college at the time of Caesar's appointment will have flouted the law - particularly for the sake of the

fuisse patricium."

[72] The suggestion that Metellus Scipio was a plebeian is erroneous (see above). Willems, Le Sénat, I.444, II.57 n.1 also reckoned P.Cornelius Lentulus Spinther (cos.57) a plebeian. Willems identified Spinther with P.Cornelius Lentulus Marcellinus (231) the brother of Cn.Lentulus Marcellinus (cos.56) and argued the Marcellini were plebeian since Gnaeus was a *septemvir epulonis* (Cic., De Har.Resp. 21) and was identical with Cn.Lentulus the tribune of the plebs before 66 (Cic., Pro Leg.Man., 58. Who is probably to be identified with the tribune Cn.Cornelius mentioned in the *Lex Antonia de Termessibus* - CIL.I^2.589, ILS.38 and the Cn.Cornelius mentioned in the *Lex Visellia* - CIL.I^2.744, ILS.5800 see Syme, JRS, 53 (1963) 55f; Sumner, Orators, 125-6). But the argument is false. First, the filiation of Lentulus Spinther proves he cannot have been the brother of Cn.Marcellinus - Spinther was P.f. L.n. and the Marcellini were P.f. P.n. (see Sumner, Orators, 141-2; Wiseman, JRS, 65 (1975) 198; MRR.III.69). Second, the plebeian status of the Marcellini has not been conclusively established. Willems ought not to have accepted so readily the postulate of Mommsen, RF.I.90-2 that only plebeians might serve as *IIIviri/VIIviri epulones*. Apart from Marcellinus no other patrician *epulones* are known under the Republic but so few are attested this cannot be considered significant (on P.Manlius *IIIvir epulo* 196-180 see Appendix VII). Moreover, under Augustus and his successors the college certainly contained patricians (see Lewis, op cit., 56f). It is probable, therefore, that the college was open to patricians at least since the dictatorship of Sulla (see Bardt, op cit., 32, 37; Münzer, RE.IV.1390; Klose, op cit., 1-3, 5-6; Shackleton Bailey, Two Studies, 29-30; Szemler, op cit., 173 n.7. As Willems, Le Sénat, II.55 himself noted the statement at De Domo 38 that patricians provided "ex parte dimidia reliquos sacerdotes" presumably includes the *VIIviri*). And the tribune Lentulus is better identified with the enigmatic Cn.(Cornelius) Lentulus Vatia (241, cf. 209) see Shackleton, Two Studies, 29f. Nor is there any reason to doubt the patrician status of L.Pinarius Natta. Furthermore, even had there been nine or more plebeians in the college in 57, it would not prove that none of the *decuriae* were reserved for either order, since if Mommsen was right, there was nothing in the law to prevent the plebeians from occupying most or all of the fifteen available places.

[73] As noted above the pontifical college in 57 consisted of eight patricians and seven plebeians and the augural college in March 49 contained at least six patricians and five plebeians - possibly six patricians, and eight plebeians (and one unknown).

[74] Dio, XLI.36.3 specifically says that Caesar did not observe all the customary usages relating to the priestly colleges.

young C.Caesar.[75] Nor is it plausible that the appointment of Caesar was an irregularity due to the First Civil War. The First Civil War did produce a large number of vacancies in the colleges.[76] And the *dominatio Cinnae* was characterized by a failure to observe *ius* and *mos*.[77] Hence it might be conjectured that vacancies in colleges were filled without regard for technicalities and Caesar was appointed in 74/3 as part of a process of redressing an imbalance of the orders in the colleges created by the appointments of Cinna and Marius. But even supposing that by 82 plebeians occupied all but a few places in the three major colleges Sulla's expansion of the colleges and restoration of co-optation would have enabled the balance of the orders to have been redressed virtually overnight.[78] Furthermore,

[75] Taylor, CP, 36 (1941) 117-120 and AJP, 63 (1942) 403-4 rightly stressed the importance of Caesar's co-optation as a corrective to some of the statements in the sources regarding his relationship with the Sullani. But the fact remains that his relationship with the regime in general and some of the members of the pontifical college in particular was less than idyllic, making it unlikely the college would have made special concessions for the benefit of Caesar. And since Caesar was co-opted (not elected) and in absentia his appointment was not the result of popular pressure or agitation by Caesar but was solely based on the decision of the *pontifices* themselves. Pace Münzer, RAA, 130 the fact that Caesar was co-opted to succeed his maternal uncle, C.Cotta, cannot explain the unprecedented nature of Caesar's appointment.

[76] Q.Pompeius Rufus (cos.88) a *Xvir s.f.* was killed in 88, the *pontifex* C.Caesar Strabo was killed in 87, as was the *augur* M.Antonius (cos.99), and the *pontifex maximus* Q.Scaevola (cos.95) was killed in 82. Other priests were expelled from the colleges. This was the fate of Sulla (App., BC.I.79), and probably also of the *pontifex* Q.Metellus Pius (Pius was probably exiled in 86 - Weinrib, Phoenix, 22 (68) 43 n.45; T.Corey Brennan, The Praetorship in the Roman Republic down to 81 B.C., (1990) 327 - and so expelled from the college). If, as Taylor, AJP, 63 (1942) 401, 403, 411 argued, Q.Lutatius Catulus (cos.78) was a *pontifex* before 88 he too was presumably deposed in 87 since he was proscribed by Cinna and joined Sulla (Schol.Bob., 126 St; Münzer, RE.XIII.2.2082-3; Keaveney, Klio, 66 (1984) 127-8 contra Badian, Studies, 216f). Cn.Octavius (cos.87), killed in 87, may have been a *Xvir s.f.* (see B.Katz, L'Ant.Class., 45 (1976) 504f). A number of other priests died of natural causes. The *augur* Q.Scaevola (cos.117) is last attested in 88 and probably died soon after, and C.Marius, also an *augur,* died in 86. In addition, an unknown *augur* died either in 88 or 80 (he was succeeded by the unknown predecessor of L.Sempronius Atratinus see Appendix VII). Sulla possibly saw to the election of a replacement for Pompeius Rufus in 88 since Pompeius was killed before Sulla left Rome and *comitia sacerdotum* were held in 88 (L.Scipio Asiagenes (cos.83) was elected to succeed M.Aemilius Scaurus in that year see Appendix VII). But perhaps Pompeius was killed after the elections had been held (see App., BC.I.64). As the *pontifex maximus* Q.Scaevola was killed just before Sulla's capture of Rome, Carbo and the Marians had no time to replace him. A significant number of priests had also died in rapid succession just prior to the Civil War: the *augur* L.Crassus and the *pontifex* M.Livius Drusus died in 91; Metellus Numidicus, possibly an *augur*, died 91 or 90 (see above); the *pontifex maximus* Cn.Domitius Ahenobarbus died c.89; and M.Scaurus died in late 89 or early 88. Yet other priests may have been among the extensive Roman casualties of the Social War. They will all have been replaced in the period 91-88. Taken together with the victims of the Civil War it is clear that in a very short space of time the membership of the major colleges must have been radically altered.

[77] Cicero, Brutus 227 described the period between Sulla's departure and return as a time "sine iure et sine ulla dignitate res publica." And the Cinnan regime countenanced a series of enormities - an all-patrician consular college in 86, multiple iteration by Cinna and Carbo, appointments of magistrates without reference to *comitia*, and a twenty-six year old consul in 82. Hence Cinna, Marius and Carbo might not have baulked at interordinal succession even if it was *contra legem*.

[78] It is likely that any putative imbalance would favour plebeians rather than patricians. Sulla's expansion of the colleges meant there were five new places in the decemviral college and six in the pontifical and augural colleges to be filled. In addition, some of Cinna's appointees were doubtless killed in the Civil War, or the proscriptions, or were driven into exile. Unfortunately, none of those appointed to the colleges in the period 87-82 are known. We do know that the *augur* L.Scipio Asiagenes (cos.83), who was elected in 88, was proscribed and went into exile in Massilia but since augurs could not be deprived of their priesthood (see above) Scipio perhaps remained a member of the college until his death. Having restored co-optation Sulla could have ensured that the vacancies and/or newly created places were filled by the number of patricians required to redress any imbalance. Hence the process might have been complete long before Caesar's co-optation.

Caesar's predecessor, C.Cotta, was almost certainly a Sullan appointment - co-opted in 82/1.[79] Hence if Cotta had been appointed to a patrician *decuria*, creating an imbalance which the co-optation of Caesar was intended to correct, the Cinnan regime was not at fault. Yet it is equally incredible that the putative imbalance was the result of Sullan appointments. If Sulla had legislated that eight *decuriae* in the colleges were reserved to plebeians and seven to patricians he will not have allowed appointments to be made which contravened the law. Sulla was adamant that his laws be observed to the letter.[80] It would seem therefore that the *Lex Cornelia de sacerdotiis* did not prohibit a patrician majority in the three major priestly colleges or interordinal succession.

Where then does that leave us ? A brief précis is desirable. Of the theses advanced above, those of von Kittlitz and Willems are demonstrably untenable. Mommsen's reconstruction remains valid but has three main weaknesses. First, if we accept his postulate that the *Lex Licinia Sextia de decemviris sacrorum*, the *Lex Ogulnia*, and the *Lex Cornelia de sacerdotiis* reserved *decuriae* in the three major colleges for plebeians but not for patricians we are faced with a glaring discrepancy between what was purportedly legally permissible and what occurred in practice. The evidence, as Mommsen acknowledged, indicates that a balance of the orders persisted in the priestly colleges throughout the Republic and that ordinal succession was observed without exception down to 167 and appears to have predominated even in the First Century. If then the plebeians had had access to all the *decuriae* in the major colleges since the Fourth Century why did they so conspicuously fail to capitalize on this signal advantage ? Second, the pontifical college in 57 contained eight patricians and seven plebeians, not vice versa. Mommsen seemingly allowed for this contingency, arguing that Sulla reserved seven or eight places for the plebs. However, it is probable that if Sulla had reserved some of the newly created places for plebeians that he would have given the plebeians a majority in the colleges. Third, popular election does not appear to have disrupted the balance of the orders in the colleges, nor can the *Lex Domitia ipso facto* explain the advent of interordinal succession. Yet the alternative scenario is also problematic. If all the *decuriae* were designated patrician or plebeian, it is difficult to explain the violation of the law in 74/3, when the Republic was still functioning, and the patrician majority in the pontifical college in 57.

It is worth, therefore, considering one final possible model. There are some incontrovertible facts with which we have to contend. First, the pontifical college in 57 consisted of eight patricians and seven plebeians. Second, in Cicero's day some places in the colleges were closed to patricians (De Domo 37) - i.e. were set aside for plebeians. Third, during the Republic there is only one attested case of interordinal succession (in 74/3, and one other case in 47). Otherwise ordinal succession and a balance of the orders apparently prevailed. Suppose, therefore, that the *Leges Licinia Sextia de decemviris sacrorum* and *Ogulnia* did not explicitly deal with the mechanics of succession. That is to say, they said nothing regarding the permissibility or otherwise of interordinal succession. They merely stipulated that the newly created places in the colleges were to be filled exclusively by plebeians (the *Lex Licinia Sextia* may have reserved only five of the eight

[79] Cotta was a *pontifex* by 76 (Cic., De Nat.Deor., I.61, II.168). Taylor, AJP, 63 (1942) 393 n.22, 404, 411 conjectured Cotta was a member of the pontifical college by 90 but the evidence for the suggestion is insecure (see above). Moreover, even if Cotta was a *pontifex* in 91, he was exiled in 90 and so must have lost his priesthood but had it restored by Sulla (unlike augurs, *pontifices* could be expelled from the college see above and Taylor, Ibid, 405).

[80] As Lucretius Afella discovered to his cost.

new places for plebeians).[81] With regard to the existing *decuriae* - hitherto monopolized by patricians - perhaps it was stipulated that they be filled exclusively by patricians, perhaps they were not mentioned.[82] Further, suppose that when Sulla expanded the priestly colleges he made no attempt to regulate the practice of succession or the division of *decuriae* between the orders.[83] Sulla may have done so because among his most prominent supporters, i.e. those who were first in line for priestly honours, plebeians outnumbered patricians, or in recognition of declining patrician numbers.[84] Whatever his motives, the consequences would have been that the *decuriae* set aside for plebeians by the *Leges Licinia Sextia* and *Ogulnia* remained closed to patricians in Cicero's day but the *decuriae* added by Sulla were open to both orders - hence nothing prevented interordinal succession in certain *decuriae*, or prohibited either order from occupying more than half the fifteen places in the colleges.[85] The plebeian C.Cotta, it may be presumed, held one of the new

[81] This is what Livy, X.6.6, 8.3 and common sense would suggest the laws decreed. A less likely possibility is that these laws prescribed that plebeians must occupy not less than a specified number of places at any time - i.e. they did not reserve specific *decuriae* for the plebs. If the latter were the case, when Cicero, De Domo 37 refers to "is locus" being not for a patrician we would have to suppose this was because there were already the maximum allowable number of patricians in the college rather than because the *decuria* concerned was reserved for plebeians.

If the laws said nothing directly regarding succession, interordinal succession would only have been illegal in so far as it contravened the rules relating to the balance of the orders in the colleges - i.e. if for instance the appointment of a patrician to succeed a plebeian would mean that there were fewer than the mandatory number of plebeians in the college.

[82] On the basis of Livy's account it could be argued either way. The bill originally proposed by Licinius and Sextius as recorded by Livy, VI.37.12 seems to have envisaged an equal division of the *decuriae* in the decemviral college (they were to be appointed "pars ex plebe, pars ex patribus"). And this is in fact what happened. Three patricians and five plebeians were co-opted to fill the eight new *decuriae* - making five patricians and five plebeians (Livy, VI.42.2 says five patricians and five plebeians were appointed but this is clearly an error since there were already two patrician *duumviri sacris faciundis*). On the other hand, the law as recorded at VI.42.2 refers only to the election of plebeians, which some scholars, like Herzog, op cit., I.226 n.2, take to mean that "nur die fünf plebejischen Stellen fest standen, die fünf andern aber freigelassen wurden." The same ambiguity is present in Livy's treatment of the *Lex Ogulnia*. As noted above Livy, X.8.3 has Decius declare that the law would not cause the patricians to be driven from the *decuriae* which they had till now monopolized. Was this because the law guaranteed the patricians possession of the existing *decuriae* ? Or because the plebs, according to 'Decius', were satisfied (at least for the present) with the new *decuriae* and had no designs on the other places ? Or, as Martin Stone put to me, simply because Livy, with the benefit of hindsight, knew that the *effect* of the law had not been the displacement of the patricians from the existing *decuriae* ? Further, Livy, X.6.6, 8.3 has the *Lex Ogulnia* refer to the new *decuriae* created for plebeians but there is no mention of the existing *decuriae*. But it is debatable whether these passages should be regarded as a faithful record of the provisions of the law.

[83] It is unlikely that Sulla's decision to add six *decuriae* to the pontifical and augural colleges (and five to the decemviral college) was motivated by the desire to give both orders three extra places. Rather the size of the increase was probably dictated by the principle that the number of places in the colleges should be uneven (Livy, X.6.7; cf. Virg., Ecl.VIII.75) and a multiple of three representing the three original tribes (Cic., De Rep., II.16; Livy, X.6.7; Dion.Hal., II.22). Characteristically, Caesar defied the principle on both counts - increasing the colleges to sixteen.

[84] The former possibility was suggested to me by Martin Stone.

[85] That is, from 81 five *decuriae* in the augural, quindecimviral and pontifical colleges would still be reserved for plebeians. While the six *decuriae* added by Sulla to the augural and pontifical colleges and the five added to the quindecimviral college would be open to both orders. The four remaining *decuriae* in the augural and pontifical colleges and the other five places in the quindecimviral college would either be set aside for patricians (supposing the *Leges Licinia Sextia* and *Ogulnia* had reserved places for patricians), or open to both orders (if the *Leges Licinia Sextia* and *Ogulnia* took no account of the existing places). If the *Leges Licinia Sextia* and *Ogulnia* had reserved places for patricians, the plebeians might occupy up to eleven *decuriae* in the augural and pontifical colleges and ten in the quindecimviral college. But if the *Leges Licinia*

places in the pontifical college that were open to both orders - making it possible for his patrician nephew C.Caesar to succeed him and explaining the eight patrician members of the pontifical college in 57. The patrician *augur* Ap.Pulcher may also have held an open place - if the appointment of Vatinius is not simply further evidence of Caesar's disregard for convention. Finally, if the *Leges Licinia Sextia* and *Ogulnia* did reserve places for the patriciate this scenario could explain the late appearance and low incidence of interordinal succession - since then interordinal succession would only have been permissible after Sulla and only in some places.

Unfortunately, it is not possible to offer a definitive reconstruction of the provisions of the *Lex Licinia Sextia de decemviris sacrorum*, the *Lex Ogulnia*, or the *Lex Cornelia de sacerdotiis*. However, the mechanics of succession can be observed in some detail in the periods 216-167 and 88-43 and the available evidence suggests that interordinal succession was a late development and an exceptional occurrence. It appears that even in the last years of the Republic ordinal succession remained the norm and a balance of the orders persisted in the major priestly colleges. That being so, whatever reconstruction of the laws is accepted the facts are revealing.

If from the Fourth Century all the *decuriae* in the colleges were open to plebeians the success of the patriciate is remarkable. Not only did the patriciate successfully maintain a *de facto* claim on approximately half the places in the colleges till the end of the Republic, in spite of the legal entitlements of the plebs, and the expansion of the colleges by Sulla, they also occupied the majority of the *decuriae* in the pontifical college in 57, and the only known Republican instance of interordinal succession involved a patrician succeeding a plebeian. Since priesthoods were highly prized *honores* it is astounding that the patriciate was so successful in holding its ground for so long if patricians were at such a legal disadvantage. How might such a state of affairs be explained ? It is doubtless significant that throughout the Republic, irrespective of the introduction of popular election, the priestly colleges retained control of the nomination of candidates for vacancies. Clearly, however, that is not an answer in itself.[86] If there was nothing in the law to prevent interordinal succession in the *decuriae* not reserved to the plebs and nothing to guarantee patrician representation, what drove the priests to perpetuate a balance of the orders in the colleges ? Two reasons suggests themselves. Religious conservatism is one possibility. The major priestly colleges were very conservative institutions.[87] But perhaps it was

Sextia and *Ogulnia* had not reserved places for patricians, the plebeians might occupy all fifteen places in all three colleges. In any event, plebeians could not hold less than five *decuriae* in each college. And interordinal succession would only be prohibited in the *decuriae* specifically reserved for one or other order.

[86] Mommsen, RF.I.87 n.33 observed that many of the few recorded cases of *nominatio* were ordinal - i.e. plebeians nominated plebeians and patricians nominated patricians. Yet it is clear that all the members of the college in which there was a vacancy had the right to nominate a candidate (see Linderski, HSCP, 76 (1972) 192, 197-8 esp. n.66). It cannot therefore be supposed that the balance of orders was maintained by allowing only plebeian members of the college to nominate candidates for plebeian *decuriae* and only patricians to nominate successors to patricians. In fact, patricians demonstrably nominated successors to plebeians and undoubtedly the reverse was true. Thus in 104 the patrician M.Aemilius Scaurus nominated an unknown individual to succeed the plebeian Cn.Domitius Ahenobarbus thereby incurring the wrath of the younger Cn.Ahenobarbus who considered Scaurus should have nominated him to succeed his father (see Asc., 21 C and Suet., Nero II.1). Since this system was operative in the pontifical and augural colleges prior to the *Lex Domitia* it must have been a provision of the *Lex Ogulnia* and presumably the *Lex Licinia Sextia de decemviris sacrorum* made a similar stipulation.

[87] Apart from the supreme pontificate, which became elective in the Third Century, the major colleges resisted the introduction of popular election until 104 (see MRR.I.469-70). And even after the *Leges*

something more profound. In the same way that concerns regarding the *auspicia publica* prevented the election of all-plebeian consular colleges until 172 despite the legal entitlements of the plebs under *Leges Licinia Sextia* and *Genucia*, religious considerations might have kept the plebeians from exploiting their putative legal advantage in the priestly colleges. If so, whereas the concerns relating to the election of all-plebeian consular colleges were overcome in 172, those relating to the priestly colleges were apparently never dispelled since the patriciate retained its share of the major colleges throughout the Republic.

If, on the other hand, the *Lex Licinia Sextia de decemviris sacrorum* and the *Lex Ogulnia* did reserve places for the patriciate it is significant that the plebeians never challenged the law when they denied the patriciate such assurances in political office.

Whether interordinal succession had always been legally possible, or the balance of the orders was enshrined in law and interordinal succession was only possible after Sulla's expansion of the colleges, the fact that a balance of the orders persisted into the last years of the Republic is illuminating. One cannot but suspect that the success of the patriciate in maintaining its hold on the major priestly colleges reflects a perception that the patriciate continued to have a unique role to play in the state religion.

Domitia and *Labiena* it was only permitted in a circumscribed form (i.e. with the colleges controlling nominations and only seventeen of the thirty-five tribes participating) considered compatible with religious sensibilities (see Cic., De leg.ag., II.18-19).

CONCLUSION

With the benefit of hindsight the history of the patriciate during the Republic may seem a simple story of the inevitable decline of the 'primeval aristocracy of Rome.' The truth is of course more complex. To see the long, drawn out process by which the plebeians gained greater equality with the patriciate as inevitable is to trivialize the intensity of the struggle and to underestimate the tenacity of the patriciate.[1] Though the patriciate was compelled to concede its monopoly of power in the early Republic, it did not tamely, or rapidly surrender its remaining prerogatives. Indeed, some of the most important plebeian advances occurred surprisingly late. It is well to remember that as late as the year 215 the advent of all-plebeian consular colleges was a far from inevitable prospect.

It is manifestly true that the role of the patriciate diminished during the later Republic.

At the outbreak of the Hannibalic War the division of political responsibility between the orders that had been established in the Fourth Century remained intact and the patriciate continued to enjoy a level of representation in high political office out of all proportion to their numbers. Though all-plebeian consular colleges had been permissible in law since the Fourth Century the belief that the election of two plebeian consuls threatened the continuity of the *auspicia publica* effectively guaranteed the patriciate one consulship *per annum*. Similarly, despite the fact that the *Lex Publilia de censore plebeio creando* specifically allowed for all-plebeian censorial colleges the patriciate had not relaxed its grip on the censorship. Further, while there was no fixed division of places between the orders in the praetorship, more often than not in the years 218-198 patricians secured half the available praetorian places. In addition, the system of alternation between the orders in the curule aedileship persisted, guaranteeing the patriciate a fixed share equal with the plebeians. And the patriciate continued to have a leading voice in the direction of senatorial policy through their monopoly of the post of *princeps senatus*. The patriciate also still exercised a disproportionate influence in the state religion, occupying half the *decuriae* in the decemviral college and four of the nine *decuriae* in the pontifical and augural colleges.

By the outbreak of the Second Civil War the situation of the patriciate had changed markedly. The Second Century witnessed significant plebeian encroachment on the prerogatives of the patriciate and by the close of the Century the privileged position of the patriciate had been substantially eroded. The elections of 172 proved that the election of two plebeian consuls was no longer displeasing to the gods and the plebeians thereby gained unrestricted access to the consulate. The loss of the *de facto* patrician monopoly on one consulate *per annum* in turn inevitably weakened the patrician hold on the censorship. And though the exact date of the change is beyond ascertainment, it is probable that alternation between the orders in the curule aedileship ceased in the latter half of the Second Century, most likely in the 140's, making it increasingly difficult for patricians to obtain an office which was an important stepping stone to the praetorship and ultimately the consulate. Thus in a little over a generation the patriciate had gone from the secure

[1] Livy's account was coloured to some extent by this perspective. He portrays the patrician opposition to the *Lex Ogulnia* as merely perfunctory (X.6.11, 8.11).

enjoyment of one consulship *per annum*, one censorship *per quinqennium* and two curule aedileships every alternate year to a situation where the plebeians could sue for all the highest offices every year.

There were further developments in the First Century. At some point in the years 76-71, possibly in 75, the influence of the *princeps senatus* was undermined when the *princeps* was deprived of the right of priority in senatorial debate, and the institution probably lapsed altogether in the late 60's. Finally, in 74/3 occurred the first recorded instance of interordinal succession in the major priestly colleges - an innovation which might have jeopardized the balance of the orders in the colleges. In short, the Second and First Centuries were crucial periods in the history of the patriciate and patricians born in the late Republic had to accept that many of the privileges which had been taken for granted by their ancestors had been swept away for good.

Yet in spite of the inroads of the plebeians the patriciate was never reduced to a marginal and impuissant sacerdotal caste. The patriciate continued to be disproportionately represented in political and religious office in the later Republic. In fact, it has rightly been observed that the patriciate "retained a prestige in inverse proportion to their shrinking numbers."[2] Following the election of the first all-plebeian consular college in 172 all-plebeian consular colleges were elected only sporadically until the 130's. And though the number of all-plebeian consulships increased dramatically from the 130's, the patriciate staged a notable recovery in the First Century - with mixed colleges predominating in the 90's, 80's and 50's.[3] Further, owing to the initial infrequency of all-plebeian consular colleges the first all-plebeian censorship did not eventuate until 131. While more than half (9 of 16) of the censorial colleges between 125 and 50 were mixed colleges, despite the increase in all-plebeian consular colleges from the 130's. Equally, the potential threat to the patrician monopoly of the post of *princeps senatus* posed by the decline in the number of patrician *censorii* was averted by the appointment of patrician consulars in 125, 115, and 70. The patriciate also showed a remarkable tenacity in the major priestly colleges. Irrespective of the advent of interordinal succession and Sulla's expansion of the major priestly colleges a balance of the orders persisted in the colleges until the end of the Republic. In 49, it seems, the patriciate continued to occupy approximately half the *decuriae* in the major priestly colleges.

Furthermore, throughout the Republic the patriciate maintained an identity and role distinct from the plebeians. In the Fifth and Fourth Centuries the patriciate was forced to yield its monopoly of the *auspicia publica,* but the distinctions between the orders in respect of the auspices were never entirely eradicated. It was in virtue of their special affinity with the *auspicia publica* that the patriciate maintained a *de facto* monopoly of one consulship *per annum* until 172, regardless of the legal entitlement of the plebs to seek both consular places. Moreover, the "auspical halo" of the patriciate was recognizable until the last years of the Republic in the vestigial forms of the *interregnum* and *auctoritas patrum*.[4] In the late Republic it became customary for the resort to an *interregnum* to be

[2] Badian, Durham University Journal, 56 (1963-4) 142.

[3] As Linderski, Staat, 43 remarked: "even after 172 patricians appear in the *fasti* more frequently than would be warranted by their political stature, and far in excess of their numbers." See also the comments of Syme, RR, 10, Dialoghi di Archaeologia, 4-5 (1970-1) 410-411; Salmon, REL, 47 bis (1969) 322f, Essays on Roman Culture, Toronto, (1976) 9-10.

[4] The apt phrase "auspical halo" is borrowed from Linderski, Staat, 43.

prefaced by a *senatus consultum*, but it remained the case that only patrician senators might serve as *interreges* and perform the *renovatio auspiciorum* necessary to restore the continuity of *auspicium imperiumque* and reanimate the Republic.[5] As a consequence it was acknowledged that the patriciate remained indispensable to the continuity of the Roman state.[6] In default of patrician senators the *auspicia publica* - the cornerstone of the Republic - would perish. Likewise, the *auctoritas patrum* remained an exclusive prerogative of the patrician members of the senate. And though the role of the *auctoritas patrum* in the electoral and legislative process was much restricted in the later Republic, elections and legislation carried through in the assemblies of the whole people still required the imprimatur of the patrician senators.

In addition, in defiance of historical trends the patriciate continued to monopolize the post of *princeps senatus*. From the Fifth and Fourth Centuries plebeian statesmen had governed the *res publica* in partnership with the patriciate. And at least since the later Third Century rank and seniority determined the order of precedence in all magisterial grades in senatorial debate and on the *album senatorium*. Yet even in the First Century only a patrician could be *princeps senatus*.

The evidence also points to the fact that the patriciate was still considered to have an essential part to play in the state religion. It was not possible to offer a definitive reconstruction of the provisions of the *Lex Licinia Sextia de decemviris sacrorum*, the *Lex Ogulnia* and the *Lex Cornelia de sacerdotiis* relating to the practice of succession in the major priestly colleges. However, it seems likely the perception of a peculiarly patrician role in the state religion partly explains the dogged retention of a balance of the orders in the major priestly colleges.

That inference is bolstered by additional evidence. Throughout the period 218-49 the patriciate retained exclusive title to a number of important priesthoods. In 209 the first plebeian was elected *curio maximus,* but the *rex sacrorum*, the three *flamines maiores*, and the college of *salii* remained sacerdotal monopolies of patriciate. And there are indications of the continuing importance of the priestly prerogatives of the patriciate.[7] Into the late Republic patrician families of the highest calibre, like the Cornelii Scipiones and Lentuli, the Postumii Albini, and Valerii Flacci, chose to remain eligible for service as *flamines* and *rex* by persisting with marriage *per confarreationem* long after confarreate marriage had become rare and unpopular.[8] That they did so proves these priesthoods retained high status. By contrast the plebeian *flamines minores* underwent a drastic decline in standing.[9]

[5] It was shown, contra Mommsen, that the patrician status of Metellus Scipio, *interrex* in 53, was unaffected by his testamentary 'adoption.'

[6] See Cicero, De Domo 38; Dio, LII.42.5-6.

[7] A chapter containing a detailed examination of the role of the sacerdotal monopolies of the patriciate in the state cult of the later Republic had to be withheld due to the word limit.

[8] This was noted by J.H.Vanggaard, The Flamen: A Study in the History and Sociology of Roman Religion, (1988) 70f, 79ff.

[9] This is evident from the increasing obscurity of the ritual, festivals and even the deities with which they were associated (see the comments of Varro, De Ling.Lat., V.84, VI.19, VII.45 on the obscurity of the *flamines minores*; and Wissowa, RKR, 432, 449 n.1; Vanggaard, op cit., 28). And from the status of the incumbents of these priesthoods. In the mid-Fourth Century B.C. the minor flaminates attracted representatives of the leading plebeian noble families, but by the First Century A.D. they could only attract representatives of obscure equestrian families (see Klose, Römische Priesterfasten, Diss., (1910) 30-1 and

Further, though the *flamines maiores* and the *rex* perpetuated some rather arcane and obscure rituals in the late Republic,[10] they also continued to play an important role in more mainstream cult. The *flamen Dialis* participated in the *Lupercalia* and the *Vinalia*, the *flamen Martialis* conducted the sacrifice of the October horse, and was involved in the *Meditrinalia*, the *rex* was present at the *Parilia* and the *Consualia*, and the *flamen Quirinalis* featured in the *Consualia*, the *Larentalia* and *Robigalia*.[11] And the *rex* and *flamines maiores* also had a say in the rulings of the pontifical college.[12] Finally, Cicero considered the *flamines* made a valuable contribution.[13] The *salii* also retained a prominent place in the religious calendar in the Second and First Centuries. The festive duties of college extended over a considerable period and were celebrated at great expense.[14] Indeed, Polybius, writing in the later half of the Second Century, reckoned the *salii* one of the three colleges that performed the most important sacrifices.[15]

Finally, the *Lex Cassia* of 45 and the *Lex Saenia* of 29 are evidence that even after the fall of the Republic it was accepted that the patriciate could not be allowed to die out.[16] Augustus, himself adlected into the ranks of the patriciate in his youth by the Dictator Caesar, was especially solicitous of the welfare of the order. Having reinforced patrician numbers by generous adlections from a heterogeneous mix of old plebeian noble families, lesser senatorial families, and loyal parvenues, he proceeded to restore the fortunes of a number of venerable, but depressed patrician houses. And the patriciate retained a prominent place in the regime of Augustus and of his successors.[17]

In sum, the dire prediction of Livy's patricians was never realized. In the late Republic the patriciate was still recognized as having a unique role in the Roman state. And despite some significant advances by the plebs the patriciate continued to wield an influence out of all proportion to their numbers.

Vanggaard, op cit., 73). Whereas throughout the same period the major flaminates continued to be filled by representatives of leading patrician families (see Lewis, op cit., 30-1, 33, 36, 74-6; Vanggaard, op cit., 70-3).

[10] Note for instance, the procession to the shrines known as *Argei*, the *Regifugium*, and the *sacra Nonalia in arce*.

[11] See Marquardt, StV^2.III.333-6.

[12] See Cic., De Domo 127, 135, De Har.Resp.12; and Marquardt, StV^2.III.326-7.

[13] See De Leg., II.20, 29.

[14] See Marquardt, StV^2.III.431-7.

[15] Polybius, XXI.13.10-11.

[16] According to Dio, LII.42.5-6 the patriciate continued to be regarded as 'indispensable for the perpetuation of traditional institutions.'

[17] On the privileges granted to patricians in the *cursus honorum* in the early Principate see Groag, Archäologisch-Epigraphische Mitteilungen aus Osterreich-Ungarn, 19 (1896) 145-6; Brassloff, Hermes, 39 (1904) 618-29; Pistor, Prinzeps und Patriziat, Diss., (1965); J.Morris, Listy Filologicke, 87 (1964) 316-37 and 88 (1965) 22-31; B.Jones, Athenaeum, 62 (1984) 635-40; and R.J.A.Talbert, The Senate of Imperial Rome, (1984) 13, 14, 17, 18, 20, 22, 313. The priestly duties of the patriciate were also expanded - the *flamines divorum* were added, and patricians were prominent in the revived sodalities. Plus patricians were disproportionately represented in the major priestly colleges (see Lewis, The Official Priests of Rome under the Julio-Claudians, (1955) and Pistor, Ibid.).

Appendix I

TESTAMENTARY ADOPTION AND THE STATUS OF Q.CAECILIUS METELLUS PIUS SCIPIO[1]

Since the status of Scipio subsequent to the year 63 is crucial in a number of contexts, some discussion of the institution of testamentary adoption is unavoidable. In 64/3 the patrician P.Cornelius Scipio Nasica was 'adopted' in the testament of the plebeian Q.Caecilius Metellus Pius.[2] Did Scipio become a plebeian as a result of the transaction, or did he retain his natal patrician status ? The question goes to the heart of the debate concerning testamentary adoption.

Basically three interpretations of testamentary adoption have been advanced by modern scholars:

1. Mommsen founded his interpretation on Caesar's testamentary adoption of C.Octavius.[3] Mommsen was of the opinion that under the Republic testamentary adoption was a modified form of *adrogatio* validated posthumously by means of a *lex curiata* and entailing all the consequences of *adrogatio inter vivos*. Hence when the patrician P.Cornelius P.f. Scipio Nasica was adopted in the testament of the plebeian Q.Caecilius Metellus Pius, he became the plebeian Q.Caecilius Q.f. Metellus Pius Scipio, and when C.Octavius C.f Scaptia was adopted in the testament of the Dictator Caesar, he became the patrician C.Iulius C.f. Fabia Caesar.[4] Further, Mommsen held that the institution of testamentary adoption underwent a transformation in the early Principate. He argued testamentary adoption degenerated to a point where it no longer involved a change of agnatic status for the adoptee - it became merely a *condicio nominis ferendi* whereby the heir agreed to bear the testator's name as a condition of accepting the inheritance.[5]

2. Mommsen's thesis has not lacked critics. His opponents maintain the term 'testamentary adoption' is a misnomer, as the institution never constituted a formal legal adoption, but was merely a *condicio nominis ferendi*. They argue the procedure followed by Octavian, and the claims he made in virtue of his testamentary adoption, were anomalous.[6]

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[1] The work on the status of Metellus Scipio had already been completed before the welcome and complementary contributions of Konrad and Linderski, *Imperium Sine Fine*, (1996) 124f, 148f became known to the author.

[2] Dio, XL.51.3.

[3] See StR.III.39-40; Gesammelte Schriften, (1906) IV.366-468 (= Historische Schriften, I.366-468).

[4] A plebeian by birth Octavius became a patrician by adlection in 45 prior to his 'adoption.'

[5] Mommsen was followed by M.-H.Prévost, Les Adoptions politiques à Rome sous la République et le Principat, Paris, (1949) 30ff, Revue internationale des droits de l'Antiquité, 5 (1950) 361ff; G.Alfs, Adoptionen in der Zeit der römischen Republik bis auf die des Caesar Octavianus, Diss., Köln, (1950); M.Lemosse, Studi in memoria di Emilio Albertario, Milan, (1953) I.369ff (with modifications); G.Wesenberg, ZRG, 71 (1954) 424-9; H.Volkmann, Gnomon, 26 (1954) 42-5; B.D'Orgeval, Studi in onore di Pietro de Francisci, Milan, (1956) II.33ff; R.Düll, ZRG, 96 (1976) 3-18; O.Salomies, Adoptive and Polyonymous Nomenclature in the Roman Empire, Commentationes Humanorum Literarum, 97 (1992) 5-14. See also (without discussion) Münzer, Hermes, 71 (1936) 223, RAA, 316; Taylor, AJP, 63 (1942) 395; Broughton, MRR .II.229; Magdelain, Hommages à J.Bayet, (1964) 427f; R.A.Billows, AJAH, 7 (1982) 57; Badian, Chiron, 20 (1990) 407-8; F.X.Ryan, Athenaeum, 82 (1994) 517.

[6] This had been the conclusion of Richter, Exercitatio juris civilis: De condicione nominis ferendi, Leipzig, (1780). Mommsen's opponents include: Bouché-Leclerque, Manuel des Institutions romaines, (1886) 387; N.H.Michel, Le Droit de Cité Romaine, Paris, (1885) 240ff; O.Karlowa, Römische Rechtsgeschichte, Leipzig, (1901) II.246ff; P.Bonfante, Corso di Diritto Romano, Rome, (1925) I.19ff; H.Siber, Abhandlungen der Philologisch-Historischen Klasse der Sächsischen Akademie der Wissenschaften, 42.3 (1933) 1-53 see esp.26-37, Abhandlungen der Philologisch-Historischen Klasse der Sächsischen Akademie der Wissenschaften, 44.2 (1940) 7-107 see esp.79-83; W.Schmitthenner, Oktavian und das Testament Cäsars: Eine Untersuchung zu den politischen Anfängen des Augustus, (1952), second edition (1973); G.E.F.Chilver, JRS, 44 (1954) 127-8; E.J.Weinrib, HSCP, 72 (1967) 247-278; Syme, AA, 244, Epigrafia e Ordine Senatorio, 1 (1982) 398,

3. A.Lefas favoured an intermediate stance.[7] He argued even under the Republic testamentary adoption could, but did not necessarily, entail all the consequences of adoption *inter vivos*. Lefas believed testamentary adoption involving the all the consequences of adoption *inter vivos,* and testamentary adoption in the minimalist form of the *condicio nominis ferendi,* coexisted.[8]

The present circumstances will not permit a full review of all the intricacies of the debate. It will suffice to recount the most serious challenges to Mommsen's thesis which render his position untenable.

(a) Though there is reference to the *condicio nominis ferendi* in the Digest, nowhere in the entire corpus of juristic literature is testamentary adoption or posthumous adrogation adverted to.[9] The silence is especially ominous in view of the jurists' tendency to elaborate any, and every, possible scenario resulting from the laws of succession. Such a situation seems inexplicable if testamentary adoption amounted to anything more than a *condicio nominis ferendi*. Mommsen attempted to evade this difficulty by arguing the jurists omitted adoption by testament because posthumous adrogation had fallen into desuetude in the early Principate.[10] But this will not do, for the jurists faithfully recorded other procedures long since obsolete.[11] The silence is even harder to account for if, as Mommsen argued, testamentary adoption was gradually transformed from posthumous adrogation into a *condicio nominis ferendi* - this development would be expected to leave some traces in the record.[12] The converse argument that testamentary adoption is not mentioned in the juristic sources because it was not considered to be "in any essential way different from adoption inter vivos, and hence did not require separate treatment" is patently spurious.[13] Testamentary adrogation might entail all manner of complications that could not arise from *adrogatio inter vivos*.[14]

(b) That testamentary adoption could be conceived of as equivalent to posthumous adrogation is refuted by the express testimony of the jurists. Despite the fact that the law relating to adoption was relaxed in a number of ways during the empire, it remained the case even in the late empire that neither *adoptio* nor *adrogatio* was possible except in the presence of the *adoptans/adrogans*. Ulpian, Digest, I.7.25 explicitly states: "neque adoptare neque adrogare quis absens nec per alium eiusmodi sollemnitatem peragere potest." *Adrogatio* in absentia or by proxy was a contingency which Roman law simply did not cater for.[15]

(c) In some instances individuals were 'adopted' by testament who could not in fact have been

404, ZPE, 61 (1985) 191, Chiron, 15 (1985) 43; E.Champlin, Final Judgements, (1991) 144-6; and Linderski, Staat, 39 n.15, *Imperium Sine Fine*, (1996) 148-154; Konrad, *Imperium Sine Fine*, (1996) 124ff; C.Kunst, Klio, 78 (1996) 87-104. Shackleton Bailey, Two Studies in Roman Nomenclature, (1976) 92ff did not commit himself one way or the other.

[7] Nouvelle Revue Historique de Droit français et etranger, 21 (1897) 921ff; cf. M.Kaser, Das Römische Privatrecht[2], Munich, (1971) I.349.

[8] A similar compromise is advocated by M.J.Slagter, Transitio ad Plebem: The Exchange of Patrician for Plebeian Status, Diss., Bryn Mawr College (1993) 273-7.

[9] Digest, XXXVI.1.65.10, XXXIX.5.19.6.

[10] See Ges.Schr., IV.403f.

[11] See Siber, Abhandlungen, 42.3 (1933) 27; Weinrib, HSCP, 72 (1967) 255f; Schmitthenner, Oktavian und das Testament Cäsars, (1952) 40f.

[12] So rightly Karlowa, Römische Rechtsgeschichte, (1901) II.247 and Weinrib, HSCP, 72 (1967) 256.

[13] So Billows, AJAH, 7 (1982) 57.

[14] See Weinrib, HSCP, 72 (1967) 256.

[15] Siber, Abhandlungen, 44.2 (1940) 83; Weinrib, HSCP, 72 (1967) 256f. The *rogatio* put to the *comitia curiata* also presupposes the *adrogans* was among the living (see Gell., NA., V.19.8-9; Konrad, *Imperium Sine Fine*, (1996) 125 n.106).

adopted in law. In law women could not adopt.[16] Late in the year 50 Cicero's son-in-law P.Cornelius Dolabella was bequeathed one third of the estate of a certain Livia on the condition that he take her name.[17] Decades later Ser.Sulpicius Galba, the future emperor, was 'adopted' by his step-mother Livia Ocellina.[18] For a while Galba styled himself L.Livius Ocella Sulpicius Galba though he later reverted to his natal nomenclature. Mommsen considered both to be instances of testamentary adoption.[19] If so, they provide further evidence that testamentary adoption was in truth no such thing, as in both cases the testator was a woman and women were legally incapable of adoption. Mommsen's attempts to circumvent this impediment not only fail to convince but create further difficulties.[20] Cicero betrays doubts even as to the propriety of the suggestion that a *nobilis adulescens* should change his name under a woman's will - that he might submit himself to adoption by a woman would have been an outrageous notion not to be countenanced. However, if testamentary adoption was no more than a *condicio nominis ferendi*, and it will be noted that Cicero speaks only of a change of name, neither case presents difficulties.

Conversely, in classical law women could not be adrogated.[21] Yet Livia was 'adopted' in the testament of Augustus.[22] And early in the Second Century A.D. the aged Cn.Domitius Tullus (cos.suff. II 98) 'adopted' his niece in his will.[23] For Mommsen this presented no problem, since according to his thesis, by the early Principate testamentary adoption was no longer equivalent to posthumous adrogation - it had degenerated into a mere *condicio nominis ferendi*. However, as we have seen this putative evolution of the institution of testamentary adoption is incredible, and the cases of Livia and Domitia Lucilla are further evidence that testamentary adoption was never equivalent to posthumous adrogation. As Suetonius, who had cited the will of Augustus, affirms Livia was made heir to one third of Augustus' estate and instructed to bear his name.[24] Tiberius and the three sons of Germanicus received similar instructions.[25] Clearly, all three cases only involved a *condicio nominis ferendi*. There can have been no point in adopting Tiberius a second time since he had been adopted by Augustus a decade earlier.[26] And the sons of Germanicus were patently not adopted, the oldest was only about seven years old, and they remained in the *potestas* of their father Germanicus.

Further, when still only an infant Ti.Claudius Nero, the later emperor, was 'adopted' in the testament

[16] Gaius, Inst., I.104 states: "feminae vero nullo modo adoptare possunt." And Ulpian, 8.8a declared: "feminae vero neutro modo possunt adoptare." See also Michel, Le Droit de Cité Romaine, (1885) 253-5, 273-6; Karlowa, Römische Rechtsgeschichte, (1901) II.248-9; Siber, Abhandlungen, 42.3 (1933) 27-8; Weinrib, HSCP, 72 (1967) 258f; Kaser, Das Römische Privatrecht[2], (1971) I.66, 348. In the late empire exceptions might be granted by imperial rescript see J.F.Gardner, Women in Roman Law and Society, Routledge, (1990) 144.

[17] Cic., Ad Att., VII.8.8.

[18] Suet., Galba 4. See Salomies, Adoptive and Polyonymous Nomenclature in the Roman Empire, (1992) 15, 32-3.

[19] Ges.Schr., IV.399.

[20] Ges.Schr., IV.399-400 on which see Weinrib, HSCP, 72 (1967) 258-9.

[21] See Gaius, Inst., I.101; Gellius, NA.V.19.10.

[22] Tac., Ann., I.8, 14, V.1.

[23] Pliny, Ep., VIII.18.2-7. On Domitia Lucilla see Salomies, Adoptive and Polyonymous Nomenclature in the Roman Empire, (1992) 20 n.1, 38, passim.

[24] Aug.CI.2: "ferre nomen suum iussit."; cf. Dio, LVI.46.1.

[25] Suet., Aug.CI.2, Tib.XXVI.2; Dio, LVII.2.1-2, 18.11.

[26] As Schmitthenner, Oktavian und das Testament Cäsars, (1952) 48.

of the senator M.Gallius.[27] The inheritance was accepted on Tiberius' behalf, but he soon dropped the name.[28] However, it is clear Tiberius was not in fact adopted in any legal shape or form. Tiberius cannot have undergone *adrogatio,* since in addition to the impediment imposed by the absence of the *adrogans*, Tiberius was at the time still *alieni iuris* and *adrogatio* required that the adoptee be *sui iuris*.[29] Nor could this obstacle have been surmounted by the expedient of emancipation, for given Tiberius' age, on emancipation he would have become an *impubes* and adrogation of persons in that category was prohibited until the reign of Antoninus Pius.[30] Similarly, *adoptio* may be ruled out as the *adoptans* was required in person to claim the adoptee before a magistrate in the action known as *cessio in iure*.[31] The same argument applies to the testamentary adoption of the younger son of P.Scipio Nasica (351) praetor? 93. Scipio's younger son will have been born probably not long after his elder brother, P.Scipio Nasica (later Metellus Scipio), that is, sometime after the year 95.[32] Yet the younger Scipio was adopted in the testament of his maternal grandfather L.Licinius Crassus (cos.95) who died in September 91.[33] Hence the younger Scipio was at most a few years old at the time of his adoption[34] and was still *alieni iuris* as his father died not long after the adoption.[35]

What is more, there is additional previously unnoticed evidence that in spite of his 'adoption' the young Tiberius never left his natal father's *potestas* - an impossible situation if the 'adoption' was an adoption in any legal sense of the word. If the adoption of Tiberius by M.Gallius had been equivalent to a formal adoption, Gallius would have become in law Tiberius' father, and it would have been incumbent upon him to make provision for the appointment of a *tutor* for Tiberius in his will. If Gallius neglected to do so, a *tutor legitimus* would have been appointed from among Gallius' nearest *agnates*, or failing that, the praetor urbanus and tribunes would have assigned a *tutor* to Tiberius.[36] Now Dio states that Ti.Nero senior in his will appointed Octavian *tutor* to Tiberius and to his brother Drusus.[37] By what right did he do so ? Clearly, not in the capacity of *tutor*, for even if it be supposed Ti.Nero had been appointed *tutor testamentarius* of Tiberius in the will of Gallius, or by the praetor urbanus, no *tutor* was empowered to nominate his successor(s) as *tutor*.[38] Only a *paterfamilias* was empowered to appoint a *tutor testamentarius,* and only for *sui heredes* who were not

[27] Suet., Tib., VI.3. Tiberius was born on the 16th of November 42 and was 'adopted' in 39 (see C.J.Simpson, LCM, 18 (1993) 154-5).

[28] Tiberius could safely repudiate the name whilst retaining the inheritance see Weinrib, HSCP, 72 (1967) 257f; Digest, XXXVI.1.65.10.

[29] Gaius., Inst., I.99; Gell., NA.V.19.

[30] Gell., NA.V.19.10; Gaius, Inst., I.102; Ulpian, 8.5. Mommsen, Ges.Schr., IV.402-3 n.2 acknowledged the validity of this argument in relation to the adoption of the younger Pliny.

[31] See Kaser, Das Römische Privatrecht[2], (1971) I.65f; 347f; Weinrib, HSCP, 72 (1967) 256.

[32] On the date of Metellus Scipio's birth see Sumner, Orators, 112-3.

[33] Cic., Brutus 212. This is the earliest attested case of testamentary adoption.

[34] Münzer, RE.XIII.1.348, RAA, 310; Schmitthenner, Oktavian und das Testament Cäsars, (1952) 44-5.

[35] See Syme, AA, 21, 244.

[36] Ti.Nero senior could not have functioned in the capacity of *tutor legitimus* as he would no longer have been an agnate of his natural son, the ties of agnation being severred by adoption (see Gaius, Inst., I.158-163. In cases of *adoptio* the *parens manumissor* could serve as *tutor legitimus* see Gaius, Inst., I.166).

[37] Dio, XLVIII.44.5.

[38] No *tutor* whether *testamentarius*, *legitimus*, or the appointee of the praetor urbanus could transfer the *tutela* see A.Watson, The Law of Persons in the Later Roman Republic, Oxford, (1967) 117, 122.

in another's *potestas*.[39] That it was within the power of Ti.Nero senior to appoint a *tutor* for both his sons establishes that the young Tiberius, like his brother Drusus, remained in his *potestas*.

All these difficulties disappear if the young Tiberius was merely instituted as heir by M.Gallius on the condition that he bore Gallius' name. As Weinrib noted a ready parallel exists. In the so-called *testamentum Dasumii* a son who remained in his father's *potestas* was instituted as the heir of 'Dasumius' on the condition that the father promised the son would take the testator's name.[40] The facts suggest that Ti.Nero senior made a similar promise on behalf of the young Tiberius.

(d) That testamentary adoption may be equated to posthumous adrogation is also thrown into doubt by a vital piece of information unknown to Mommsen. A *tessera nummularia* dated to the year 53 discloses that Metellus Scipio served as *interrex* in June of that year.[41] The scholarly response to this discovery can only be characterized as methodologically curious. Under Mommsen's spell, none questioned the notion that testamentary adoption produced all the effects of a full plenary adoption. Instead two schools of thought emerged. In spite of unequivocal statements in the sources that *interreges* had to be patrician,[42] the first school declared that Metellus Scipio was the one and only known plebeian *interrex,* a situation necessitated, so the argument goes, by the shortage of qualified patricians in 53.[43] The idea quickly gained currency and obtained extra momentum from the widely credited, but equally spurious, argument that Metellus Scipio was tribune of the plebs.[44] Others preferred to suggest Metellus Scipio could function alternatively as a patrician and a plebeian.[45] Even those who subscribed to the latter hypothesis were forced to admit it was "self-contradictory" and "inexplicable."[46] More to the point, it is totally incredible and must be repudiated, as indeed it later was by its original author.[47] It is only lately that reason has found a voice. The obvious and irrefutable conclusion is that Metellus Scipio's service as *interrex* signifies not an unparalleled decision to throw that patrician preserve open to the plebs, nor the acknowledgement that Scipio occupied some anomalous hybrid status between patrician and plebeian, but that he retained his patrician status after his 'adoption.'[48] That conclusion accords with the evidence cited

[39] See Gaius, Inst., I.144-6; Digest, XXVI.2.1.1, 2.1.2, 2.10.2, L.17.73.1; Ulpian, 11.14, 15; Watson, Ibid., 114. In the later Empire a father might appoint a *tutor testamentarius* for an emancipated son and though this *tutela testamentaria imperfecta* was technically invalid it could be confirmed by the praetor. There is no evidence that this provision existed during the Republic.

[40] Weinrib, HSCP, 72 (1967) 257f.

[41] CIL.I^2.2.2663 c.

[42] See Cic., Domo 38; Zonaras, VII.19.

[43] So Münzer, Hermes, 71 (1936) 223; Broughton, MRR.II.229; Magdelain, Hommages à J.Bayet, (1964) 427f; Shackleton, Two Studies, 98-9; A.Guarino, Index, 3 (1972) 295; Badian, Chiron, 20 (1990) 407-8

[44] On which see Appendix II.

[45] See Syme, JRS, 53 (1963) 56 n.14; followed by Weinrib, HSCP, 72 (1967) 260 n.53.

[46] So Weinrib, HSCP, 72 (1967) 260 n.53.

[47] Syme, AA, 244.

[48] As per Syme, AA, 244, Epigrafia e Ordine Senatorio, 1 (1982) 398, 404, ZPE, 61 (1985) 191, Chiron, 15 (1985) 43; and Linderski, Staat, 39 n.15, *Imperium Sine Fine*, (1996) 148f; and Konrad, *Imperium Sine Fine*, (1996) 124f. However, Syme's argument AA, 53 that Metellus Scipio retained his natal tribe after the 'adoption' cannot be used to support this conclusion for two reasons. Firstly, Scipio Aemilianus' complaint as censor (Gell., V.19.15) indicates this was possible even in cases of *adoptio* and/or *adrogatio inter vivos* by the second half of the Second Century. Secondly, we do not know the tribe of the Scipiones Nasicae and although some of the Metelli were enrolled in Aniensis (as emerges from the *s.c. de agro Pergameno* - the identity of the Metellus concerned depends on whether the *s.c.* is dated in 129 or 101 see Willems, Le Sénat, I.700, 707; Taylor, Voting Districts, 172, 175, 198; Mattingly, AJP, 93 (1972) 423), Fabia may nevertheless have been the tribe of Metellus Pius (Ibid., 198, 282) as members of the same family were sometimes

above which shows that testamentary adoption did not alter the status of Crassus Scipio, or the young Ti.Nero. And if P.Dolabella was adopted in the testament of Livia, this is further evidence that testamentary adoption did not alter the adoptee's status, for Livia was a plebeian; yet Dolabella retained his patrician status until his adoption by a plebeian in 48. As Linderski concluded, the testamentary adoption of Scipio was a private agreement, "as far as the families of the Scipiones and the Metelli were concerned, Scipio became an heir to Pius, and a member of Pius' family; in sacral law, as he did not perform the *detestatio sacrorum*, he remained a Cornelius who, however, also took care of the ancestral *sacra* of the Caecilii; and in public law he was and he continued to be a patrician."[49]

(e) Nomenclature is a treacherous guide. The fact that P.Cornelius P.f. Scipio Nasica after his testamentary adoption by Q.Caecilius Metellus Pius is referred to in two *senatus consulta* and an inscription from Pergamon as Q.Caecilius Q.f. Metellus Pius Scipio[50] and that Cicero addressed T.Pomponius Atticus after his testamentary adoption by his uncle Q.Caecilius as Q.Caecilius Q.f. Pomponianus Atticus[51] is sometimes taken as proof that testamentary adoption was equivalent to a plenary adoption. But in other formal contexts subsequent to their 'adoptions' Cicero could still refer to Scipio as P.Scipio and Atticus as T.Pomponius.[52] Moreover, as Linderski pointed out, after his 'adoption' Scipio's daughter continued to be called Cornelia not Caecilia.[53] Whereas, if Scipio's 'adoption' was a genuine *adrogatio,* all those in his *potestas* at the time of the adoption should have taken on the new name of the *adrogatus*. Other significant onomastic indicators occur in the cases of testamentary adoption in the Imperial Dynasty. In the *fasti triumphales* for 40 and 36 B.C. Octavian was registered as 'Imp.Caesar divi f. C.f.' - i.e. with both his 'adoptive' and natal filiation whereas a genuine *adrogatio* should have extinguished all trace of the latter.[54] Likewise after her 'adoption' in the testament of Augustus Livia continued more often than not to be equipped with her natural filiation - she is styled 'Drusi f.'.[55] While Tiberius after his 'adoption' by M.Gallius rapidly reverted to his natal nomenclature, including his natural filiation. Up until his adoption by Augustus in A.D. 4, he was registered on official documents as Ti.Claudius Ti.f. Nero.[56]

(f) The 'adoption' of C.Octavius provides further evidence that testamentary adoption did not have the legal consequences of adoption *inter vivos*. Appian states that despite his 'adoption' Octavian did not registered in different tribes (see Taylor, Ibid., 279, 280f, 283f and G.Forni, L'Onomastique Latine, Paris, (1977) 90-1).

[49] Linderski, *Imperium Sine Fine*, (1996) 153-4.

[50] Cic., Ad Fam., VIII.8.5, 6; IGRRP.IV.409 = Tuchelt, Frühe Denkmäler Roms in Kleinasien, Tübingen, (1979) 206.

[51] Cic., Ad Att., III.20.

[52] Thus Cicero, De Domo 123 in his speech before the pontifical and augural colleges in 57 addressed Metellus Scipio as "P.Scipio." The same manner of reference was used in the senate in April 43 (Phil., XIII.29). And apart from the initial letter heralding Atticus' 'adoption', Cicero continued to address Atticus as T.Pomponius (see Shackleton Bailey, Onomasticon to Cicero's Letters, Teubner, (1995) 26-7). See especially Ad Att., VII.7 where Cicero, envisaging being asked his *sententia* in the senate, replies "Adsentior Cn.Pompeio, id est T.Pomponio."

[53] Linderski, *Imperium Sine Fine*, (1996) 150.

[54] See Mommsen, Ges.Schr., IV.401 and Weinrib, HSCP, 72 (1967) 259-60.

[55] See Weinrib, HSCP, 72 (1967) 259.

[56] See CIL.IX.2443 dating c.3 B.C. - A.D. 3 - alongside his brother 'Drusus Claudius Ti.f. Nero'; see also the *fasti Colotiani* for 13 B.C.; Dio, LIV index. After his adoption by Augustus his filiation was adjusted accordingly, he became - 'Augusti f..'

possess any rights in respect of the relatives or freedmen of the Dictator.[57] This would not have been the case if testamentary adoption was equivalent to adoption *inter vivos*. As a consequence of plenary adoption an adopted child enjoyed all the rights of a natural child in the laws of succession. Having entered the *familia* and *gens* of the *adoptans*, the child being in law the son and *heres suus* of the *adoptans*, had claims, in default of other heirs, on the estates of his father's relatives. And the patronal rights of the father in respect of his freedmen devolved upon his adoptive sons on the father's death.[58] Yet even after his testamentary 'adoption' Octavian remained in law an *heres extraneus* of the Dictator and so had no claim in respect of his relatives or freedmen.[59] Octavian only secured those rights following the passage of a *lex curiata*.

(f) Finally, Mommsen's interpretation of the institution of testamentary adoption was founded on the 'adoption' of Octavius, but subsequent scholarship has demonstrated this was a far from reliable paradigm.[60] Schmitthenner's analysis of the accounts of Appian and Dio, the only detailed accounts, revealed they are replete with errors and contradictions which betray the exorbitant and unparalleled nature of the procedure followed by Octavius. Thus Appian registers two adoptions.[61] In 44 on learning the contents of Caesar's will Octavius sailed from Apollonia to Brundisium and there, encouraged by the reception of the soldiers, assumed the name of Caesar.[62] Then proceeding to Rome, Octavius formalized the adoption before the praetor urbanus.[63] The fact that Octavius was *sui iuris* and the praetor urbanus played no role in the ceremony of *adrogatio* did not apparently trouble Appian. Then a year later having seized the consulate, Octavius passed a *lex curiata* and by means of this 'second adoption' ratified the 'first, testamentary adoption.'[64] All this we are assured was strictly in accordance with the law. Dio's account is equally confused. Dio has transformed the *tutores* that Caesar nominated in the event of his producing a son,[65] into *tutores* for Octavius.[66] Dio also thought Octavius only entered Caesar's family subsequent to the passage of the *lex curiata,* yet he was aware that Octavius had already taken Caesar's name and claimed his inheritance in the previous year.[67] But like Appian, Dio insists that the procedure followed was traditional.[68] The accounts of Appian and Dio are scarcely consistent with the notion that the 'adoption' of Octavius was a routine instance of 'posthumous adrogation.' Quite apart from the errors of fact, their repeated insistence on the legality and propriety of the procedure is significant - it surely reflects the 'official version' which sought to minimize the enormity of Octavius' actions. The behaviour of Octavius in 44 is, however, consistent with the acceptance of a *condicio nominis ferendi*. Thus on learning of the contents of the will, he assumed the name of Caesar without ado, as he was entitled to do. Subsequently he

[57] BC.III.94; cf. Dio, XLV.5.3-4. See Mommsen, Ges.Schr., IV.403-4.

[58] It was not until the time of Justinian that adoptive children of the patron were excluded.

[59] See Siber, Abhandlungen, 42.3 (1933) 27f; Schmitthenner, Oktavian und das Testament Cäsars, (1952) 51f, 64, 89f; Chilver, JRS, 44 (1954) 126-7; Weinrib, HSCP, 72 (1967) 260.

[60] See Karlowa, Römische Rechtsgeschichte, (1901) II.247; Siber, Abhandlungen, 42.3 (1933) 28f; Schmitthenner, Oktavian und das Testament Cäsars, (1952) 51f; Chilver, JRS, 44 (1954) 126; Konrad, *Imperium Sine Fine*, (1996) 124f; Kunst, Klio, 78 (1996) 99f.

[61] BC.III.94.

[62] BC.III.11.

[63] BC.III.14.

[64] BC.III.94.

[65] Suet., Iul., LXXXIII.2.

[66] XLIV.35.2.

[67] XLV.5.1, XLVI.47.4-6.

[68] XLVI.47.4-5.

performed the *cretio* before the praetor urbanus by which as an *heres extraneus* he claimed his inheritance. It was only later as consul in a characteristically brazen distortion of the law that he secured a *lex curiata* and claimed thereby to enjoy all the rights consequent upon a genuine adrogation. Schmitthenner persuasively argued that Caesar *in ima cera* merely instituted Octavius as heir with a *condicio nominis ferendi,* but that Octavius by an unprecedented procedure successfully represented this as a fully valid case of *adrogatio*.[69] As Schmitthenner observed, and Konrad has recently reminded us, the architect of the Principate and the author of constitutional monstrosities like the *tribunicia potestas* hardly makes for a suitable model on which to base our understanding of the institution of testamentary adoption.

The accumulated evidence demonstrates that testamentary 'adoption' was not an adoption in any shape or form and produced no change in the agnatic status of the 'adoptee.' Consequently, the patrician status of P.Cornelius Scipio Nasica was unaffected by his testamentary 'adoption' by the plebeian Q.Caecilius Metellus Pius.

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[69] Note Suetonius, Iul.., LXXXIII.2. states that Caesar 'adopted' Octavius "in ima cera." That being the case, if the 'adoption' of Octavius was equivalent to a genuine adoption it would probably have rendered Caesar's will invalid (see Gaius, Inst., II.138; Schmitthenner, Oktavian und das Testament Cäsars, (1952) 41; and Lemosse, op cit., 374).

Appendix II

THE CURULE AND PLEBEIAN AEDILSHIP 217-49

Table I: Known Curule Aediles 217-160.*

Patricians are in Bold Type.

Name	Aedile	Praetor	Consul	Noble
Ap.Claudius Pulcher	217	215	212	+
C.Laetorius	216	210	-	-[1]
Ti.Sempronius Gracchus	216	-	215, 213	+
Q.Fabius Maximus	215	214	213	+
Cn.Fulvius Centumalus	214	213	211	+
P.Sempronius Tuditanus	214	213	204	+
M.Cornelius Cethegus	213	211	204	+
P.Cornelius Scipio Africanus	213	-	205, 194	+
P.Licinius Crassus Dives	212	208	205	+?[2]
L.Veturius	210	-	-	+[3]
P.Licinius Varus	210	208	-	+
L.Cornelius Lentulus Caudinus ?	209	-	-	+[4]
Ser.Sulpicius Galba	209	-	-	+
Q.Caecilius Metellus	208	-	205	+[5]
C.Servilius Geminus	208	206	203	+[5]
Cn.Servilius Caepio	207	205	203	+
Ser.Cornelius Lentulus	207	-	-	+
Cn.Cornelius Lentulus	205	-	201	+
L.Cornelius Lentulus ?	205	-	199	+[4]
C.Livius Salinator	204	202, 191	188	+
M.Servilius Geminus	204	-	202	+
M.Fabius Buteo	203	201	-	+
M.Valerius Falto	203	201	-	+
Q.Fulvius Gillo	202	200	-	+?[6]
L.Licinius Lucullus	202	-	-	-[7]
L.Quinctius Flamininus	201	199	192	+
L.Valerius Flaccus	201	199	195	+
Sex.Aelius Paetus Catus	200	-	198	+
M.Claudius Marcellus	200	198	196	+
C.Cornelius Cethegus	199	-	197	+
C.Valerius Flaccus	199	183	-	+[8]
Q.Minucius Thermus	198	196	193	+
Ti.Sempronius Longus	198	196	194	+
P.Cornelius Scipio Nasica	197	194	191	+
Cn.Manlius Vulso	197	195	189	+
M.Fulvius Nobilior	196	193	189	+
C.Flaminius	196	193	187	+
L.Cornelius Scipio Asiaticus	195	193	190	+
A.Atilius Serranus	194	192, 173	170	+
L.Scribonius Libo	194	192	-	-
M.Aemilius Lepidus	193	191	187, 175	+
L.Aemilius Paullus	193	191	182, 168	+
P.Iunius Brutus	192	190	-	+
M.Tuccius	192	190	-	-
Sp.Postumius Albinus	191?	189	186	+[9]
P.Claudius Pulcher	189	187	184	+
Ser.Sulpicius Galba	189	187	-	+
P.Cornelius Cethegus	187	185	181	+
A.Postumius Albinus	187	185	180	+
Q.Fulvius Flaccus	184	182	179	+
Ti.Sempronius Gracchus	182	180	177, 163	+

Ap.Claudius Centho	179	175	-	+
Cn.Servilius Caepio	179	174	169	+
Cn.Octavius	172?	168	165	-
P.Cornelius Lentulus	169	165	162	+
P.Cornelius Scipio Nasica Corculum	169	165	162, 155	+
M'.Acilius Glabrio	166	by 157	154	+[10]
M.Fulvius Nobilior	166	by 162	159	+
Cn.Cornelius Dolabella	165	162	159	+[11]
Sex.Iulius Caesar	165	by 160	157	+
L.Cornelius Lentulus	163	by 159	156	+
L.Valerius Flaccus	163	by 155	152	+
L.Cornelius Merula	161	?	-	+[12]
L.Postumius Albinus	161	by 157	154	+
Q.Fulvius Nobilior	160	by 156	153	+
L.Marcius Censorinus	160	by 152	149	+

* I have excluded from the list M.Valerius Laevinus who was aedile at an unknown date (Gell., NA.XIII.13.4. See MRR.I.372). He might be either the consul of 220, 210 or the praetor of 182 and hence is best omitted.

1. The Laetorii were undoubtedly plebeians during the Republic and were only raised to the patriciate by Caesar or Augustus (see C.Heiter, De patriciis gentibus, (1909) 51, H.H.Pistor, Prinzeps und Patriziat, (1965) 22-3). C.Laetorius might claim descent from M.Laetorius Plancianus (mag.eq.257) but as the magister equitum was ranked equal to the praetor this will not have conferred nobility on the Laetorii (see Cic., De Leg., III.9; Mommsen, StR^3.I.562, II.176; Gelzer, The Roman Nobility, R.Seager trans., Oxford, (1969) 32f).

2. P.Licinius Crassus Dives was noble if as seems likely he descended from the consular Licinii Calvi/Stolones. Note contra Livy that Crassus was aedile in 212 (see Mommsen, RF.I.101; Seidel, FA, 23-4; Münzer, RAA, 187f; MRR.I.268, 271 n.3).

3. The status and identity of L.Veturius the curule aedile of 210 is disputed. There are two alternatives: either Veturius is to be identified with L.Veturius Philo the patrician praetor of 209 and consul of 206 in which case it must be presumed he was incorrectly listed as aedile with a plebeian colleague (P.Licinius Varus) in a plebeian year (210) and that Veturius belongs in the preceding patrician year for which no curule aediles are recorded (so Willems, Le Sénat, I.376-7; Münzer, RAA, 127); or else Veturius is to be distinguished from the patrician consul and to be presumed one of the plebeian Veturii probably descended from T.Veturius Calvinus the plebeian consul of 334 and 321 and likely related to the plebeian augur T.Veturius Gracchi f. Sempronianus co-opted in 174 (so Mommsen, RF.I.99, 120; Seidel, FA, 26; Broughton, MRR.I.279, 284 n.2; Shatzman, CQ, 23 (1973) 67-9. On the plebeian Veturii see E.Badian, Arethusa, 1 (1968) 31-6 and Shatzman, CQ, 23 (1973) 65-77). Since plebeian Veturii are attested and we cannot be certain L.Philo was aedile it is best to distinguish the two.

4. The identity of the Lentuli curule aediles in 209 and 205 is problematic (see Münzer, RE.IV.1378-9; Broughton, MRR.I.286, 289 n.2, III.66-7; and Sumner, Arethusa, 3 (1970) 89, Orators, 142). Livy records a plethora of Lentuli in these years and distinguishes between: L.Lentulus curule aedile in 209 (on the *praenomen* see MRR.I.289 n.2); L.Lentulus curule aedile in 205 and consul in 199; and P.Lentulus curule aedile in 209 and praetor in 203. Münzer suggested the 'L.Lentulus' registered as curule aedile in 209 should be emended to 'P.Lentulus' and identified with P.Lentulus the praetor of 203. Sumner, on the other hand, argued L.Lentulus (cos.199) should be identified with L.Lentulus the curule aedile of 209, and 'L.Lentulus' the curule aedile of 205 be emended to 'P.Lentulus' and identified with P.Lentulus the praetor of 203.

5. Q.Caecilius Metellus and C.Servilius Geminus were both also plebeian aediles in 209 (see Table II).

6. It is probable despite the absence of the famous *cognomina* that Fulvius belonged to a branch of the noble family. See also next note.

7. Lucullus' and Fulvius' prospects of advancement were doubtless damaged by the condemnation of

their *scribae* and *viatores* for corruption. Livy states most of the associated *infamia* clung to Lucullus (XXX.39.7).

8. C.Valerius Flaccus the curule aedile of 199 was also *flamen Dialis* so his chances of being elected consul were minimal.

9. A Sp.Postumius Albinus was curule aedile in the early Second Century (Pliny, NH.XVIII.41-3). The person concerned may be either the consul of 186 presumably therefore aedile in 191 when there is a gap in the record (see MRR.I.353) or Sp.Postumius Albinus Paullulus praetor in 183 and consul in 174 and presumably aedile in 185 in which year the aediles are not recorded (see MRR.III.174). There is no evidence to permit a conclusive decision but for present purposes the identification is not crucial.

10. Though the praetorship of M'.Glabrio and those who follow him in the list are not directly attested, since they were consul after the passage of the *Lex Villia Annalis* it is certain that they were praetor at some point prior to their consulship.

11. Broughton, MRR.I.442 considered 162 "the most probable date" for the praetorship of Dolabella but given Dolabella was curule aedile in 165 and consul in 159 and we must allow for a *biennium* between his aedileship and praetorship and between his praetorship and consulship 162 is the only possible date for his aedileship.

12. L.Cornelius Merula may or may not have been praetor. As the *fasti praetorii* are only imperfectly known after 166 in the absence of Livy, it is perfectly possible Merula was praetor in the 150's unbeknownst to us.

RESULTS:

For the purpose of analysis the preceding data is divided into two periods: 217-198 and 197-160. The first period begins when the record of the *fasti aedilicii* resumes with the text of Livy and ends when the number of praetorships was still only four per year. The second period begins in 197 as this was the first year when six praetors were elected and ends in 160 as this is when our knowledge of the *fasti aedilicii* fails completely once more. Of necessity the second period encompasses more years than the first. This permits the aediles recorded between 169-160 to be exploited in lieu of those unknown in the years c.179-170. As a result the sample in both periods is of equal size. I do not believe this discrepancy to have significantly affected the results.

Curule aediles 217-198

Known - 33 (16 patricians and 17 plebeians).
Praetor - 20 or 21 (depending on the identity of the Lentuli aediles in 209 and 205. 9 or 10 patrician aediles were praetor and 11 plebeians) = 60.61 or 63.64%. Note, however, of the 12 or 13 aediles who were not praetor 8 were nonetheless consul (4 patricians and 4 plebeians).
Consul - 22 (10 patricians and 12 plebeians) = 66.66%.
Noble - 31 = 93.94%.
Did not advance - 4 or 5 (2 or 3 patricians - depending on the identity of the Lentulus aedile in 209. And 2 plebeians) = 12.12 or 15.15%.

Curule aediles 197-160

Known - 33 (20 patricians and 13 plebeians).
Praetor - 32 or 33 (L.Cornelius Merula may or may not have been praetor) = 96.97 or 100 %.
Consul - 27 (17 patricians and 10 plebeians) = 81.82%.
Noble - 30 = 90.91%.
Did not advance - 0 or 1 ? (depending on whether L.Merula was praetor or not) = 0 or 3.03%.

Table II: Known Plebeian Aediles 217-160.

Name	Aedile	Praetor	Consul	Noble
M.Aurelius Cotta	216	-	-	+

M.Claudius Marcellus	216	-	-	+
M.Fundanius Fundulus	213	-	-	+
L.Villius Tappulus	213	199	-	-
?.Memmius	211?	-	-	-[1]
Q.Catius	210	-	-	-
L.Porcius Licinus	210	207	-	-
C.Servilius Geminus	209	206	203	+[2]
Q.Caecilius Metellus	209	-	205	+[2]
C.Mamilius (Turrinus ?)	208	207	-	+[3]
M.Caecilius Metellus	208	206	-	+
M.Pomponius Matho	207	204	-	+
Q.Mamilius Turrinus	207	206	-	+
Sp.Lucretius	206	205	-	-
Cn.Octavius	206	205	-	-
Ti.Claudius Asellus	205	-	-	-[4]
M.Iunius Pennus	205	201	-	+
P.Aelius Paetus	204	203	201	+
P.Villius Tappulus	204	203	199	-
M.Sextius Sabinus	203	202	-	-
Cn.Tremellius Flaccus	203	202	-	-
P.Aelius Tubero	202	201	-	+
L.Laetorius	202	-	-	-[5]
L.Apustius Fullo	201	196	-	+
Q.Minucius Rufus	201	200	197	+
Cn.Baebius Tamphilus	200	199	182	-
L.Terentius Massiliota	200	187	-	-
M.Porcius Cato	199	198	195	-
C.Helvius	199	198	-	-
C.Sempronius Tuditanus	198	197	-	+
M.Helvius	198	197	-	-
M'.Acilius Glabrio	197	196	191	-
C.Laelius	197	196	190	-
Cn.Domitius Ahenobarbus	196	194	192	-
C.Scribonius Curio	196	193	-	-
C.Publicius Bibulus	195?	-	-	-[6]
L.Oppius Salinator	193	191	-	-
M.Iunius Brutus	193	191	178	+
A.Caecilius	189	-	-	-
Q.Fulvius Flaccus	189	187	180	+
M.Furius Luscus	187	-	-	-
C.Sempronius Blaesus	187	184	-	+
L.Pupius	185	183	-	-
Cn.Sicinius	185	183, 172	-	-
C.Servilius (Geminus)	173?	?	-	+[7]

1. As to the date of Memmius' aedileship and the suggested identification of the aedile and the praetor of 172 see L.Hayne, L'Ant.Class., 60 (1991) 130-138.

2. C.Servilius Geminus and Q.Caecilius Metellus were also curule aediles in 208 (see Table I).

3. C.Mamilius the aedile of the plebs in 208 and praetor in 207 cannot be identified with C.Mamilius Atellus the *curio maximus* 209-174 as the *curio maximus* was prohibited from holding any other offices. The aedile and praetor and the *curio* should therefore be distinguished (note Livy never equips the former with a *cognomen* but always refers to the *curio* as C.Mamilius Atellus). It is highly probable that the aedile and praetor was a C.Mamilius Turrinus son of C.Mamilius Q.f. Q.n. Turrinus (cos.239) and elder brother of Q.Mamilius Turrinus plebeian aedile in 207 and praetor in 206 (see E.Champlin, CP, 84 (1985) 58).

4. A Ti.Claudius Asellus was praetor in 206. Given that it is improbable that the praetorship would be held in the year preceding the aedileship it is best to distinguish the praetor and the aedile.

5. Laetorius could not claim nobility in virtue of descent from M.Laetorius Plancianus Mag.Eq.257 (see Table I note 1).

6. The date of the aedileship of Publicius is uncertain (see MRR.I.342 n.1).

7. If 173 is approximately the right date for the aedileship of Servilius it seems unlikely he was praetor unless he only reached the praetorship after a delay of some years (i.e. he might conceivably have been praetor after 166 when the *fasti praetorii* are missing) but since the praetorship normally followed the aedileship after a short interval it is perhaps more likely Servilius was never praetor. On Servilius see Badian, PBSR, 52 (1984) 56-9.

RESULTS:

For the purpose of analysis the data on occupancy of the plebeian aedileship cannot be divided into precisely the same periods as for the curule aediles due to the nature of the record. The first period begins in 216, a year later than for the equivalent period for the curule aediles, as no plebeian aediles are recorded for 217. The second period also effectively ends in 185 as the *fasti* for the plebeian aedileship falter almost completely, excepting one case, between 184 and 160. As a result the second sample is considerably smaller than the first period and than both periods for the curule aediles.

Plebeian aediles 216-198

Known - 31.
Praetor - 23 = 74.19%. Of the 8 aediles who were not praetor 1 was consul (Q.Metellus. Note Metellus had also been curule aedile).
Consul - 7 = 22.58%. Of these 2 were also curule aedile (Q.Metellus and C.Servilius Geminus).
Noble - 15 = 48.39%.
Did not advance - 7 = 22.58%.

Plebeian aediles 197-173 (notionally)

Known - 14.
Praetor - 10 or 11 (depending on whether C.Servilius aedile in 173 was praetor or not) = 71.43 or 78.57%.
Consul - 5 = 35.71%.
Noble - 4 = 28.57%.
Did not advance - 3 or 4 (depending on Servilius) = 21.43 or 28.57%.

COMPARISON OF THE CURULE AND PLEBEIAN AEDILESHIP c.217-160:

Curule aediles 217-198

Known - 33 (16 patricians, 17 plebeians)
Praetor - 60.61 or 63.64%
Consul - 66.66%
Noble - 93.94%
Did not advance - 12.12 or 15.15%

Plebeian aediles 216-198

Known - 31
Praetor - 74.19%
Consul - 22.58%
Noble - 48.39%
Did not advance - 22.58%

Curule aediles 197-160

Known - 33 (20 patricians, 13 plebeians)
Praetor - 96.97 or 100%
Consul - 81.82%
Noble - 90.91%
Did not advance - 0 or 3.03%

Plebeian aediles 197-173

Known - 14
Praetor - 71.43 or 78.57%
Consul - 35.71%
Noble - 28.57%
Did not advance - 21.43 or 28.57%

COMPARISON OF PATRICIAN AND PLEBEIAN CURULE AEDILES c.217-160:

Patrician curule aediles 217-198

Known - 16
Praetor - 9 or 10 = 56.2/62.5%
Consul - 10 = 62.5%
Noble - 16 or 100%

Plebeian curule aediles 216-198

Known - 17
Praetor - 11 or 64.71%
Consul - 12 or 70.59%
Noble - 15 or 88.24%

Did not advance - 2 or 3 = 12.5/18.75%

Patrician curule aediles 197-160

Known - 20
Praetor - 19 or 20 = 95/100%
Consul - 17 = 85%
Noble - 20 = 100%
Did not advance - 0 or 1 = 5%

Did not advance - 2 or 11.76%

Plebeian curule aediles 197-160

Known - 13
Praetor - 13 or 100%
Consul - 10 or 76.92%
Noble - 10 or 76.92%
Did not advance - 0

COMPARISON OF PLEBEIAN CURULE AEDILES AND PLEBEIAN AEDILES c.217-160:

Plebeian curule aediles 217-198

Known - 17
Praetor - 64.71%
Consul - 70.59%
Noble - 88.24%
Did not advance - 11.76%

Plebeian curule aediles 197-160

Known - 13
Praetor - 100%
Consul - 76.92%
Noble - 76.92%
Did not advance - 0

Plebeian aediles 216-198

Known - 31
Praetor - 74.19%
Consul - 22.58%
Noble - 48.39%
Did not advance - 22.58%

Plebeian aediles 197-173

Known - 14
Praetor - 71.43 or 78.57%
Consul - 35.71%
Noble - 28.57%
Did not advance - 21.43 or 28.57%

Table III: Known Aediles 159-49.*

Name	Aedile	Praetor	Consul	Noble
Q.Caecilius Q.f. Metellus (Macedonicus?)	aedile by 151/0	148	143	+[1]
A.Hostilius Mancinus	curule 150	?	-	+[2]
P.Licinius Crassus Dives Mucianus	aedile by 137	by 134	131	+[3]
Cn.Cornelius Scipio Hispanus	curule 143/142	139	-	+[4]
C.Sempronius Tuditanus	aedile ? by 135/4	132	129	+[5]
M'.Aquillius	aedile ? by 135/4	by 132	129	+[6]
?.Lucretius Vespillo	plebeian 133	?	-	-[7]
Q.Caecilius Q.f. Metellus (Balearicus?)	aedile by 129/8	by 126	123	+[8]
M.Aemilius Scaurus	curule 123/2	by 119	115	+[9]
M.Iunius Pennus	aedile c.118	-	-	+[10]
M.Livius Drusus	aedile ? 118/7?	by 115	112	+[11]
?.Remmius	aedile ? 118/7?	?	-	-[11]
M.Porcius Cato	curule by 104	101	-	+[12]
L.Licinius Crassus	curule by 101	by 98	95	+[13]
Q.Mucius Scaevola	curule by 101	by 98	95	+[13]
C.Claudius Pulcher	curule 99	95	92	+[14]
L.Valerius Flaccus	curule 100/99/98	95?	86	+[15]
L.Gellius Poplicola	aedile by 97/96	94	72	-[16]
C.Sentius Saturninus	aedile by 97	94	-	-[17]
Ap.Claudius Pulcher	curule by 92	89	79	+[18]
M.Claudius Marcellus	curule 91	by 74	-	+[19]
C.Iulius Caesar Strabo	curule 90	-	-	+[20]
Q.Caecilius Metellus Celer	aedile 88	?	-	+[21]
P.Antistius	aedile ? 86	-	-	+[22]
P.Furius Crassipes	curule c.84-2	?	-	+
L.Critonius	plebeian c.83	?	-	-
M.Fannius	plebeian c.83	80	-	+
M.Pomponius	plebeian 82	?	-	+?
Q.Lutatius Catulus	aedile ? 81?	80?	78	+[23]

Did not advance - 2 or 3 = 12.5/18.75%

Did not advance - 2 or 11.76%

Patrician curule aediles 197-160

Known - 20
Praetor - 19 or 20 = 95/100%
Consul - 17 = 85%
Noble - 20 = 100%
Did not advance - 0 or 1 = 5%

Plebeian curule aediles 197-160

Known - 13
Praetor - 13 or 100%
Consul - 10 or 76.92%
Noble - 10 or 76.92%
Did not advance - 0

COMPARISON OF PLEBEIAN CURULE AEDILES AND PLEBEIAN AEDILES c.217-160:

Plebeian curule aediles 217-198

Known - 17
Praetor - 64.71%
Consul - 70.59%
Noble - 88.24%
Did not advance - 11.76%

Plebeian aediles 216-198

Known - 31
Praetor - 74.19%
Consul - 22.58%
Noble - 48.39%
Did not advance - 22.58%

Plebeian curule aediles 197-160

Known - 13
Praetor - 100%
Consul - 76.92%
Noble - 76.92%
Did not advance - 0

Plebeian aediles 197-173

Known - 14
Praetor - 71.43 or 78.57%
Consul - 35.71%
Noble - 28.57%
Did not advance - 21.43 or 28.57%

Table III: Known Aediles 159-49.*

Name	Aedile	Praetor	Consul	Noble
Q.Caecilius Q.f. Metellus (Macedonicus?)	aedile by 151/0	148	143	+[1]
A.Hostilius Mancinus	curule 150	?	-	+[2]
P.Licinius Crassus Dives Mucianus	aedile by 137	by 134	131	+[3]
Cn.Cornelius Scipio Hispanus	curule 143/142	139	-	+[4]
C.Sempronius Tuditanus	aedile ? by 135/4	132	129	+[5]
M'.Aquillius	aedile ? by 135/4	by 132	129	+[6]
?.Lucretius Vespillo	plebeian 133	?	-	-[7]
Q.Caecilius Q.f. Metellus (Balearicus?)	aedile by 129/8	by 126	123	+[8]
M.Aemilius Scaurus	curule 123/2	by 119	115	+[9]
M.Iunius Pennus	aedile c.118	-	-	+[10]
M.Livius Drusus	aedile ? 118/7?	by 115	112	+[11]
?.Remmius	aedile ? 118/7?	?	-	-[11]
M.Porcius Cato	curule by 104	101	-	+[12]
L.Licinius Crassus	curule by 101	by 98	95	+[13]
Q.Mucius Scaevola	curule by 101	by 98	95	+[13]
C.Claudius Pulcher	curule 99	95	92	+[14]
L.Valerius Flaccus	curule 100/99/98	95?	86	+[15]
L.Gellius Poplicola	aedile by 97/96	94	72	-[16]
C.Sentius Saturninus	aedile by 97	94	-	-[17]
Ap.Claudius Pulcher	curule by 92	89	79	+[18]
M.Claudius Marcellus	curule 91	by 74	-	+[19]
C.Iulius Caesar Strabo	curule 90	-	-	+[20]
Q.Caecilius Metellus Celer	aedile 88	?	-	+[21]
P.Antistius	aedile ? 86	-	-	+[22]
P.Furius Crassipes	curule c.84-2	?	-	+
L.Critonius	plebeian c.83	?	-	-
M.Fannius	plebeian c.83	80	-	+
M.Pomponius	plebeian 82	?	-	+?
Q.Lutatius Catulus	aedile ? 81?	80?	78	+[23]

Cn.Aufidius Orestes	aedile ? by 80	77	71	+[24]
L.Licinius Lucullus	curule 79	78	74	+
M.Terentius Varro Lucullus	curule 79	76	73	+
Q.Hortensius Hortalus	aedile 75	72	69	+[25]
C.Iunius	aedile 75	?	-	+?
M.Seius	curule 74	?	-	-
Q.Curtius (Postumus)	aedile ? 71?	?	-	-
D.Iunius Silanus	aedile 70/69	67	62	+[26]
P.Sulpicius Galba	curule 69/68	66	-	+[27]
M.Caesonius	plebeian 69	66	-	-[28]
M.Tullius Cicero	plebeian 69	66	63	-[28]
C.Flaminius	curule 67?	?	-	+?[29]
M.Plaetorius (Cestianus)	curule 67?	64?	-	-[29]
Q.Gallius	aedile 67	65	-	-[30]
Q.Voconius Naso	aedile? 67?	by 60	-	-[31]
M.Calpurnius Bibulus	curule 65	62	59	+?
C.Iulius Caesar	curule 65	62	59	+
Q.Tullius Cicero	plebeian 65	62	-	-
C.Vergilius Balbus	plebeian 65	62	-	-
L.Calpurnius Piso Caesoninus	aedile 64	61	58	+[32]
C.Octavius	plebeian 64/63?	61	-	-[33]
C.Toranius	plebeian 64/63?	?	-	-[33]
P.Cornelius Lentulus Spinther	curule 63	60	57	+
L.Domitius Ahenobarbus	curule 61	58	54	+[34]
Q.Metellus Pius Scipio Nasica	cur.aed.suff 60?	55	52	+[35]
P.Licinius Crassus Dives	aedile ? 60?	57	-	+[36]
C.Licinius Murena	curule 59?	?	-	-[37]
C.Visellius Varro	curule 59?	-	-	-[37]
L.Calpurnius Bestia	aedile by 58	-	-	+[38]
Q.Marcius Crispus	aedile ? by 58	?	?	-[39]
M.Aemilius Scaurus	curule 58	56	-	+[40]
P.Plautius Hypsaeus	curule 58	by 55	-	+[40]
Q.Fabius Maximus	curule 57?	by 49?	45	+[41]
C.Cosconius	plebeian 57	54	-	-[42]
P.Clodius Pulcher	curule 56	-	-	+[43]
C.Claudius Marcellus	aedile ? 56	53	50	+[44]
L.Aemilius Paullus	aedile ? 55?	53	50	+[45]
Nonius Struma	aedile ? 55?	?	-	-[46]
C.Messius	plebeian ? 55	-	-	-[47]
Cn.Plancius	curule 55/54	?	-	-[48]
A.Plautius	curule 55/54	51	-	-[48]
M.Aemilius Lepidus	aedile ? 53?	49	46	+[49]
M.Favonius	aedile 53/52	49?	-	-[50]
M.Caelius Rufus	curule 50	48	-	-[51]
M.Octavius	curule 50	?	-	+
C.Vibius Pansa Ceatronianus	aedile ? 49?	?	43	-[52]

Aediles Post-160: Date Unknown.**

L.Iulius	curule 146?	?	?	+[53]
M.Iunius	curule 146?	?	?	+[53]
Q.Minucius Thermus	curule	?	?	+[54]
L.Valerius	curule	?	?	+[54]
C.Rabirius	curule	?	?	-[55]
L.Piso	curule	?	?	+[56]
L.Cornelius	curule	?	?	+[56]
?.Postumius A.f.	curule ?	?	?	+[57]
?.Octavius Cn.f.	curule ?	?	?	+[57]
L.[....]s L.f. Flaccus	aedile	date unknown	?	?[58]
Q.?.Pompeius Rufus	aedile	?	?	+[59]
P.Barronius Barba	curule	?	-	-[60]

* The following hypothetical aedileships have been omitted: Broughton, MRR.II.466-7 tentatively canvassed the possibility that L.Marcius Philippus (cos.91), C.Scribonius Curio (cos.79), and C.Aurelius Cotta (cos.75) were aediles on the basis of Cic., De Off.II.59. But as Mommsen, StR^3.I.541 n.2 and Münzer, RE.XIV.2.1563, IIA.1.862 saw the fact that Philippus, Curio and Cotta could boast that they had risen to the highest offices "sine ullo munere" almost certainly means they cannot have been aedile (see also Seidel, FA, 83-4, 87; Shatzman, Athenaeum, 46 (1968) 353-4; Badian, Athenaeum, 48 (1970) 3-4; and Broughton, MRR.III.31). Seidel, FA, 44 and Broughton, MRR.I.568 assigned P.Crassus (cos.97) an aedileship on the basis of Cic., De Off.II.57 but the passage refers to P.Crassus Dives Mucianus (cos.131) since the consul of 97 was not a Dives (Note that if the consul of 97 had been curule aedile, 103, not 102 as per Broughton, would be the latest possible date, as Crassus was praetor no later than 100 (see further below on Crassus Mucianus). The aedileship assigned M.Livius Drusus, tr.pl.91, by the Auctor, De vir.ill.66 should be disregarded or attributed to his father (see infra). Sumner, Athenaeum, 56 (1978) 395-6 conjectured that L.Sulla was aedile in 98, a plebeian year, and praetor in 95. Sulla suffered a *repulsa* at his first attempt on the praetorship because he had not held the aedileship and the people had expected magnificent games from him on account of his friendship with Bocchus of Mauretania (Plut., Sulla 5.1). But rather than run for the aedileship in order to satisfy the people's demands as Sumner suggested, Sulla promised the voters splendid games if they should elect him praetor at his next attempt; which they did (Pliny, NH.VIII.53; Sen., De Brev.Vit.XIII.6. See Badian, Studies, 159-160; MRR.III.74; T.Corey Brennan, Chiron, 22 (1992) 110, 132f). Thus as Badian argued Sulla was never aedile and was elected praetor on his second attempt probably for 97. I have not registered the conjecture that M.Licinius Crassus (cos.70) was aedile in 76, as the evidence for this suggestion is insubstantial (MRR.III.120). Where the evidence does not permit greater specificity I have simply listed an individual as aedile.

** M.Ampudius, C.Appulleius Tappo, and M.Fruticius who are all described in inscriptions as aedile, as well as the plebeian aedile C.Papirius Masso, and the curule aedile P.Paquius Scaeva are all to be dated after 49 (see Seidel, FA, 82; Cichorius, Römische Studien, (1922) 285f) and so are omitted.

1. An inscription discovered at Larissa discloses a Q.Caecilius Q.f. Metellus αγορανομος (see P.Garnsey, T.Gallant, D.Rathbone, JRS, 74 (1984) 37f; P.Garnsey, D.Rathbone, JRS, 75 (1985) 22, 25; MRR.III.39-40). Metellus has been variously identified as Macedonicus, Balearicus, Nepos (cos.98), or Metellus Scipio (see Broughton; and Konrad and Linderski in *Imperium Sine Fine*, Stuttgart, (1996) 134f, 161 n.60 respectively). Metellus Nepos and Metellus Scipio are to be rejected as various factors place the inscription in the Second Century but both Macedonicus and Balearicus remain possible identifications. It is unknown whether Metellus was plebeian or curule aedile. If this Metellus is identified as Macedonicus 151 - a patrician year - is the latest possible date if he was curule aedile, 150 if he was plebeian aedile but these are merely the latest possible dates and earlier ones are not excluded. If Balearicus is preferred the latest possible dates are 129 - a patrician year - if he was curule aedile, and 128 if he was aedile of the plebs.

2. The A.Hostilius Mancinus who was curule aedile at an unspecified date (Gell., NA.IV.14.1-6) is almost certainly to be identified with the homonymous legate of 149 (see Seidel, FA, 78; Broughton, MRR.I.460 n.5). The aedile's run in with the courtesan thus explains the bandage worn by the legate at the time of the embassy which provoked M.Cato's famous witticism. The aedileship of Mancinus must then date before 149. Broughton, MRR.I.455 opted for 151 (with a query. Seidel offered no date). But the bandage worn by the legate presupposes his injury was recent, hence 151 is too early and the aedileship of Mancinus is best placed in 150 (which was also, unlike 151, a plebeian year).

3. The aedileship of P.Licinius Crassus Dives Mucianus is based on the testimony of Cicero (De Or.I.239-40, De Off.II.57; cf. Pliny, NH.XXI.6. All these passages undoubtedly refer to Mucianus and not P.Crassus the consul of 97 see Münzer, RE 'Licinius' nos.61 and 72 and RAA, 264-6; B.Marshall, Historia, 22 (1973) 461-2; cf. Ryan, Klio, 78 (1996) 74-8). It is not stated whether Mucianus was curule or plebeian aedile. Münzer, RAA, 264 n.1 argued Mucianus was curule aedile on the grounds that he was supported in his *petitio* by the patrician Ser.Sulpicius Galba (Cic., De Or.I.239) and the support of a patrician would have been 'out of

place' if Mucianus was campaigning for the plebeian aedileship (followed by Broughton, MRR.I.475). This is hardly persuasive. Galba would be expected to support the candidacy of his *adfinis* Mucianus whether he sought the curule or plebeian aedileship. Nor is it known whether all the other aediles listed by Cicero, De Off.II.57 were curule aediles; so it cannot simply be assumed on this basis that Mucianus was curule rather than plebeian aedile (see Seidel, FA, 44, 53, 54 and below on Q.Hortensius and D.Iunius Silanus). That having been said, given plebeian *nobiles* more frequently served as curule than as plebeian aediles, it is more likely that a man of Mucianus' lineage and wealth will have been curule aedile. As to the date Broughton initially tentatively followed Münzer in dating Mucianus' aedileship to 142 (see RAA, 264 and MRR.I.475, 476 n.2). Sumner, Orators, 52 exposed that date as being "virtually without foundation" and stated "it could equally well be 140 or 138, and possibly 143, 141, 139, 137, if the alternation of patrician and plebeian years had already ended." Accepting Sumner's comments Broughton later admitted the date cannot be fixed (MRR.III.120). Seidel, FA, 41 simply stated 136 is the latest possible date if Mucianus was plebeian aedile, 137 if he was curule aedile. Ryan, Klio, 78 (1996) 78 making the unwarranted assumption that Mucianus was aedile *suo anno* ventured "aed.cur. by 140 or aed.pl. by 139" (Based on Sumner's calculation that Mucianus was born in 178/7. Ryan dismisses the issue of alternation in the curule aedileship as an 'unnecessary complication' - Ibid., 98 n.40).

4. The *elogium* of Cn.Cornelius Scipio Hispanus attests he was curule aedile (CIL.I^2.2.15 = ILS.6). Broughton, MRR.I.477 dated his aedileship in 141 on the basis that "this is the latest possible date before his praetorship" (139). But the existence of a *biennium* between the curule aedileship and the praetorship at this period means Scipio can have been aedile no later than 142 (Seidel, FA, 41 placed it "kurz vor 141"). The exact year of Scipio's tenure of the aedileship cannot be established. According to his *elogium* Scipio was Xvir stlitibus iudicandis, military tribune twice, quaestor, curule aedile and praetor. Whether this represents the correct chronological order is debatable (Münzer, RE.IV.1493 apparently thought so). It seems likely that Scipio was quaestor in 150 (Broughton, MRR.I.456, II.556; J.Suolahti, The Junior Offices of the Roman Army in the Republican Period, Helsinki, (1955) 356) or 149 (as Münzer; cf. Seidel). If as we should expect Scipio was elected quaestor at or near the minimum age he was about 29-30 years of age in 150/149 (at this period candidacy for the quaestorship was possible as young as 25 but most candidates will have been at least 27 see Sumner, Orators, 6. However, Scipio cannot have been born later than 179 since the *leges annales* required candidates for the aedileship to be at least 36 and due to the required *biennium* between curule aedileship and praetorship 142 is the latest possible date for Scipio's aedileship). That being so, Scipio was probably born in 180 or 179 which in turn means Scipio was not eligible to run for the aedileship before 144 for 143. That leaves only two years for Scipio's aedileship - the patrician year 143 or the plebeian year 142 Either year is plausible and greater precision impossible.

5. C.Sempronius Tuditanus pr.132, cos.129 may have been curule aedile in 135 - a patrician year. But it is equally possible Tuditanus was plebeian aedile in 134 (see Chapter IV above).

6. Cicero, Pro Scauro III.2 says a M'.Aquillius attained the same *honores* as P.Crassus Mucianus. B.Marshall, A Historical Commentary on Asconius, (1985) 142, and F.Ryan, Hermes, 24 (1996) 115-6 identified Aquillius as the consul of 129 and Ryan argued since Aquillius attained the same *honores* as Crassus Mucianus he must have been aedile and quaestor. Cicero cannot literally mean Aquillius attained all the *honores* obtained by Mucianus since Aquillius was not *pontifex maximus*. On the other hand, he cannot simply mean Aquillius was consul since he speaks of *honores* - plural. It is possible therefore that Aquillius was aedile - either curule or plebeian. The latest possible dates if Aquillius was aedile are 135 - a patrician year - if he was curule aedile, or 134 if he was an aedile of the plebs but since only Aquillius' consulate can be dated with certainty earlier dates are possible. The uncertainty surrounding possible dates is further complicated by the question of the identity of Aquillius. Contra Marshall and Ryan, it can be argued as Cicero is discussing men who committed suicide to avoid falling into enemy hands and says that Aquillius failed to live up to the example of the Crassi his remarks are more appropriate to M'.Aquillius (cos.101) who was captured, humiliated and killed by

Mithridates (so Klebs, RE.II.326; Watts, Loeb, vol.XIV p.272 note a; Broughton, MRR.II.43; and Shackleton Bailey, Onomasticon to Cicero's Speeches[2], Stuttgart, (1992) 18).

7. Vespillo was aedile of the plebs in 133 (see Val.Max., I.4.2 from Nepos; De vir.ill., 64.7; Seidel, FA, 43; MRR.I.493).

8. Metellus Balearicus may have been aedile - if curule by 129 - a patrician year - if plebeian by 128 (see above on Metellus Macedonicus).

9. The aedileship of M.Aemilius Scaurus is reported in De vir.ill., 72.4. Various dates have been suggested - 122 proving most popular recently (Schubert, De Romanorum aedilibus, (1828) 396 opted for 122. Groebe, GR[2].I.18 ventured c.123. Klebs, RE.I.1.584 offered no date. G.Bloch, Mélanges D'Histoire Ancienne, 25 (1909) 14-15 merely stated 122 was the latest possible date. Seidel, FA, 43-4 attempted no greater precision than between 125 and 122 - note although he twice cites 121 as the latest possible date this must be a slip since he correctly observed a date after 122 is precluded. Broughton, MRR.I.517, 519 n.3 (with a query); Sumner, Orators, 69; Shatzman, Anc.Soc., 5 (1974) 201; and R.L.Bates, Proc.Amer.Phil.Soc., 130 (1986) 252 all favoured 122. Develin, Practice, 91 suggested 123 or 121). Let us review the evidence. Scaurus' aedileship can be dated within fairly narrow parameters. Scaurus was born in 162/1 (Asc., 22 C; Sumner, Orators, 69) and candidates for the aedileship were required to be 36 years of age (i.e. 37 in their year of office - see Astin; Lex Annalis, (1958) 31f, 37f, 41; Sumner, Orators, 6f, Phoenix, 25 (1971) 246f); so Scaurus was not eligible for the aedileship before 126/125. As Scaurus was praetor no later than 119 (he was an unsuccessful candidate for the consulship of 116 - Cic., Mur. 36. Thus Bloch, Ibid., 14-15. Sumner, Orators, 69 and Broughton, MRR.I.519 n.3, 526, 527 n.1 argued Scaurus was praetor in 119) allowing for the compulsory *biennium* between his curule aedileship and praetorship Scaurus can have been aedile no later than 122 (The case against the existence of a *biennium* between the curule aedileship and praetorship in this period is weak and Develin's suggestion, Patterns, 91 that Scaurus may have been aedile in 121 is to be rejected, for as he admitted, a lapse of at least two years between the curule aedileship and praetorship was at the very least customary if not obligatory. The additional and unnecessary argument that Scaurus cannot have been aedile in 121 because he was a *privatus* in 121 based on De vir.ill., 72.9 is unsound. That Scaurus offered Opimius 'private counsel' only means that his advice was not proffered publicly). The parameters can be narrowed further since Scaurus served under L.Aurelius Orestes (cos.126) who commanded in Sardinia from 126 to late 122 (De vir.ill., 72.3. Orestes triumphed in Rome on 8th Dec.122). Seidel asserted as Scaurus served in Sardinia in 126 he cannot have competed for the aedileship before 125. Sumner, Orators, 69 argued on the basis of his service in Sardinia Scaurus' aedileship "could hardly have been earlier" than 122. Since much hinges on Scaurus' service in Sardinia closer scrutiny of this episode is required. Three related questions become crucial. In what capacity, at what date and for what period did Scaurus serve under Orestes ? Schubert, De Romanorum aedilibus, (1828) 396 suggested Scaurus was quaestor in 126. Carcapino, Autour des Gracques[2], (1967) 204 n.112 argued Scaurus was quaestor in 125 as successor to C.Gracchus. This must be ruled out for C.Gracchus served Orestes as quaestor from 126 until late in 124 when he arrived in Rome to stand for the tribunate of 123 (see Bloch, op cit., 14-17; MRR.I.508, 511-12; Shatzman, Ibid., 200 n.10; Badian, AJP, 104 (1983) 156f. Scaurus self-evidently cannot have been quaestor as late as 123 as that leaves insufficient time for him to observe the required intervals between his quaestorship and aedileship, and his aedileship and praetorship. If Scaurus was quaestor his quaestorship must precede his service in Sardinia - as rightly Shatzman, op cit., 200). Drumann and Groebe, GR[2].I.18 suggested Scaurus served Orestes as proquaestor c.126. That is equally untenable since Gracchus was proquaestor until 124 (nor is it feasible that Scaurus replaced Gracchus as proquaestor in the years 124-122). Bloch, op cit., 17 drew attention to the fact that the Auctor, De vir.ill, 72.3 says Scaurus: "sub Oreste... *stipendia* fecit." He rightly argued the term *stipendia* would be a singularly inapproriate description of someone serving as quaestor or proquaestor and strongly suggests Scaurus was serving in the army in some capacity. Bloch, op cit., 15-17 therefore concluded Scaurus had served as a military tribune or legate. When and how long did Scaurus serve ? Scaurus evidently did not serve for the entire campaign. In 123 Scaurus was

co-opted into the augural college and as appointment to a major priestly college in absentia was a rare honour it is likely he was in Rome when he was co-opted (the date is certified by a fragment of the *fasti sacerdotum* - CIL.VI.32318 = ILS.9338 no.4. The first co-optation in absentia was the appointment of P.Scipio Nasica as *pontifex maximus* c.141. Only two other cases of appointment in absentia are recorded under the Republic - Marius and Caesar. Since prior to the *Lex Domitia* vacancies in the colleges were filled immediately by co-optation Scaurus' appointment may have occurred any time in 123). Further, as aedile no later than 122 he must have left Sardinia at the latest in time for the elections for 122 i.e. Scaurus was in Rome by late 123. But it is probable he returned earlier still. On his return to Rome in 124 C.Gracchus complained that some of Orestes' entourage had gone out with *amphorae* full of wine and returned with them full of gold and silver whilst the soldiers starved (Gell., NA.XV.12.3-4; Plut., C.G., 2.5). Given that Scaurus inherited very little but died a very wealthy man (see Shatzman, Senatorial Wealth and Roman Politics, (1975) 263-4) and had a reputation for rapacity (Cic., De Or., II.280, 283; Sall., Iug.XV.4-5, XXIX.2-3; Pliny, NH.XXXVI.116; Florus, I.36.5; De vir.ill., 72.4; Bloch, op cit., 19f) it is highly likely Scaurus was one of Gracchus' intended targets (as Shatzman, op cit., 200-1; Bates, op cit., 277 n.21). The accusation is also very plausible when it is considered that Scaurus must have acquired the funds he was intending to expend on games during his hoped for aedileship in the years running up to his *petitio* (De vir.ill., 72.3). That being so, it follows that Scaurus returned to Rome prior to C.Gracchus - i.e. no later than the latter half of 124. Thus Scaurus' service in Sardinia probably did not extend beyond early 124. It is possible therefore that Scaurus ran in late 124 for a curule aedileship in 123, a patrician year, or in 123 for 122, a plebeian year (Develin, Practice, 91 suggested as a possibility that Scaurus was in Sardinia 126-122 and was elected to an aedileship in absentia in 123 to be served in absentia. This is out of the question. There are only three attested cases of election to an aedileship in absentia, only one of which was served in absentia. Two occurred during the Hannibalic War - in 205 Livy, XXIX.11.12 and in 199 Livy, XXXI.50.7-11 - the former has been questioned see Sumner, Arethusa, 3 (1970) 89; and L.Lucullus was elected in absentia for 79 - Cic., Acad., II.1; Plut., Lucullus 1.6. All three cases are exceptional and it is unlikely that this was condoned except in extraordinary circumstances. That Scaurus was elected aedile and co-opted augur in absentia strains credulity. Moreover, the term *stipendia* indicates military service and the Auctor, De vir.ill , 72.3 says Scaurus celebrated games as aedile and he can scarcely have done so by proxy). Thus it is possible that Scaurus was aedile in 123 or 122. And although 122 is usually preferred two circumstantial arguments might be made in favour of 123. First, if as seems likely Scaurus had returned to Rome from Sardinia by mid-124 since he was already past the legal minimum age for the aedileship it is unlikely he will have let slip the opportunity to stand for the aedileship in the elections of 124 (for 123). Second, the Auctor, De vir.ill., 72.3 comments Scaurus "aedilis iuri reddendo magis quam muneri edendo studuit." That would seem a curious decision. It can be accounted for by arguing Scaurus' limited means forced this posture on him (as Bloch, op cit., 17-18). But there is another possibility. As part of the extensive legislative program passed in his first tribunate C.Gracchus introduced laws providing for regular distributions of grain at fixed prices, authorizing the construction of major public works including roads, granaries and other structures, and establishing new *portoria* (see MRR.I.514). These laws encroached upon the portfolio of the aediles (on the curule aediles and the grain supply see Livy, X.11.9, XXX.26.5-6, XXXI.50.1, XXXIII.42.8, XXXVIII.35.5-6; Cic., De Off., II.58; curule aediles and roads and construction see Livy, X.23.12, 31.9, 33.9, 47.4, XXXIII.42.10, XXXV.10.11-12, 41.10; curule aediles and the treasury see Livy, XXX.39.7). Add to this a pattern of conflict between C.Gracchus and Scaurus (Scaurus was perhaps one of those who denounced Gracchus before the censors in 124 and subsequently accused him of complicity in the revolt of Fregellae, whilst Scaurus was probably among the subordinates of Orestes attacked by Gracchus in 124, and later Scaurus advised Opimius to crush Gracchus). It might be argued the reforms of 123 which impinged on the activities of the aediles were partly actuated by Gracchus' desire to revenge himself on Scaurus. That is, the laws would restrict Scaurus' opportunities as aedile for winning *urbana gratia*. Speculation aside Scaurus' aedileship can be dated with equal plausibility in 123 or 122 and so cannot conclusively establish the principle of alternation

was at an end.

10. It is unknown whether M.Iunius Pennus was plebeian or curule aedile and the date is equally uncertain (see MRR.I.513, III.113).

11. The Auctor, De vir.ill.66 states that M.Livius Drusus, tr.pl.91, was aedile. We are told Drusus celebrated magnificent games and had a colleague named Remmius. Münzer, RE.XIII.1.864, II.1A.595 endorsed the attribution of an aedileship to the tribune of 91. Broughton both accepted the report as accurate (MRR.II.12, 14 n.1) and that it was the result of the confusion of father and son (MRR.I.517). Later he maintained the aedileship might be assigned to the tribune of 91 or his father (MRR.III.126, 181). But that the tribune of 91 was aedile is not credible (see Seidel, FA, 79-80; Sumner, Orators, 110-111). Yet the details give the anecdote the ring of authenticity. It is said Drusus celebrated magnificent games, a fact consistent with his immense wealth, and he is equipped with a colleague from an otherwise obscure family (Sumner, Orators, 111 suggested the possibility the tribune had given games in honour of his father and that these had been confused with aedilician games but this fails to account for his colleague). Either, therefore, the report should be disregarded, or else, the notice is the result of confusion of the tribune of 91 and his homonymous father - the consul of 112 (cf. Seidel, FA, 80; MRR.I.517; Wiseman, NMRS, 256). Note especially Drusus' disdainful jibe at his colleague - "Quid tibi cum republica nostra ?" The implication being that Remmius' family had not long enjoyed the status of Roman citizens and that Remmius ought not to presume to instruct his superiors. That derogatory sentiment accords well with the attitude towards the Latins and Italians made manifest in the political programme pursued by the consul of 112 when tribune of the plebs (and is irreconcilable with the programme of his son). If M.Livius Drusus (tr.pl.122, pr. by 115, cos.112) was aedile the possible dates can be fixed fairly precisely. Cicero De Fin., IV.66 says Drusus was "fere aequalis" of C.Gracchus who was born 154/3 (see Sumner, Ibid., 64, 70). Hence Sumner concluded Drusus was born in 155 and was praetor in 115 and consul in 112 *suo anno*. That being so, if Drusus was curule aedile it must have been in 118, whilst if he was aedile of the plebs 118 or 117 is possible. Broughton, MRR.II.14 n.1 commented: "Drusus' station and magnificence suggests the curule aedileship, but the obscurity of Remmius the plebeian one." The curule aedileship seems the more probable but the election of two plebeians for the plebeian year 118 obviously does not necessitate the assumption that alternation was then still in force.

12. M.Porcius Cato was curule aedile and praetor (Gellius, NA.XIII.20.12). Despite the short generation gap between father (M.Cato cos.118) and son, Cato's praetorship should now it seems be placed in 101 (see M.Hassall, M.Crawford, J.Reynolds, JRS, 64 (1974) 202, 210; A.N.Sherwin-White, JRS, 66 (1976) 1-13; and E.Champlin, CP, 84 (1989) 54) rather than c.92 (as MRR.II.18, III.170). As a consequence allowing for the *biennium* between aedileship and praetorship Cato can have been curule aedile no later than 104 - a plebeian year (rather than c.94 as MRR.II.13. Seidel, FA, 46 only ventured 'etwa 100-90').

13. L.Licinius Crassus and Q.Mucius Scaevola were curule aediles together at some indeterminable date between 103 and 101 (Broughton, MRR.I.575 following Seidel, FA, 44-5 makes the parameters 105-100 but as Scaevola was tr.pl. in 106 the rules against *continuatio* preclude an aedileship before 104. Equally 105 and 104 can be ruled out on account of the age of Crassus and Scaevola. Crassus was born in 140 - Cic., Brutus 161 and Crassus and Scaevola were probably exact *aequales* - Sumner, Orators, 97 - hence they were not eligible to stand for the aedileship before the elections of 104 for 103. And as Crassus and Scaevola were praetors by 98, 101, not 100, is the latest possible date). The years 103 and 101 were 'patrician' and if Crassus and Scaevola were curule aediles in those years the breakdown in alternation must already have occurred but Crassus and Scaevola may equally have served in the 'plebeian year' 102. Ryan, Klio, 78 (1996) 79, 86 dates the aedileship of Crassus and Scaevola in 103 but his argument is spurious. Cicero, De Off., II.57-9 includes Crassus and Scaevola in a list of men who reached high office late. Ryan for no good reason assumes all the aediles mentioned reached the aedileship *suo anno* but reached the praetorship or consulship late. As Crassus and Scaevola were born in 140 and they 'must have been aediles *suo anno*' the aedileship belongs in 103. This is patently fantasy and we have no means of deciding between the three possible years 103, 102, 101.

14. The aedileship of C.Claudius Pulcher is amply attested (see elogium no.XXXIII CIL.I^2 p.200 = ILS.45 = Inscript.It., XIII.3 no.70b; Cic., Verr.II.4.6, 133, De Har.Resp.26, De Off. II.57; Val.Max., II.4.6; Pliny, NH.VIII.19, cf. XXI.6, XXXV.23; Gran.Lic., 38 B). The date (99) is certified by Pliny, NH.VIII.19. The date of his praetorship (95) is certified by Cicero, Verr., II.2.122. The fact that a *triennium* elapsed between Gaius' aedileship and praetorship might at first sight appear to support the notion that alternation was still in force in 99/98. For Sumner, Ibid., 10 n.3 observed that when alternation was the rule a number of individuals observed a *triennium* between the curule aedileship and praetorship followed by a *biennium* between praetorship and consulship and plausibly explained the anomaly by suggesting that patricians and plebeians who due to the date of their birth reached the required age for the curule aedileship in the wrong year (i.e. a patrician who turned 37 in a plebeian year or vice versa) were allowed to run a year early rather than incur a year's delay. If Gaius was another such case this would necessitate the assumption that the breakdown in the principle of alternation occurred between 99/98 and 91. But Gaius did not reach the highest offices *suo anno* (Cicero, De Off. II.59; Sumner, Orators, 8 n.2, 62, 100; Broughton, MRR.I.556, 558 n.5, 561, II.435, III.57) and the *triennium* between his aedileship and praetorship is to be accounted for by the presumption that Gaius decided not to run for the praetorship of 96, or suffered a *repulsa* in doing so, or perhaps a rival engineered a prosecution in order to delay his candidacy.

15. The date of the curule aedileship of L.Valerius Flaccus (cos.suff.86) must remain uncertain. Cicero, Pro Flacco 77 states that Flaccus was tried before the people when aedile by the tribune C.Appuleius Decianus (the prosecution of minor magistrates during their term of office by a tribune in a *iudicium populi* was permissible see Weinrib, Phoenix, 22 (1968) 32-56). But it is disputed whether Decianus was tribune in 99 (i.e. from 10th of December 100 to the 9th of December 99) or 98 (i.e. from 10th of December 99 to the 9th of December 98. See MRR.III.21-3). Moreover, as Seidel pointed out even if the year of Decianus' tribunate could be determined with certainty the year of Flaccus' aedileship would remain uncertain because the prosecution may have been initiated in Decianus' first month of office (i.e. between December 10th and December 31st). Thus if Decianus was tribune in 99 the prosecution might be placed in 100 or 99 or if he was tribune in 98 it could be dated in 99 or 98. And whilst the case for placing the tribunate of Decianus in 99 seems stronger than the case for 98 that still leaves 100 or 99 open as the date of Flaccus' aedileship. Seidel, FA, 45-6 settled for 'etwa 99'. Münzer, RE.VIII.A.26 dated the prosecution of Flaccus in the first month of Decianus' tribunate which he placed in 98 consequently fixing the aedileship of Flaccus in 99 (cf. De gente Valeria, 42). Broughton, MRR.III.212 (contra MRR.II.1, 3 n.4); Sumner, Orators, 81-2; and Alexander, Trials, 40-1 all conceded 99 or 98 was possible.

16. That Gellius was aedile is to be inferred from the statement of Valerius Maximus, V.9.1 that he held all the magistracies up to the censorship (see Seidel, FA, 53; Broughton, MRR.II.10). Whether he was curule or plebeian aedile is unknown. If the former 97 is the latest possible date. But if Gellius was aedile of the plebs since by the 90's he was already past the minimum legal age for the aedileship (see Sumner, Orators, 102-3 - born by 135 at the latest) and an interval of only one year was required between the plebeian aedileship and the praetorship Gellius might have been aedile as late as 96.

17. C.Sentius Saturninus, praetor in 94, was also aedile (Cic., Pro Plancio 19 see Syme, Historia, 13 (1964) 121-2, 156-166 and MRR.III.23, 191). Sentius was erroneously conflated with L.Appuleius Saturninus (30) by Seidel, FA, 60-1; in RE; and originally in MRR. Hence Sentius was deprived of his aedileship which was attributed instead to L.Appuleius Saturninus - registered as plebeian aedile in 61 in (MRR.II.179 corrected at MRR.III.23, 191). Cicero's emphasis on curule rank perhaps suggests Sentius was curule aedile but this is not conclusive since Sentius' curule status may derive from his praetorship alone. If Sentius was curule aedile 97 - a patrician year - is the latest possible date (MRR.III.191) but as Sentius' early career is a blank and his age unknown the actual date may be earlier.

18. The date of the aedileship of Ap.Claudius Pulcher (cos.79) is uncertain. At an unknown date he suffered a *repulsa* when a candidate for the curule aedileship but at a later unspecified date was elected (see

Cic., De Har.Resp.26; Seidel, FA, 46-7; Broughton, T.A.Ph.Soc., 81 (1991) 40). Broughton initially suggested Appius was aedile in 91 on the basis that this was "the latest possible date since he held the praetorship in 89" (MRR.II.21, 24 n.8). He later realized due to the required *biennium* that 92 was the latest possible date (T.A.Ph.Soc., 81 (1991) 40. As per Seidel, FA, 47. Appius' praetorship should be dated in 89 not 88 as Badian argued in PACA, 1 (1958) 5-6 = Studies, (1964) 74-82, cf. Philologus, 103 (1959) 87f. See B.Katz, CP, 71 (1976) 330 n.9; A.Keaveney, Eranos, 81 (1983) 47-51 and MRR.III.41, 56, 98). Since Appius' aedilician candidacy will have been governed by the *leges annales*, establishing his age will help date his *petitiones*. Appius can have been born no later than 130 (he cannot have been born posthumously in 129 see infra). But it is probable he was born some years earlier. Sumner, Orators, 62 argued Appius was born not long after his brother Caius whose birth Sumner dated in the period c.141-136 (see Orators, 20, 100). The upper date was based on the notion that Caius was quaestor by c.113. Appius' own quaestorship is now dated c.112 (Orators, 62-3. Mommsen had placed it in 99 see MRR.II.2, 3 n.8, III.56). Yet as Sumner admitted this creates inordinately delayed careers for Caius and Appius. Both reached high office late (Cic., De Off. II.59) but surely not this late. Some help may be obtained from Sallust. Sallust, Histories, frg. I.75 M says L.Philippus (cos.91), born c.136, was the oldest serving senator in 77 (see further above Chapter V). That being so, Appius must have been born after c.136. The upper and lower limits for Appius' birth are therefore 135 and 130. From these dates can be derived parameters for Appius' failed and successful attempts on the aedileship. If Appius was born in 135 he was not eligible to stand for the aedileship until the year 99 for 98. If Appius was born in 130 he was first able to compete for the aedileship in 94 for 93 (Appius cannot have been born posthumously in 129 since he would not then have been able to stand for the aedileship before the year 93 for 92 - which is impossible since 92 is the latest possible date for Appius to have held the aedileship and he suffered a *repulsa* before being elected). The actual date of his birth probably lies somewhere between the years 135-130. If Appius was born in 130 it must be assumed his failed and successful attempts on the aedileship occurred in consecutive years (i.e. he ran in 94 for 93 but failed, then ran in 93 for 92 and was elected). If so alternation was at an end (since 92 was a notionally plebeian year). But it is possible to generate equally plausible scenarios predicated on the assumption alternation was still in force. If Appius was born in 134 he could have run in 98 for the patrician year 97, failed, but secured election in 94 for the patrician year 93. Or perhaps he was born in 132 ran in 96 for 95 and failed, then ran in 94 for 93 and was elected. In the latter scenarios Appius observed a *triennium* between his aedileship and praetorship but this is not improbable - so did his brother (see above). Attempts to fix the dates precisely in the present state of knowledge cannot hope to succeed (Seidel, FA, 46-7 dated the aedileship "kurz vor 91." Broughton, T.A.Ph.Soc., 81 (1991) 40 suggested the *repulsa* occurred in 95 or 94).

19. Marcellus was curule aedile in 91 (Cic., De Or., I.57; Seidel, FA, 47; MRR.II.21, 24 n.7). For the praetorship of Marcellus see MRR.III.55.

20. Strabo sought permission to omit the praetorship. He was killed in 87.

21. The Metellus Celer who was aedile at an unspecified date is almost certainly to be identified with the father of the consul of 60 (see Seidel, FA, 48-8; MRR.II.45 n.5, III.37).

22. On the aedileship of Antistius see Seidel, FA, 48-8; MRR.III.17. Antistius was never praetor since it is probable he should be identified with the *aedilicius* Antistius killed in 82 see MRR.II.57 n.3.

23. Ammianus Marcellinus, XIV.6.25 refers to the awnings which a Catulus was the first to erect in his aedileship (cf. Val.Max., II.4.6, VI.9.5. Pace Sumner, JRS, 54 (1964) 45 n.48 Catulus' aedileship can hardly be inferred from Cicero, De Off., II.58). Catulus' aedileship was not registered by Seidel, nor initially by Broughton but was added later (MRR.III.131). Sumner, JRS, 54 (1964) 45 n.48, Orators, 116 accepted the aedileship and proposed a date c.84 "based merely on the assumption of two *biennia* (aedile-praetor, praetor-consul)." But Sumner and Broughton overlooked an important fact. Catulus was clearly too young to have been aedile by 87 (Münzer, RE.XIII.2.2082-3 thought him a *quaestorius* by 87 but cf Badian, Studies, 152-3) and Catulus fled Rome during the Cinnan regime only to return with Sulla (Schol.Bob., 126 St refers to him as

proscriptus see Münzer and Keaveney, Klio, 66 (1984) 127-8 contra Badian, Studies, 216f). Consequently, Münzer judged Catulus had no opportunity to be aedile. But the aedileship need not necessarily be repudiated. There are two alternatives. We know that some Sullani received special dispensations from the laws to enable them to make up for lost time. Thus L.Lucullus was curule aedile in 79, and praetor in 78. It is usually assumed Catulus was praetor in 81 and that a *biennium* intervened between his praetorship and consulship. But Catulus may have obtained a dispensation like Lucullus. Catulus could have been aedile in 81 and praetor in 80. And since he was some years older than Lucullus Catulus may have been granted the additional concession of standing for the consulship without having observed a *biennium* between the praetorship and consulship. Alternatively, the aedileship might be assigned to Q.Catulus (cos.102) rather than his son (neither Ammianus, XIV.6.25 nor Val.Max., II.4.6 makes clear which Catulus is being referred to). Whether the aedileship concerned was curule or plebeian is unknown though the former seems more likely.

24. It is not certain on the basis of Cic., De Off.II.58 that Orestes was aedile (Orestes was not accorded an aedileship by Seidel; cf. Ryan, Hermes, 124 (1996) 253-5).

25. Seidel, FA, 53 assumed all the aediles named by Cicero, De Off.II.57 were curule but this is not certain (see above on P.Crassus Dives Mucianus). Contra Broughton, MRR.II.100 n.2 the fact that Hortensius distributed grain whilst aedile does not necessarily suggest he was aedile of the plebs. That form of largesse was not peculiar to the plebeian aediles. Amongst others M.Seius, the curule aedile of 74, distributed grain (Cic., De Off.II.58).

26. From Cicero, De Off.II.57 it may be deduced that D.Silanus was aedile between the aedileships of Q.Hortensius and P.Lentulus Spinther - that is between 75 and 63 (Cic., De Off.II.57). Since Silanus was a candidate for the consulship of 64 (Cic., Ad Att., I.1.2) he was praetor no later than 67. Based on his age Sumner, Orators, 129 argued Silanus was praetor in 67. Given the practice of the period, Silanus even if curule aedile, may not have observed a *biennium* between his aedileship and praetorship and so can have been aedile in 70 or 69 (Sumner argues no earlier or later than these years). It is unknown whether Silanus was plebeian or curule aedile (see above on Hortensius and Crassus Mucianus). If aedile in 69 Silanus must have been curule aedile as M.Cicero and M.Caesonius were plebeian aediles in that year.

27. The aedileship of Galba is attested by coins he issued bearing the legend 'P.Galb.cur.aed.' (RRC, I.418 no.406). The date is not certified. Bardt, Die Priester der vier grossen Collegien aus römisch-republikanischer Zeit, (1871) 15, Seidel, FA, 54-5 and Münzer, RE.IV.A.1.758 dated Galba's aedileship in 71 on the bases that Galba was praetor by 66 (he was a candidate for the consulship of 63 - Cic., Ad Att., I.1.1, Mur.17, [Q.Cic.], Comm.Pet., 7; Asc., 82 C), he was not in office in 70 (Cic., Verr.II.1.18), and in the belief that M.Cicero and M.Caesonius were curule aediles in 69. However, Taylor, AJP, 60 (1939) 194-202 demonstrated Cicero and Caesonius were plebeian aediles making it possible to place Galba's aedileship in 69 (so tentatively Taylor, Ibid., 200, AJP, 63 (1942) 395; Broughton, MRR.II.132, 136 n.4; and Sumner, Orators 146. Gruen, LGRR, 513 makes him aedile c.69). A separate proposition of Taylor's can be employed to exclude a date earlier than 70. Taylor, AJP, 63 (1942) 385f argued the names of the members of the pontifical college in Macrobius, Sat., III.13.11 and Cicero, De Har.Resp., 12 are registered in order of seniority. If so, it follows the *flamen Martialis* L.Lentulus Niger entered the pontifical college before Galba (Cicero lists Niger ahead of Galba). Since Niger's inauguration can be dated no earlier than the 23rd of August 70 (see Appendix VI), and Galba's coins show he was a *pontifex* by the time he was aedile, his aedileship cannot be dated prior to 70. That considerably strengthens the case for 69 but cannot prove it beyond doubt as there remains one alternative. Badian, JRS, 49 (1959) 81-88 demonstrated that the *biennium* between the curule aedileship and praetorship was not always observed in this period. It is possible, therefore, that Galba did not observe a *biennium* between his aedileship and praetorship and was praetor in 66 and curule aedile in 68.

28. Taylor, AJP, 60 (1939) 194-202 demonstrated M.Cicero and M.Caesonius were plebeian not curule aediles.

29. The date of the aedileship of Flaminius and Plaetorius is not certain but 67 seems most likely (see

Seidel, FA, 56-7; MRR.II.150 n.3, III.157).

30. Asconius, 88 C provides the only evidence for the aedileship of Q.Gallius. It is not stated whether Gallius was plebeian or curule aedile. Since Gallius did not observe a *biennium* between his aedileship (67) and praetorship (65) it has traditionally been assumed he must therefore have been aedile of the plebs (see Seidel, FA, 57; MRR.II.144). But as Badian, JRS, 49 (1959) 81-8 demonstrated the *biennium* was not always observed by curule aediles in the post-Sullan era so Gallius may have been curule aedile (this possibility is excluded if Flaminius and Plaetorius were the curule aediles of 67).

31. The aedileship of Q.Voconius Naso is based on the fact he was *Iudex* of the *Quaestio de veneficis* in 66 (see Seidel, FA, 58; MRR.II.144). It is likely therefore he was aedile shortly beforehand. Broughton, MRR.II.144 makes Naso aedile of the plebs since he dates his aedileship in 67 and he believed Flaminius and Plaetorius were curule aediles in 67 (cf. Seidel, FA, 58). But since the date of the aedileship of Flaminius and Plaetorius is uncertain and Naso may not have been aedile immediately before his service as *Iudex* we cannot be certain he was a plebeian aedile.

32. Seidel, FA, 59 and Broughton, MRR.II.162 list L.Piso Caesoninus as curule aedile without a query but the only evidence for Piso's aedileship (Cic., In Pisonem 1-2) does not specify whether Piso was curule or plebeian aedile.

33. The aedileship of Octavius and Toranius is attested by Suetonius, Aug.27.1 and the *elogium* of Octavius CIL I^2.1, p.199 = ILS.47. The latter specifies they were aediles of the plebs. Neither provides a date. Broughton, MRR.II.162 opted for 64 on the basis of the date of Octavius' praetorship (61) but as it was not necessary to observe a *biennium* between these offices 63 is equally possible (Seidel, FA, 59-60 suggested "64 oder 63." Octavius was also *iudex quaestionis*, presumably in the year after his aedileship, but there need not have been an interval between his service as *iudex* and his praetorship see for instance M.Favonius (15) and C.Caesar cos.59). Octavius died before he had the opportunity to run for the consulship (Cic., Phil.III.15; Suet., Aug.4). Toranius might be identified with the praetor of 44 (see MRR.III.207).

34. F.X.Ryan, Hermes, 123 (1995) 82-90 argues the Domitius who was curule aedile in 61 was not L.Domitius Ahenobarbus (cos.54) but a Cn.?.Domitius Ahenobarbus (but cf. Ryan, Klio, 78 (1996) 72 n.15).

35. The aedileship of Metellus Scipio is an exceedingly complicated matter. That Scipio was aedile is not directly attested (Canali, Miscellanea greca e romana, 19 (1995) 147-59 identified Scipio with the Q.Caecilius Q.f. Metellus αγορανομος recorded on an inscription discovered at Larissa but that is inadmissible as the inscription dates to the Second Century see above on Metellus Macedonicus; MRR.III.39-40; and Konrad and Linderski, *Imperium Sine Fine*, (1996) 134f, 161 n.60). Münzer, Hermes, 40 (1905) 94-8, RE Suppl.III.223 argued Scipio was curule aedile in 57 on the grounds that he celebrated games in honour of his 'adoptive' father Metellus Pius in that year - some six years after Pius' death (see MRR.II.201, 207 n.1) and on the basis of an anecdote from Cicero's lost De Virtutibus (see infra). Taylor, Studies in Honor of B.L.Ullman, (1964) 79-85 argued Scipio was curule or plebeian aedile suffect in 60 on the basis of an enigmatic episode reported by Cicero (Ad Att., II.1.9). Needless to say Münzer's and Taylor's theses are mutually exclusive and since debate is ongoing a review is called for. First, Münzer and the *ludi funebres* of Metellus Pius. Münzer, Hermes, 40 (1905) 97 argued the long delay between the death of Pius and Scipio's celebration of the games suggests Scipio had waited to celebrate the games as aedile (accepted by Broughton, MRR.II.201, 207 n.1. Rejected by Seidel, FA, 85 n.1). That notion is plausible and attractive. Caesar had likewise timed the celebration of games in honour of his long dead father to coincide with his aedileship (Dio, XXXVII.8). And Ap.Pulcher (cos.54) also intended to celebrate games in honour of his brother-in-law Q.Marcius Rex who had died in 62 or early 61 (Cic., Ad Att., I.16.10, II.1) during his hoped for aedileship in 57. In the event the games went ahead (Dio, XXXIX.7.1) though Appius campaigned for and was elected to the praetorship instead. Furthermore, when the celebrant had no ulterior motive *ludi funebres* tended to be celebrated close upon the honorand's demise (see the *ludi funebres* of L.Paullus - D.Gilula, Athenaeum, 67 (1989) 285-7; of Metellus Diadematus - Plut., Rom., 10.2, Coriol., 11.3; C.Curio - Linderski, HSCP, 76 (1972) 187-8). Hence the hypothesis that funeral games

celebrated at a significant remove from the death of the honorand indicate an impending *petitio* or the successful attainment of some office appears valid. But caution is requisite. In accordance with the Dictator's will Faustus Sulla gave games in his father's honour (Cic., Pro Sulla 54-5). The games were put on in 61 or 60 (Dio, XXXVII.51.4) some seventeen or eighteen years after L.Sulla's death. Now the delay will have been partly due to Faustus' age but Faustus eventually put the games on at a time when he was neither holding office nor likely to do so for some years. Moreover, even if it is conceded that Scipio scheduled the games so as to coincide with some stage in his *cursus* it need not be assumed this was an aedileship. Scipio may have intended the games to coincide with his campaign for the praetorship (so Shatzman, Athenaeum, 46 (1968) 353, Senatorial Wealth and Roman Politics, (1975) 310; Richardson, CQ, 33 (1983) 457; Konrad, *Imperium Sine Fine*, (1996) 140. Note Q.Gallius aed.67 pr.65 celebrated games ostensibly in honour of his father when a candidate for the praetorship - Asc., 88 C). That way if the games were decreed in the will of Pius Scipio could evade the provisions of the *Lex Tullia de ambitu* (Cic., In Vat., 37; see Konrad, Ibid.). Thus it may be argued with equal plausibility that Scipio put on the games in 57 as part of his campaign for the praetorship which he held in 56 or 55 (The date of Scipio's praetorship is disputed see Shatzman, Athenaeum, 46 (1968) 350-353, Senatorial Wealth and Roman Politics, (1975) 310; Richardson, CQ, 33 (1983) 456-63; Shackleton Bailey, Cicero's Letters to Atticus, (1965) II.209; Badian, Athenaeum, 48 (1970) 4-6; Linderski, Historia, 34 (1985) 248-54; MRR.III.42; Konrad, *Imperium Sine Fine*, (1996) 139. Though contra Shatzman and Richardson the dramatic date of Book III of De Re Rustica must be 50 not 54 B.C. Scipio's praetorship may still be dated in 56 if the aedileship of 57 is renounced see Konrad, Ibid.. Conversely, if Scipio's praetorship is dated in 56 he clearly cannot have been aedile in 57 as an interval of at least one year was required between these offices in the period see Badian, JRS, 49 (59) 81-89). Second, Münzer and De Virtutibus. Münzer, Hermes, 40 (1905) 94-8, RE.VI.1791 drew attention to an anecdote deriving from Cicero's lost work De Virtutibus in which two senators "Metel et Fabien" are said to have lost popularity due to a shortage of corn (see H.Knoellinger, M.Tullii Ciceronis de Virtutibus libri fragmenta, (1908) 28, 49; cf. F.Gustafsson, BPhW, 24 (1904) 1277-8; Canali, Ibid.; Linderski, *Imperium Sine Fine*, (1996) 161 n.60; and Konrad, *Imperium Sine Fine*, (1996) 135-8). Münzer inferred from the mention of the corn supply that Metellus and Fabius were aediles and noting the shortages in 57 which led to riots and Pompey's extraordinary appointment, identified "Metel" with Metellus Scipio and "Fabien" with Q.Fabius Maximus (cos.suff.45) suggesting they were curule aediles in 57. As Konrad has shown the argument is vulnerable on a number of counts. Though it is a reasonable inference we cannot be certain Metellus and Fabius were aediles. In times of want the people were apt to vent their spleen on the consuls rather than the aediles (as for instance in 138 - Val.Max., III.7.3; in 75 - Sallust, Hist., II.44-48 M; and 57 - Cic., De Domo 5-6, 10-13). In addition, the proposed identifications are insecure, particularly so in the case of Metellus Scipio, as Cicero is unlikely to have referred to Metellus Scipio as 'Metellus.' Nor does the anecdote require the assumption that Metellus and Fabius were colleagues. There is in sum little solid evidence on which to base the claim that Metellus Scipio was aedile in 57. Next Taylor and Cicero, Ad Atticum, II.1.9. This letter of June 60 reveals that Scipio had defeated M.Favonius in an election for some unspecified *honos* as a consequence of which Scipio had been prosecuted unsuccessfully by Favonius. The office concerned has been the subject of multiple conjectures. One fact is clear - the election was conducted about May 60 - too late for the regular elections of 61 (for 60) and too early for those of 60 (for 59) and so must have been a supplementary election to elect a suffect magistrate (M.Alford, CR, 41 (1927) 216-7; Taylor, Ibid., 80f. Taylor suggested this was the election mentioned at II.1.5 and that Nasica was the unnamed candidate escorted by Cicero and Clodius). That disposes of a number of conjectures (a tribunate of the plebs of 59 as per Drumann-Groebe, GR^2.II.36, III.33, IV.557, V.596; Münzer, RE.III.1225, VI.2074; Gelzer, RE.VIIA.1.904; Broughton, MRR.II.189 is out of the question.. Although the election of tribunes in this period might precede the election of higher magistrates - Mommsen, StR^3, I.585f; Taylor, Ibid, 80f and Historia, 17 (1968) 188f; Richardson, CQ, 33 (83) 461f - there is no parallel for tribunician elections this early in the year and the tribunician elections for 59 were still in prospect when Cicero was writing see Cic., Ad Att., II.1.4-5;

Dio, XXXVII.51.2 on which see Alford, op cit., 216; Taylor, op cit., 191 n.56; and Meier, op cit., 97. That the regular tribunician elections for 60 had been delayed into 60 is excluded - Cicero, Ad Att., I.18.4-6 makes clear the tribunes of 60 were in office by the 20th of January 60. Chr.Meier, Historia, 10 (1961) 96-98 suggested the anecdote referred back to the elections of 61 and that Scipio had been elected tribune for 60 but as Taylor retorted the surrounding narrative is concerned with current events. Sumner, Orators, 113 suggested the possibility the regular quaestorian elections for 60 had been delayed into 59 but this should be rejected. P.Clodius Pulcher was quaestor in 61 and was probably back in Rome by late December 61 - boasted he made the returned journey from Sicily in only 7 days - Cic., Ad Att., II.1.5; this point was made independently by Ryan, Athenaeum, 82 (1994) 507 n.13; cf. the arguments of Wiseman, JRS, 65 (1975) 198. That suggests Clodius had already been relieved by his successor and that the quaestorian elections for 60 had been completed by December 61. Note also C.Trebonius may have opposed the tribune C.Herennius as quaestor in January 60 but this is uncertain - MRR.II.184, III.207 and it is also tempting to suggest that the Fabius who opposed Herennius - Ad Att., II.1 was Q.Fabius Maximus then quaestor with his later consular colleague Trebonius. P.Servilius Isauricus who spoke in the senate before the 15th of March 60 was not then quaestor - MRR.III.196 contra II.184. The timing of the election also rules out a regular aedileship of 60 as per Shatzman, Senatorial Wealth and Roman Politics, (1975) 310. Finally, an election for a priesthood is out see Appendix VII; Sumner, Orators, 112 and Ryan, Athenaeum, 82 (1994) 510-11). This leaves three possibilities: - a suffect tribunate of the plebs of 60 (M.Alford, CR, 41 (1927) 216-7; Ryan, Athenaeum, 82 (1994) 505-21); a suffect quaestorship of 60 (Shackleton Bailey, Cicero's Letters to Atticus, (1965) I.350, cf. I.343, VII.85; Sumner, Orators, 112-3; Broughton, MRR.III.41-2, T.A.Ph.Soc., 81 (1991) 48); or a suffect aedileship of 60 (Taylor, Ibid., 83f; Konrad, *Imperium Sine Fine*, (1996) 108, 132f, 139-41; Linderski, *Imperium Sine Fine*, (1996) 148 n.14, 154 n.38). Broughton and Sumner argued a suffect tribunate is excluded since a suffect tribune ought to have entered office immediately and been immune from prosecution but the same argument applies equally to a suffect quaestor or aedile (see Ryan, Ibid., 507-12). But there is one insurmountable objection to the argument that Metellus Scipio was tribune of the plebs - Scipio was a patrician. Scipio did not become a plebeian by virtue of his 'testamentary adoption' by Metellus Pius (contra Ryan, Ibid., 517). Testamentary adoption was incapable of effecting a change of agnatic status (see Appendix I and Konrad, Ibid., 124-131; Linderski, Ibid., 148f). Scipio remained a patrician as may be seen from his service as *interrex* in 53. Thus the notion that Metellus Scipio was ever tribune of the plebs must be discarded. That leaves a suffect quaestorship or curule aedileship. A quaestorship is most unlikely. As Wiseman, JRS, 65 (1975) 198 objected quaestorships were too numerous and not important enough to provoke such a contest. Further, as Scipio was born no later than 95 he could have been quaestor years earlier (as early as 64) - making a frantic dash in 60 implausible. Moreover, it appears Favonius and perhaps Scipio were quaestors before 60 (on Favonius see Ryan, Ibid., 515f; with the comments of Konrad, Ibid., 131-2; on Scipio see Konrad, Ibid., 132 n.136 and Linderski, Ibid., 148 n.14). Only a suffect curule aedileship remains. That Favonius claimed to be standing "rei publicae causa" in 60 is no bar (see Konrad, Ibid., 132-4). Nor is the fact that Favonius only reached the aedileship in 53 or 52 - when he stood for the same office again in the elections of 60 for 59 he was once more unsuccessful (see Ryan, Ibid., 515-7, 521 and Konrad, Ibid., 108, 123, 131-2. Pace Sumner, Orators, 112 the oath Favonius swore in 59 to uphold Caesar's agrarian law applied to magistrates and senators and so cannot prove Favonius was successful on the second attempt). Konrad, Ibid., 140-1 offered a plausible reconstruction. Born in early 96 Scipio would normally have stood for the aedileship *suo anno* in 60 for 59. But in early 60 one of the curule aediles had to be replaced and Scipio exploited the opportunity seeking and gaining a suffect aedileship earlier than would otherwise have been possible. If the foregoing is accepted we can reconstruct a cursus for Metellus Scipio which agrees with all the available evidence. Scipio was curule aedile suffect in 60, praetor in 56 or 55, proconsul in 54, triumphed in late 54 or in 53, and consul in 52.

36. The aedileship of Crassus Dives is an inference from the fact he was *Iudex Quaestionis* in 59 which office was often preceded by the aedileship (see for instance C.Caesar). Contra Broughton, MRR.II.184

where he is listed as plebeian aedile there is no evidence as to which aedileship he held.

37. The date of the curule aedileship of C.Murena and Visellius Varro is uncertain (see Seidel, FA, 62-3; MRR.II.193 n.4, III.222). A date in the mid-60's is not impossible. Varro was never praetor as he died the year after his aedileship.

38. It is disputed whether there was one or two contemporary Lucii Calpurnii Bestiae (see Münzer, RE nos.24, 25; Broughton, MRR.III.46, T.A.Ph.S., 81 (1991) 35 n.4). The date of the aedileship of L.Calpurnius Bestia (25) is uncertain except that it belongs before 57 as Bestia was an unsuccessful candidate for a praetorship of 56. Cicero, Phil., XI.11, XIII.26 does not specify whether Bestia was curule or plebeian aedile. Seidel, FA, 61 argued since Cicero, Phil., XIII.26 lists the followers of M.Antonius in order of rank and Bestia is placed before the curule aedile L.Trebellius, Bestia must also have been curule aedile (note also Cicero's sarcastic comparison with the curule aedile C.Caesar Strabo). Yet the two aediles may simply be listed in order of seniority as Bestia's aedileship preceded that of Trebellius by more than a decade. If Seidel's argument is accepted Bestia cannot have been aedile in 58 since Scaurus and Hypsaeus were curule aediles in that year but 59 remains possible as the curule aedileship of Murena and Varro cannot be securely dated in 59. If L.Bestia (25) is identified with the homonymous tribune of the plebs of 62 (no.24) his aedileship should be no earlier than 60.

39. Q.Marcius Crispus (52) was a legate of L.Piso in Macedonia 57-55 (MRR.II.204, 212) and Sumner and Broughton suggested he was one of the *aedilicii* in Piso's retinue (Cic., In Pisonem 88. See Sumner, Phoenix, 25 (1971) 269 and Broughton, MRR.III.138). As Sumner demonstrated Crispus was not necessarily praetor before his appointment as proconsul of Bithynia and Pontus in 45. It has sometimes been suggested that Crispus be identified with Q.Marcius the consul suffect of 36 (see MRR.II.356, III.137, 138. The *praenomen* of the consul suffect is now certified by the *Fasti Tauromenitani*. As a consequence the notion that the consul suffect may have been L.Marcius Figulus (64) is ruled out). But the consul suffect may be Q.Marcius Philippus (13) the proconsul of Cilicia 47-6 (as per Syme, AA, 28 n.111) or Q.Marcius Rex, the son of the consul of 68 (as per Petersen, PIR^2, M 244).

40. The aedileship of Scaurus and Hypsaeus is attested by the coins they issued (see RRC, I.466 no.422). The date is certified by Cicero, Pro Sestio 116 (Seidel, FA, 63-4; Astin, Latomus, 16 (1957) 599 n.3). Scaurus was an unsuccessful candidate in the infamous elections for the consulship of 53. He was prosecuted and convicted for *ambitus* in 52. Hypsaeus was an unsuccessful candidate for the consulship of 52, he was prosecuted for *ambitus* and succumbed in that year. See also the previous note.

41. The aedileship of Q.Fabius Maximus is attested by fragments of the *Fornix Fabianus* which he restored as aedile (see CIL.I^2.2.762-3 = VI.1303-4 = ILS.43). Münzer, Hermes, 40 (1905) 94-8, RE.VI.1791, Suppl.III.223 also identified the senator "Fabien" mentioned in Cicero's De Virtutibus who incurred blame during a shortage of corn with this Fabius Maximus suggesting he was curule aedile in 57 (see above on Metellus Scipio. Münzer's argument was endorsed, with a query, by Broughton, MRR.II.201, 207 n.1 and more recently by Canali, MGR, 19 (1995) 156-8; cf Linderski, *Imperium Sine Fine*, (1996) 161 n.60, but was rejected by Konrad, *Imperium Sine Fine*, (1996) 135-8). Münzer, Hermes, 40 (1905) 94-8 also dated Fabius' aedileship in 57 since a comment of Cicero's in 56 (In Vat.28) indicates the restoration of the *Fornix* was already complete and from the fact that 58 and 56 are ruled out by the curule aedileships of M.Scaurus, P.Hypsaeus and P.Clodius and C.Marcellus (so also Seidel, FA, 64-5). Konrad, *Imperium Sine Fine*, (1996) 136-7 argues since it is not in fact known that Marcellus' *petitio* was successful (see below) Fabius may have been aedile in 56 (This is problematic if as Taylor argued L.Paullus was aedile with Clodius in 56 see below). It is very likely but not certain that Fabius was praetor (see Sumner, Phoenix, 25 (1971) 251-2; MRR.III.87). If so his praetorship belongs some years before 49.

42. Cosconius was aedile of the plebs (see Seidel, FA, 65). On the praetorship of Cosconius see Sumner, Phoenix, 25 (1971) 251; MRR.III.77.

43. Clodius was killed in 52 when a candidate for the praetorship of that year.

44. Cicero, Ad Att., IV.3.5 mentions a "Marcellus candidatus" in the upcoming elections for 56. Marcellus is usually identified with the later consul of 50 and it is assumed the office he sought was a curule aedileship. Further, it is normally presumed, though we have no explicit testimony, that he was elected (see Münzer, Hermes, 40 (1905) 96; Seidel, FA, 66-7; Broughton, MRR.II.208, III.54, T.A.Ph.S., 81 (1991) 44. Konrad, *Imperium Sine Fine*, (1996) 112, 136-7 raised the possibility Marcellus was not elected). Yet if Taylor's dating of the curule aedileship of Plancius and Plautius in 55 is accepted (see infra) and the aedileship of L.Aemilius Paullus (see next note) is moved as a consequence to 56 it must be presumed Marcellus' *petitio* was not for the aedileship or was unsuccessful (see MRR.III.9, 158).

45. The aedileship of Paullus is inferred from his restoration of the *Basilica Aemilia* (see Drumann and Groebe, GR^2.I.6; Klebs, RE.I.1.564-5; Münzer, Hermes, 40 (1905) 97-8; Seidel, FA, 67-8; MRR.II.216, III.9). As to the date Drumann, Groebe, Klebs, Münzer and Seidel opted for 55. Münzer on the basis that Clodius and Marcellus belonged in 56 and Plancius and Plautius in 54. But the aedileship of Marcellus is uncertain (see above) and Taylor, Athenaeum, 42 (1964) 12-28 has argued Plancius and Plautius belong in 55 (see below). As a consequence Taylor suggested moving Paullus' aedileship to 56 (Ibid., 18 see also Sumner, Phoenix, 25 (1971) 251-2 n.19).

46. The aedileship of Nonius is far from certain. It is based on Catullus 52 which mentions a Nonius who occupied a curule chair when Vatinius was fraudulently elected praetor (i.e. in 55). But as Taylor, Athenaeum, 42 (1964) 18 pointed out, there is no particular reason to assume Nonius was aedile rather than praetor like Vatinius. Moreover, even if it could be established Nonius was an aedile we could not be certain he was a curule aedile since plebeian aediles by this time also possessed the *sella curulis* (see Taylor, AJP, 60 (1939) 194-202). Taylor proposed the identification of Struma and M.Nonius Sufenas (52) on which see MRR.III.148-9.

47. It is not certain Messius was a plebeian aedile. Shackleton Bailey, Cicero's Letters to Atticus, (1965) II.211-12 argued Messius may have been a curule aedile since the elections for curule aediles of 55 were delayed into 55 and attended by violence (Dio, XXXIX.32.2) whereas the elections for plebeian aediles probably took place at the normal time in 56 prior to the passage of the *Lex Licinia de sodaliciis* (cf. Badian, ZPE, 55 (1984) 104-7). Further he argued the fact Messius celebrated the Floralia is not decisive as it is not certain only plebeian aediles did so. But as Shackleton admitted the *Lex Licinia* was probably retroactive and there is no certain instance of curule aediles celebrating the Floralia. In addition, there is already a superabundance of curule aediles for 55 (see L.Paullus, Nonius Struma, Cn.Plancius and A.Plautius). If Messius was ever praetor, it was after 46, as in that year he was still an *aedilicius* (Bell.Afr.33.2).

48. The date of the aedileship of Plancius and Plautius is a matter of dispute. Taylor, Athenaeum, 42 (1964) 12-28 argued against the traditional date (54) in favour of 55 (Taylor's argument has been accepted by Broughton, MRR.III.158; Linderski, Studi in onore di Edoardo Volterra, Milan (1969) II.281-302 and Shackleton Bailey, Phoenix, 24 (1970) 164 but was rejected by Sumner, Phoenix, 25 (1971) 249 n.12, Orators, 150).

49. The aedileship of Lepidus though not directly attested is a necessary supposition based on his probable service as *interrex* in 52 (see Seidel, FA, 70; MRR.II.228, III.7).

50. The date of Favonius' aedileship cannot be certified (see MRR.II.235, 240 n.2, III.90-91). Favonius' conjectural colleague M.Aufidius Lurco should be deleted (see MRR.III.29). Favonius competed unsuccessfully for a praetorship of 50 (Caelius, Ad Fam., VIII.9.5; Broughton, T.A.Ph.S., 81 (1991) 37; Konrad, *Imperium Sine Fine*, (1996) 107-8). F.Ryan, AJP, 115 (1994) 587-601 argues Favonius suffered another *repulsa* when he sought the praetorship of 49 (cf. Konrad, *Imperium Sine Fine*, (1996) 107-8, 123).

51. Caelius was killed when praetor in 48.

52. The aedileship of Pansa is doubtful (see MRR.III.220-1).

53. See Chapter IV above.

54. See Chapter IV above.

55. See Chapter IV above.

56. Most probably a corruption of the aediles of 161 - L.Postumius (Albinus) and L.Cornelius (Merula) see Chapter IV above.

57. A marble altar discovered in Rome bears the inscription: [Po]stumio A.f. and an [O]ctavio Cn.f. ai[d. hae]c ara restit[uta] (see CIL.I^2.2.807 = VI.810; Seidel, FA, 81; MRR.II.467). Mommsen presumed the two were curule aediles on the basis that Postumius is a patrician Albinus (Mommsen does not say why Postumius must be a patrician but this was doubtless predicated on Postumius' filiation - as Münzer, RE.XXII.1.895). Octavius is presumed a scion of the noble house. Mommsen, CIL.I^2.2.807 argued since the college consisted of a patrician and a plebeian it must be dated "neque ante saec.VII medium." Münzer, RE.XXII.1.895 on the same grounds dates it not before the end of the Second Century (compare Münzer, RE.XVII.2.1803-4 "in der letzen republikanischen Zeit.") Seidel offered "der letzen Zeit der Republik" and Broughton the "last century of the Republic." Various identifications have been proposed - none of them compelling. Mommsen suggested an otherwise unknown son of the consul of 87, or a son of Cn.Octavius RE no.22 cos.76, or an older brother of L.Octavius Cn.f. RE no.26 cos.75. Münzer, RE.XVII.2.1803-4 also suggested a son of the consul of 87 or 76. Seidel ventured a younger brother of the consul of 75, or a son of the consul of 76. But nothing excludes Cn.Octavius cos.128, M.Octavius Cn.f RE no.32 tr.pl. c.99-87 or Cn.Octavius Cn.f.? RE no.20 cos.87 (But note Badian, Chiron, 20 (1990) 405-6 suggests the consul of 87 was Q.f.). The latter is usually excluded on the grounds that Cic., Pro Plancio 51 establishes he was never aedile but this is not necessarily the case (see Chapter IV). M.Octavius Cn.f. RE no.33 is ruled out - he was curule aedile in 50 with M.Caelius Rufus. Mommsen and Seidel alluded to the *monetalis* A.Postumius A.f. Albinus RE no.36 c.81. Münzer, RE.XXII.1.895 made reference to A.Postumius A.f. Albinus RE no.31 cos.151 and suggested he was possibly curule aedile in 159 (RE.XXII.1.903) but did not cite the inscription as evidence. Seidel also mentioned the 'A.Albinus' who governed Sicily in 48 but that man was in fact A.Allienus (see MRR.II.275). A number of other Postumii are equally feasible). Further, the possibility ought to be admitted that Postumius despite his filiation was a plebeian and consequently that Postumius and Octavius are not necessarily curule aediles.

58. A fragmentary inscription discovered on the Tiber Island now lost refers to an aedile (not in RE) who together with his colleague (whose name does not survive) let a contract for the construction of some edifice for Aesculapius which they later approved as praetors (CIL.I^2.2.800 = VI.7 = ILS.3836 = ILLRP.39). In CIL the first legible line of the inscription is registered as follows: A · L · [....]S · L · F · FLACCVS. A.Degrassi and Dessau offer: A · L[....]S · L · F · FLACCVS. Mommsen suggested the restoration 'vALeriuS.' That would entail the consequence Flaccus was curule aedile. Seidel, FA, 81 accepted Mommsen's restoration but stated identification was impossible as any one of a number of L.Valerii Flacci would suit. D.Degrassi, Athenaeum, 65 (1987) 521-7 identified the aedile with L.Valerius Flaccus (179) pr.63 suggesting he was curule aedile in 66. But Mommsen's restoration is untenable. The letter A appears to have been the first letter of the (second ?) line hence the insertion of the letter V before it is illicit. Further, the inscription as printed in CIL has the letter L preceded and followed by fullstops whilst A.Degrassi and Dessau show only a fullstop between the letters A and L - both preclude the possibility the letters A, L, and S form part of the same word - i.e. the *gentilicium* Valerius. If the reading in CIL is accurate the aedile was a Lucius [.....]s Flaccus (i.e. 'L.' must be understood as his *praenomen* - as Broughton, MRR.II.467 and the letter A must follow on from the previous line). But the *gentilicium* Valerius is ruled out as there appears only enough space for a short *gentilicium*. Whereas if A.Degrassi and Dessau are followed the aedile was an A(ulus) L[.....]s Flaccus. Moreover, D.Degrassi's suggested identification is unsatisfactory. If L.Valerius Flaccus (179) had been aedile it would be very difficult to account for Cicero's omission of the office in his review of Flaccus' career (Pro Flacco 6 passim). And as Münzer, RE.VIIIA.1.33 noted there is no room for an aedileship in the *cursus* of L.Valerius Flaccus. As Degrassi saw 66 would be the only possible date for an aedileship for Cicero's client (any earlier is excluded by his age - born c.103, quaestor 71/70; cf above on Flaminius and Plaetorius; and 65, the latest possible date, is excluded by the aedileship of Caesar and Bibulus). Yet L.Valerius Flaccus served under Metellus Creticus and perhaps Pompey from 68-66 (see MRR.II.140, 156). The aedile and praetor remains a mystery. If he was a

L.[.....]s Flaccus a Fulvius is unlikely as the Fulvii eschewed the *praenomen* Lucius in the later Republic. If he was an A.L[.....]s Flaccus a Laenius might be considered. But the only known Laenius Flaccus was M.Laenius Flaccus an equestrian friend of Cicero. As the date of Flaccus' aedileship cannot be ascertained and it is unknown whether he was curule or plebeian aedile the inscription is unhelpful for present purposes.

59. Aelian, NA.IX.62 refers to a Pompeius Rufus who was aedile (see Mommsen, StR^3.II.521 n.5; Seidel, FA, 81; MRR.II.467, 604. The fact is omitted in RE and by Sumner, AJAH, 2.1 (1977) 8-25). The date of the anecdote, the identity of Pompeius and whether he was curule or plebeian aedile are unknown. It is probable the anecdote belongs to the Republic (Pompeii Rufi are not attested after the Republic. As Sumner, Ibid., 13 suggested the Caesarian officer Pompeius Rufus who was almost killed by his own troops at Thapsus - Bell.Afr., 85.7 should probably be identified with Q.Pompeius Rufus (41) tr.pl.52 who was exiled in 51. He was likely one of the exiles restored by Caesar. Cn.Pompeius Q.f. cos.suff.31 is often presumed a Rufus and son of the tribune but this is best avoided see Sumner, Ibid., 20-1; Syme, AA, 30; cf. Wiseman, CQ, 14 (1964) 125). That being so, only two men can be considered: Q.Pompeius Rufus (39) tr.pl.99, pr.91, cos.88; and Q.Pompeius Rufus (42) pr.63. If the aedile is identified with the consul (as by A.F.Scholfield, Aelian On the Characteristics of Animals, Loeb, (1959) II.279 without argument) and Sumner, AJAH, 2.1 (1977) 12 was right to suggest a birth date c.131 the aedileship if curule should be dated in 94 - a plebeian year (this is the latest possible date allowing for the lapsing of a *biennium* before his praetorship and an earlier date would be inconsistent with the suggested date of his birth). If the consul was aedile of the plebs 93 is the likely date. The praetor of 63 is usually reckoned a *quaestorius* by 73 on the basis of his appearance in the *senatus consultum de Oropiis* (born by 106/5 - Sumner, Ibid., 12). If so, his putative aedileship may be dated anywhere between c.69-65.

60. P.Barronius Barba was curule aedile at an unknown date in the late Republic (CIL.I^2.2.817 = VI.31612 see Klebs, RE.III.26; Seidel, FA, 81; MRR.II.467; Wiseman, NMRS, 217). The inscription probably dates to the last years of the Republic and so will not effect the question of the end of alternation.

RESULTS:

For the purposes of the following statistical analysis I shall use only those individuals listed in Table III whose aedileships are beyond doubt and are certified as either curule or plebeian.

Of the curule aediles these are: A.Hostilius Mancinus; Cn.Cornelius Scipio Hispanus; M.Aemilius Scaurus; M.Porcius Cato; L.Licinius Crassus; Q.Mucius Scaevola; C.Claudius Pulcher; L.Valerius Flaccus; Ap.Claudius Pulcher; M.Claudius Marcellus; C.Iulius Caesar Strabo; P.Furius Crassipes; L.Licinius Lucullus; M.Terentius Varro Lucullus; M.Seius; P.Sulpicius Galba; C.Flaminius; M.Plaetorius; M.Calpurnius Bibulus; C.Iulius Caesar; P.Cornelius Lentulus Spinther; L.Domitius Ahenobarbus; C.Licinius Murena; C.Visellius Varro; M.Aemilius Scaurus; P.Plautius Hypsaeus; Q.Fabius Maximus; P.Clodius Pulcher; Cn.Plancius; A.Plautius; M.Caelius Rufus; M.Octavius.

Of the plebeian aedile these are: ?.Lucretius Vespillo; L.Critonius; M.Fannius; M.Pomponius; M.Caesonius; M.Tullius Cicero; Q.Tullius Cicero; C.Vergilius Balbus; C.Octavius; C.Toranius; C.Cosconius.

Given that the record of the lower echelons of the senate in this period is miserably inadequate the statistics set out below on the number of aediles who were praetor and the number who did not advance can only be regarded as a rough approximation.

Curule aediles 159-49

Known - 32 (12 patricians and 20 plebeians)
Praetor - 21 or 22/28 = 75 or 78.57% *
Consul - 13/23 = 56.52% **
Noble - 25 = 78.13%
Did not advance - 5?/28 = 17.86% ***

* Of the 32 known curule aediles in this period 4 had no opportunity to be praetor hence the total 28 (Caesar Strabo and Clodius were killed and C.Visellius Varro died after their aedileships; M.Octavius followed Pompey from Italy in 49). 22 of the curule aediles were praetor if Q.Fabius Maximus (cos.suff.45) held that office which is likely but not certain.
** Of the 32 known curule aediles in this period 9 had no opportunity to stand for the consulship hence the total 23 (Cn.Scipio perhaps died shortly after his praetorship; M.Cato certainly did; Caesar Strabo, C.Visellius Varro and Clodius died before being able to stand; Caelius Rufus was killed when praetor and like Plancius, Plautius and Octavius could not in any case have stood for the consulship before 49). In addition, the chances of M.Scaurus minor and P.Hypsaeus reaching the consulship were limited as both were convicted of *ambitus* after their first attempt.
*** There is no evidence as to whether A.Hostilius Mancinus, P.Furius Crassipes, M.Seius, C.Licinius Murena, or Cn.Plancius went on to higher office.

Plebeian aediles 159-49

Known - 11
Praetor - 8 = 72.73%
Consul - 1/10 = 10% *
Noble - 2 = 18.18%
Did not advance - 3? = 27.27% **

* Of the 11 known plebeian aediles 10 were never consul but of these 1 (Octavius) died before having the opportunity to stand.
** There is no evidence as to whether Lucretius Vespillo, L.Critonius, or M.Pomponius went on to higher office.

Abortive aedilician campaigns c.159-91

Only one such case in the period is known. In 148 P.Cornelius Scipio Aemilianus was a candidate for the curule aedileship of 147 (a patrician year) but was elected consul instead (Livy, Per.L; Val.Max., VIII.15.3; Vell., I.12.3; App., Lib.112; De vir.ill., 58.5). Born in 185 (Sumner, Orators, 44) Scipio was in excess of the legal minimum age (36) when he stood for aedileship (Münzer, RE.IV.1446; Develin, Patterns, 89). Scipio was old enough to have stood for the aedileship of 148 (a plebeian year) but at the time of the elections of 149 for 148 Scipio was serving as a military tribune of the fourth legion in Africa (see MRR.I.459, 462). Develin, Patterns, 89 remarking on Scipio's delayed candidacy commented that Scipio "was busy" in 149 and perhaps could not run in any case if alternation persisted. The former is hardly an adequate explanation of Scipio's failure to compete. Scipio was under no compulsion to stand for election to the military tribunate in 150 and must have taken the decision knowing full well this would preclude his competing at the elections of 149. Given that Scipio was ambitious the decision requires some explanation. Either Scipio was compelled to wait a year because alternation was still in force and 148 was a plebeian year. Or else Scipio, like everyone else in Rome at the time, believed that Carthage would be rapidly defeated and considered it worth delaying his aedileship for a year in order to take part in the victory. Either scenario is plausible.

Unsuccessful attempts on the curule aedileship c.159-91

A number of individuals are recorded as having unsuccessfully competed for an aedileship at an unknown date which must nevertheless fall between 159 and 91. However, some are not certainly identifiable (see P.Nasica), some perhaps sought the plebeian aedileship not the curule aedileship (see Cn.Octavius and M.Tullius Decula), and so little is generally known of their early careers that it is impossible to establish the dates of their candidature.

- A P.Cornelius Scipio Nasica suffered a *repulsa* when running for the curule aedileship (Cic., Plancio 51; Val.Max., VII.5.2). Scholars are divided as to whether the individual concerned is the consul of 138 or his homonymous son the consul of 111 (Seidel, FA, 90; Münzer, RE.IV.1501-2 and Broughton, T.A.Ph.Soc., 81 (1991) 41 n.2 preferred the former but admitted the alternative was possible. Shackleton Bailey, Onomasticon to Cicero's Speeches[2], (1992) 41 also opted for the consul of 138. Sumner, Orators, 92 preferred the consul of 111). Valerius Maximus implies the latter but his testimony is unreliable as he here conflates a number of Nasicae. Cicero's description of Nasica as 'the bravest citizen the Republic had produced' would seem to point to P.Scipio Nasica Serapio (cos.138) the slayer of Ti.Gracchus. Further, the Nasica of the anecdote is said to have lost the election due to an ill-judged quip which alienated the common people. That would seem more in keeping with the character of Serapio. The consul of 111 had a reputation for wit, charm and affability (see Cic., De Off., I.109, Brutus 128; Val.Max., IV.5.2) and was beloved by the people (see Pliny, NH.XXI.10). Whereas those were not attributes shared by Serapio. But then perhaps the remark that undid Nasica was a witticism of the consul of 111 that was simply taken the wrong way. Chronological considerations certainly favour the consul of 111. Cicero says the grandfather of M.Iuventius Laterensis (16) witnessed the *repulsa* and unless we posit an unusually long generation gap the grandfather of Laterensis would have been a near contemporary of the consul of 111 and a mere boy when the consul of 138 was of an age to seek the aedileship. If the subject of the anecdote is the consul of 138 since he was praetor by 141 allowing for the required *biennium* between the curule aedileship and praetorship the *repulsa* can be dated no later than the elections of 145 (for 144) a plebeian year. But as Serapio was born c.182-1 (Sumner, Orators, 60-1) the elections of 146 (for 145), a patrician year, are also possible. However, if the Nasica concerned is the consul of 111 the latest possible date is the elections of 118 (for 117), a patrician year. But if the consul of 111 was born earlier than 154 the *repulsa* may be dated earlier (on the date of his birth see Sumner, Orators, 61, 74).

- C.Marius campaigned unsuccessfully for both the curule and plebeian aedileships in an unspecified year (Plut., Marius 5.1-2, Moralia 202 A; Cic., Pro Plancio 51. Valerius Maximus, VI.9.14 was aware Marius suffered one *repulsa* in seeking the aedileship but not apparently that he received two. On Valerius' knowledge of Marius' early career see T.F.Carney, Rh.Mus., 105 (1962) 285-7. Diod.Sic., XXXIV/XXXV.38.1 also notes that Marius "τὰς ὑποδεεστέρας ἀρχὰς μόγις εἰληφὼς ἐν." Sallust, Iug.63.4-5 and the Auctor, De vir.ill.67.1 gloss over the setbacks of Marius' early political career). Plutarch says in an unspecified year after his tribunate of the plebs (119) Marius became a candidate for the curule aedileship but when it became clear to Marius he would lose he then competed for the plebeian aedileship only to be defeated there also - thereby being the first man to achieve the dubious distinction of being defeated twice in the same day. That the elections for the curule and plebeian aedileships were conducted on the same day making it possible for Marius to suffer two *repulsae* in a day has been questioned (see Seidel, FA, 91; L.R.Taylor, Historia, 17 (1968) 191 n.53; B.Katz, L'Ant.Class., 45 (1967) 506 n.32. Mommsen, StR[3].I.581-2 n.6 considered it "nicht unmöglich....aber wenig glaublich.") However, in the present context it is irrelevant whether Marius' twin *repulsae* actually occurred on the same day, it only matters that they occurred in the same year and this feature of the story must be regarded as accurate. That Marius' failed twice is certified by Cicero, Pro Plancio 51 and as Mommsen acknowledged we have no good reason to doubt the essentials of Plutarch's account. Indeed, it was the extraordinary nature of the event that made the *repulsae* memorable and guarantees the reliability of this aspect of the anecdote. Had Marius merely failed twice in consecutive years there would have been nothing very extraordinary in this. The crucial point is the date of Marius' failed candidacy. As Marius was tribune of the plebs in 119 and praetor in 115 there are only two possible scenarios: either Marius ran in 118 for the curule and plebeian aedileships of 117; or else he competed in 117 for the aedileships of 116 (As tribune of the plebs in 119 Marius was ineligible for an aedileship before 117 since a minimum of one year was required between the tribunate and the curule and plebeian aedileship see Mommsen, StR[3].I.531-5). If the latter scenario is correct Marius, a plebeian, was competing for a curule aedileship in a plebeian year. If, however, the first alternative could be proven Marius was competing for 117 - a patrician year - which presupposes that alternation

was no longer in force. Seidel, FA, 90-1 would not be drawn on a precise date, stating only that Marius' *petitio* must fall in 118 or 117. Carney, A Biography of C.Marius, (1961) 21 though he offered no argument and did not reflect on the constitutional implications of the date, thought that Marius probably competed in 118 for the curule aedileship of 117. Broughton, T.A.Ph.Soc., 81 (1991) 42, on the other hand, also without argument suggested Marius' candidacy be dated in 117 (Mommsen, StR^3.I.581 n.6 and Weynand, RE Suppl.VI.1371-2 did not venture a date. Premerstein, RE.IV.48 erroneously credited Marius with an aedileship of the plebs in an unspecified year). As Plutarch, Marius 5.2 indicates that a short interval of time intervened between Marius' *repulsae* at the aedilician elections and his campaign for the praetorship that might be taken to preclude the possibility that Marius campaigned in 117 for 116 since technically he then allowed no interval to elapse between his aedilician and praetorian candidacy but rather competed for the praetorship at the first available opportunity. But Plutarch's testimony cannot be relied upon to be that accurate. On the other hand, it might be argued as Marius was a man in a hurry it is unlikely he remained idle for long after his tribunate and that he would have competed for the aedileship as soon as possible. In that case it is improbable he sought the curule aedileship unless it entailed no delay i.e. Marius ran unsuccessfully in 118 for the patrician year 117 which presupposes alternation had already been abandoned. Whereas if alternation was still in force it must be presumed Marius waited until 117 (the first available plebeian year) to try for a curule aedileship knowing that in campaigning for that office he would face the stiffest competiton and run the greatest risk of failure, rather than compete immediately in 118 for the plebeian aedileship of 117. It does seem most likely that Marius ran in 118 for the curule aedileship of 117 - presupposing alternation was at an end - but the argument falls far short of proof.

- L.Iulius Caesar (cos.90) failed of election at an unspecified date (Cic., Pro Plancio 51. See Seidel, FA, 91 and Broughton, T.A.Ph.Soc., 81 (1991) 40). Since Caesar was probably praetor in 95 the *repulsa* can be no later than 99 (for 98) - a plebeian year - but that date is only a *terminus ante quem* and the actual date may be earlier.

- Cn.Octavius (cos.87) also suffered a *repulsa* (Cic., Pro Plancio 51. Seidel, FA, 91 and Broughton, T.A.Ph.Soc., 81 (1991) 41). As Broughton observed it is uncertain whether Octavius competed for the curule or the plebeian aedileship. Octavius was praetor by 90. If Octavius competed for the curule aedileship the required *biennium* means the *repulsa* occurred no later than the elections of 94 for 93 (Broughton, Ibid. for unspecified reasons places it c.95). If Octavius ran for the plebeian aedileship the *repulsa* might be dated in 93.

- M.Tullius Decula (cos.81) suffered a *repulsa* at an unknown date (Cic., Pro Plancio 51. Seidel, FA, 91 and Broughton, T.A.Ph.Soc., 81 (1991) 43). It is unknown whether Decula campaigned for the curule or plebeian aedileship. The date of Decula's praetorship is unknown but since Decula's *repulsa* was witnessed by the grandfather of Laterensis it may be that it occurred in the 90's as did the *repulsae* of L.Caesar and Cn.Octavius with whom he is grouped. The precise date is beyond ascertainment. If Decula's *repulsa* belongs in the 90's he must, like Ap.Pulcher (cos.79), have had a long delayed career.

- On the *repulsa* suffered by Ap.Claudius Pulcher (cos.79) see above.

Appendix III

THE *PRINCIPES SENATUS* OF THE REPUBLIC

Of the Latin sources only those which expressly refer to an individual as *princeps senatus* are cited. Similarly only Greek sources which use the appropriate technical formula are cited (on which see below). The names of those individuals whose appointment is conjectural are italicized.

Name	Appointed	Appointed by
M'.Valerius Maximus (243) Dict.494	465 ?[1]	Q.Fabius Vibulanus ? or T.Quinctius Capitolinus ?[2]

Elogium no.23 CIL.I^2.189-191 = XI.1826 = ILS.50 = Inscript.It., XIII.3.60, 78.

1. The only source for Valerius' appointment as *princeps senatus* is the *elogium* of Augustan date which may be the product of the fertile imagination of an Augustan antiquarian, or based on a fabrication of an annalist of earlier date. Valerius Antias is often cited as a possible source (see the comments of Mommsen, CIL.I^2. p.190-1; O.Hirschfeld, Philologus, 34 (1876) 92f; Münzer, De gente Valeria, 23f, 63; Degrassi, op cit, 57-9; T.J.Luce, Between Republic and Empire, (1993) 134f; Bonnefond-Coudry, MEFR, 105 (1993) 103 n.2, 126). It might also be questioned whether in fact the position existed at the beginning of the Republic (see Hirschfeld, Ibid., 92). If the appointment is credited, the exact identity and *cursus* of this man are difficult to disengage (see MRR.I.14 n.1). Broughton's position is somewhat ambiguous (compare MRR.I.14 n.1 and I.35 where he queries the identification of the *princeps* and the *augur* who died in 463 with II.630 and III.213 where the identification is accepted). The identification has a bearing on the question of the date of Valerius' appointment as *princeps senatus*. Broughton, MRR.I.14 followed by Suolahti, Arctos, 7 (1972) 216 tentatively suggested Valerius was appointed during the *census* conducted in 493. If, however, the *princeps* is identified with the *augur* Marcus Valerius who died in 463 (Livy, III.7.6), the suggestion is doubly problematic. Though the discrepancy in *praenomina* is not a serious objection to the identification (Manius often being corrupted to the more familiar Marcus), Dionysius of Halicarnassus, VI.39.2 says the dictator of 494 was already an old man at that date making his survival till 463 improbable. In addition, the *elogium* of Valerius states that he was nominated *princeps senatus* only once ("princeps in senatum semel lectus est"). If Valerius was appointed in 493 and survived until 463, why was he only appointed the once (in 493) and not reappointed in the censuses conducted in 474 and 465 ? Better perhaps if the identification is accepted, to suggest Valerius was appointed for the first and only time in 465, dying two years later (as Mommsen, CIL.I^2.190-191).

2. Possibly appointed by one of the consuls in 493 or 465 (see previous note).

L.Lucretius Tricipitinus Flavus (20) *Cos.Suff.393, Mil.Tr.c.p.IV.*[1]	*392 ?*[2]	*L.Papirius Cursor or* *C.Iulius Iullus or* *M.Cornelius Maluginensis*

According to Plutarch, Camillus 32.1-2 during the senatorial debate on the proposal to emigrate to Veii in 390 the Dictator Camillus spoke forcefully against the measure after which those who wished to do so were given the opportunity to speak. Plutarch continues: "τέλος δὲ τὸν πρῶτον εἰωθότα λέγειν γνώμην Λεύκιον Λουκρήτιον ἀναστήσας ἐκέλευσεν ἀποφήνασθαι πρῶτον, εἶτα τοὺς ἄλλους ἐφεξῆς." Lucretius was seemingly accorded the privilege of expressing his *sententia* and delivering his vote first - the prerogative of the *princeps senatus* until the mid-70's. It was on this basis that Broughton made the suggestion that Lucretius was *princeps senatus* at the time (MRR.I.92, II.583). Suolahti, Censors, 180 accepted the suggestion without hesitation (though Lucretius is omitted from his list of *principes senatus* in Arctos, 7 (1972) 207-18).

F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) overlooked Broughton's suggestion. Münzer, RE.XIII.2.1684 had interpreted the passage differently. He thought Lucretius was assigned this role "weil unter seinem Consulat jener Ubersiedlungsplan zeurst erwogen und abgelehnt worden war, und weil der in den Fasten auf zahlreiche Consulartribunen folgende erste Consul für den ranghöchsten senator gehalten werden durfte." That explanation is hardly adequate. That the matter was first raised in Lucretius' consulate will have had no bearing on the order followed in the *interrogatio*. Further, whilst consulars will no doubt have been consulted before consular tribunes, Lucretius cannot have been consulted first on that account, since he was demonstrably not the senior consular. At least two more senior consulars were alive in 390 - namely: L.Valerius Potitus (307) cos.393; and P.? (or Ser.).Cornelius Maluginensis (251 cf. 252) see MRR.I.94-5, 100. As perhaps were L.Furius Medullinus (65) cos.413, 409 who was still alive in 391 and Q.Servilius Priscus Fidenas (75) dictator 435, 418 see MRR.I.76 n.1, 93, 96. If Camillus began the *interrogatio* with the consulars, Lucretius ought clearly to have been consulted after Potitus and Maluginensis, and perhaps after Medullinus. And if *dictatorii* were given precedence over consulars (on which see Chapter V), Priscus Fidenas should have been consulted before Lucretius. It is possible to construct an alternative explanation to Broughton's interpretation. It was widely believed by writers of the late Republic and early Empire that in the early Republic especial deference had been paid to the oldest senators (age was thought to have determined the order of precedence in the alternation of the *fasces* see Cic., De Rep.II.55; Gell., NA.II.15.4-8; Val.Max., IV.1.1 on which see Mommsen, StR^3.I.37f; Willems, Le Sénat, II.183; Taylor and Broughton, MAAR, 19 (1949) 5f, Historia, 17 (1968) 166f). Among those who subscribed to this view was Plutarch himself (Popl.12.4). Furthermore, age was sometimes erroneously held to have been crucial in the determination of the order in which the ex-consuls were called upon to deliver their *sententia* and vote (see for instance Dion.Hal., V.71.3, VI.68.1, VII.47.1, XI.6.6-7.1). In consequence it might be conjectured Lucretius was thought to be the oldest surviving ex-consul in 390. That mistaken notion might have been encouraged by the tradition that the oldest senators had willingly accepted death at the hands of the Gauls during the sack of Rome, so as not to be a burden on the defenders of the Capitol (see Livy, V.39.12-40.1, 41; Plut., Cam.21.2, 22.4-6). It is therefore possible that Lucretius was believed the oldest ex-consul living in 390 and the custom to which Plutarch obliquely refers may be that which supposedly conceded priority to the oldest ex-consul. However, in fact as we have seen Lucretius was junior to Potitus, Maluginensis and perhaps Medullinus. Moreover, this complicated construction is a much less plausible alternative to the acceptance of the clear and natural implication of Plutarch's words - i.e. that Lucretius was *princeps senatus*. The only reason to deny this is a desire to preserve Mommsen's contention that only the *gentes maiores* (according to Mommsen the Aemilii, Claudii, Cornelii, Fabii, Manlii, and Valerii) were eligible for the post. If Lucretius is accepted as *princeps senatus,* either the Lucretii must be admitted to the *gentes maiores,* or else Mommsen's thesis must be discarded.

1. There is no evidence Lucretius was ever censor not that this discredits the claim that he was *princeps* as the censorship was not originally a prerequisite (see Chapter V and below under M.Fabius Ambustus).

2. If Lucretius was *princeps senatus* in 390, the only feasible date for his appointment is the censorship of 392, as Broughton suggested (MRR.I.92 though in the index II.583 he has Lucretius *princeps* "c.390 ?" The former suggestion was followed by Suolahti, Censors, 180). For he can have been named no later than the censorship of 392, and since he was only consul in 393, no earlier than that date.

That Lucretius was nominated *princeps* in 392 is somewhat surprising as he was neither an especially distinguished or senior senator. But this would not be the last time more senior or more distinguished men were passed over in favour of other candidates (see infra).

M.Fabius Ambustus (44) ?[2] ?[2]
Cos.360, 356, 354, Dict.351.[1]

Pliny, NH.VII.133.

1. There is no evidence that Ambustus was censor. The Ambustus, censor in 363, was M.Fabius Ambustus (43) (see Münzer, RE.VI.1753; C.De Boor, Fasti Censorii, Berlin, (1873) 6; R.V.Cram, HSCP, 51 (1940) 81; MRR.I.117; and Suolahti, Censors, 195). But De Boor and Suolahti, Censors, 197f, 626f, Arctos, 7 (1972) 216-7 argued Fabius was probably censor at some date prior to his appointment as *princeps senatus* as it is stated in Livy, XXVII.11.10 that before 209 the *princeps* was normally the senior *censorius*. Since it is possible that there were unidentified censors in office in 358, De Boor suggested Fabius was one of these (followed by Suolahti. Mommsen must have assumed Ambustus was censor as he wrongly stated StR.III.970 n.2 that there was no certain example of a *princeps* who had not been censor first). The argument is unsound. We do not know how far back beyond 209 the practice of appointing the *princeps* from amongst the patrician *censorii* extended. It almost certainly post-dates the *Lex Ovinia* which greatly elevated the standing of the censorship. And as the place of the censorship in the *cursus honorum* was not fixed until the Third Century (down to 378 it was not uncommon for censors to have held no previous office and it was still possible for sometime afterward to hold the censorship without having held the consulship viz. L.Papirius Crassus cens.318, possibly pr.332; Ap.Claudius Caecus cens.312 cos.307; and L.Papirius Praetextatus cens.272), it is probable that the censorship was not a necessary prerequisite for the *princeps senatus* until after the early Third Century (as Soulahti, Arctos, 7 (1972) 213 n.1 admitted. See the comments of Willems, I.115-6). There are other indicators that the practice referred to by Livy in 209 was comparatively recent. It is not certain that Q.Fabius Maximus Rullianus was censor before he was *princeps* and in any case he was not the senior *censorius* when appointed (see next entry). And there is no evidence that Ambustus' grandson, Q.Fabius Maximus Gurges, who was also *princeps senatus,* was censor. Willems, Le Sénat, I.112; Münzer, Rh.Mus., 61 (1906) 22 n.1; Cram, op cit., 81; and Broughton, MRR.II.562 rejected De Boor's conjecture. Münzer suggested Ambustus was appointed in default of any patrician *censorii* of the *gentes maiores*.

2. The date of Fabius' appointment is beyond conjecture (as MRR.II.562). Suolahti, Arctos, 7 (1972) 216 suggested c.358-320 based presumably on Fabius' spurious censorship and the date of his death, but Fabius is last recorded alive in 322 (Livy, VIII.38.1).

Q.Fabius Maximus Rullianus (114) ?[1] ?
Cos.322, 310, 308, 297, 295 , Cens.304.

Pliny, NH.VII.133.

1. The date of Fabius' appointment as *princeps* is unknown. Broughton wisely avoided hazarding a guess (MRR.II.563). Suolahti, Arctos, 7 (1972) 216 suggested c.304-291 (no date given Censors, 231). Since the censorship at this time was still not certainly a prerequisite for appointment it is unsafe to presume Fabius must have been appointed during or after his censorship.

As Münzer, RE.VI.1811 pointed out, though it is reported in Livy, XXVII.11.10 that prior to 209 the senior ex-censor was normally appointed, Rullianus cannot have been the senior *censorius* when appointed. Rullianus is last heard of in 292/1, and it is likely his appointment preceded this date, yet he was probably survived by two more senior patrician *censorii* - namely: Ap.Claudius Caecus (cens.312) who was still alive in 280 and was never *princeps senatus* (see his *elogium* ILS.54); and M.Valerius Maximus (cos.312, 289, 286?, cens.307). In a desperate attempt to avoid this conclusion F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 291f conjectured Rullianus was only appointed in 275.

Q.Fabius Maximus Gurges (112) ?[2] ?
Cos.292, 276.[1]

Pliny, NH.VII.133.

1. There is no direct evidence that Gurges was censor (MRR.I.184 n.2). The patrician colleague of

Ti.Coruncanius who was censor probably in 289 is unknown. That Fabius was his colleague is inferred from the fact that he was *princeps senatus* and from the claim of Livy, XXVII.11.10 that prior to 209 normally the senior *censorius* was appointed *princeps* (that Gurges was censor was accepted by Willems, Le Sénat, I.112; De Boor, Fasti Censorii, 10; Münzer, RE.VI.1799; tentatively by Broughton, MRR.I.184 n.2; Suolahti, Censors, 242f, Arctos, 7 (1972) 216). The inference is unsound. As argued above it is not certain the censorship was a prerequisite at this date.

2. The date of Gurges' appointment as *princeps* is unknown (Suolahti, Arctos, 7 (1972) suggested c.289-73). If Gurges succeeded his father, as Pliny claims, he cannot have been appointed much later than the censorship of c.289. Even if Gurges was censor, it is unlikely he was the senior patrician *censorius* when appointed *princeps*.

M.Fabius Buteo (53) ? ?
Cos.245, Cens.241.

That Buteo was *princeps senatus* was first conjectured by Panvinius (see Mommsen, Rh.Mus., 19 (1864) 455-6) based on the fact that he was the senior *censorius* in 216 (Livy, XXIII.22.10) and the statement that prior to 209 the senior *censorius* had regularly been appointed *princeps* (Livy, XXVII.11.10). The same suggestion was made by Borghesi, Oeuvres, IV.26 and Willems, Le Sénat, I.112. It was endorsed by Münzer, RE.IV.1378 (though he made no mention of it in his article on Buteo - RE.VI.1760); Broughton, MRR.I.259, II.562; Suolahti, Censors, 311, Arctos, 7 (1972) 216-7; and F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 331-2. Mommsen, Rh.Mus., 19 (1864) 455-6 repudiated the suggestion, labelling Livy's description of Buteo in Book XXIII "nicht genügt." Mommsen's scepticism is not without warrant for doubts arise when the attempt is made to date Buteo's tenure. Willems made no pronouncement as to the date of Buteo's appointment, or the length of his tenure. Borghesi considered Buteo *princeps* from an unspecified date until his death which he placed just prior to the censorship of 209. Münzer suggested Buteo was appointed in 236, or one of the following *lectiones,* but had been succeeded as *princeps* by 220 (see the next entry). Broughton reckoned Buteo was named *princeps* in 214, and possibly in 220, 216 and through 210. Suolahti and Ryan followed Broughton's lead. But as Mommsen saw in spite of the fact that Buteo was the senior *censorius* in 216 it is possible he never bore the title *princeps senatus*. Though Buteo was the senior *censorius* in 216, he may have achieved that distinction only recently. It is possible that a *princeps senatus* had been appointed, or reappointed in the *lectio* of 220, but died sometime prior to 216, making Buteo the senior *censorius* in that year. This might explain the conspicuous absence of the *princeps senatus* during the senatorial debate on the appropriate response to the siege of Saguntum in 219 (Dio, frg.54.5; Zonaras, VIII.22), and the debate as to how to replenish the senate in 216 (Livy, XXIII.22.4-9). Further, if Buteo was not already *princeps* by 216, he may have been reluctant to accord himself the title in the extraordinary *lectio* he conducted as dictator in 216. The appointment of a *princeps* was the job of one of the duly elected censors and Buteo declared that he intended to do the bare minimum during the *lectio,* as he was especially wary of arrogating unto himself responsibilities that properly belonged to the censors (Livy, XXIII.23.2-4). Buteo must have placed someone first on the *album senatorium* in 216, but he may have listed the senior *consularis* first, who may or may not have been Buteo, and refrained from designating a *princeps*. Equally, that Buteo was appointed, or reappointed *princeps* in the censorship of 214 is open to doubt, as Buteo is not heard of subsequent to the year 216. Finally, Buteo cannot have been appointed, or reappointed *princeps* in the censorship of 210. Even if Buteo was still alive in 210, the *lectio* was not accomplished as the censor Veturius died shortly after entering office (MRR.I.278).

The appointment of M.Fabius Buteo as *princeps* remains uncertain.

L.Cornelius Lentulus Caudinus (211) ? ?
Cos.237, Cens.236.

That Lentulus was *princeps senatus* was the conjecture of Münzer, RAA, 99-100, 186, 410, RE.IV.1378.

Münzer argued that Dio, fragment 54.5 and Zonaras, VIII.22 show that Lentulus spoke first in the senatorial debate in 219 from which it follows he was *princeps* by that date. Münzer maintained this accords with the rule observed prior to 209 that the *princeps* should be the oldest patrician ex-censor (Livy, XXVII.11.10). Münzer stated that Lentulus was appointed in 220, succeeding M.Fabius Buteo, and remained *princeps* till his death in 213.

The conjecture must be rejected. Firstly, as is well known the historical reliability of speeches in the sources cannot be taken for granted and some scholars have repudiated this speech as outright invention (see W.V.Harris, War and Imperialism in Repubican Rome 327-70 B.C., Oxford, (1986) 269-70). Secondly, the passages of Dio and Zonaras cited by Münzer do not establish that Lentulus spoke first in the senate in 219, they merely show that Lentulus played a leading role as an advocate of the speedy declaration of war against Carthage. Moreover, even had the passages suggested Lentulus was the first speaker, that would not constitute conclusive evidence Lentulus was then *princeps,* as the order of speakers as presented in set piece debates in the ancient sources cannot be assumed to be an accurate depiction of the events described. Close scrutiny of debates of this kind reveals the order of speakers was often manipulated for maximum rhetorical effect. The use of one or more speeches to reflect the spectrum of senatorial opinion or the motives behind senatorial policy is a familiar device. Commonly two opposing extreme views are presented followed by a compromise measure (see for instance the comments of R.Talbert, The Senate of Imperial Rome, Princeton, (1984) 246f and M.G.Morgan, Athenaeum, 69 (1991) 365f). Moreover, since Münzer accepted the statement that prior to 209 the senior *censorius* was regularly appointed *princeps,* and M.Fabius Buteo was censor before Lentulus and survived at least until 216, Lentulus cannot have been appointed before the *lectio* of 214 at the earliest. There is, however, no evidence that Lentulus was ever *princeps*.

Q.Fabius Maximus Verrucosus (116) Cos.V, Cens.230.	209 Livy, XXVII.11.9-12 204 Livy, XXIX.37.1	P.Sempronius Tuditanus[1] M.Livius Salinator or C.Claudius Nero

Elogium no.29 CIL.I^2.193-4 =
ILS.56 = Inscript.It., XIII.3.80.
Livy, XXVII.11.9-12, XXIX.37.1.

1. The appointment of a *princeps* in 209 was the subject of dispute between the censors. Livy, XXVII.11.9-12 reports that M.Cornelius Cethegus claimed before that date the practice had been to appoint the senior *censorius* and that Cethegus argued the tradition ought to be maintained. But Cethegus' colleague Tuditanus argued since the gods had seen fit via the lot to allocate the choice to him, he could exercise his judgement in making the appointment, and he bypassed the senior *censorius,* T.Manlius Torquatus (cos.235, 224, cens.231), and selected Q.Fabius Maximus (cens.230). Münzer, RAA, 187 suggested the fact that there was a fault in the election of Torquatus and Fulvius to the censorship which resulted in their abdication may have been influential in the decision to bypass Torquatus. But according to Livy, Tuditanus' selection was based entirely on an assessment of the relative merits of the two candidates. Moreover, abdicated magistracies were nonetheless counted to an individual's credit. See Münzer, RE.VI.1825, 1828, XIV.1.1209.

P.Cornelius Scipio Africanus (336) Cos.205, 194, Cens.199.	199 Livy, XXXIV.44.4 194 Livy, XXXIV.44.4	P.Scipio Africanus or P.Aelius Paetus Sex.Aelius Paetus or
Livy, XXXIV.44.4, XXXVIII. 28.1-2, XXXIX.52.1-6; Plut., Flamininus 18.2.	189 Livy, XXXVIII.28.1-2, Livy, XXXIX.52.1-6; Plut., Flamininus 18.2.	C.Cornelius Cethegus T.Quinctius Flamininus[1]

1. Plutarch states that Flamininus was responsible for the reappointment of Scipio in 189. Whilst Plutarch is correct to suggest the nomination was the responsibility of one of the censors (Livy, XXVII.11.9-12), it may not be coincidental that he often claims the subject of his biography was responsible for the nomination

(thus Paullus makes the appointment in Aem.38.9 and Cato in Cato Maior 17.1). Lots were no doubt drawn separately to determine which of the censors would nominate the *princeps senatus,* and which would perform the *lustrum,* hence the fact that Flamininus' colleague M.Marcellus performed the *lustrum* (Livy, XXXVIII.36.10) does not count against Plutarch's claim that Flamininus selected the *princeps*.

In 199, as in 209, more senior patrician *censorii* were bypassed in favour of the man selected. M.Cornelius Cethegus (cens.209, cos.204) was alive in 199 (he died in 196 - Livy, XXXIII.42.5), as probably was C.Claudius Nero (cens.204) though absent on official business (he was a legate 201-199 see MRR.I.321, 328). There is no evidence for the suggestion of Suolahti, Arctos, 7 (1972) 214 n.4 that L.Aemilius Papus (cens.220) and C.Claudius Centho (cens.225) were possibly also alive in 199.

Concerning the date of Scipio's death and the appointment of L.Valerius Flaccus see the next entry.

L.Valerius Flaccus (173) Cos.195, Cens.184.

184 Livy, XXXIX.52.1-6 Plut., Cato Maior 17.1

M.Porcius Cato[1]

Livy, XXXIX.52.1-6;
Plut., Cato Maior 17.1

1. According to Plutarch, Flaccus was appointed by Cato.

Flaccus was appointed *princeps* in the censorship of 184. Yet according to some authorities, his predecessor, Scipio Africanus, was still alive in 183. A number of solutions to this conundrum are possible.

The date of Africanus' death was disputed in antiquity. Polybius and Rutilius dated Africanus' death in 183, Valerius Antias in 187 (Livy, XXXIX.52). Plutarch's source(s) believed Scipio was dead by the *recognitio equitum* of 184 (Cato Maior 18.1). Livy also believed Scipio was dead before the *lectio* of 184, since he contended Africanus would not have been succeeded by Flaccus while he lived, unless he had been expelled from the senate (see XXXVIII.54-60, XXXIX.52.1-3). That Africanus did not come to the aid of L.Scipio when Cato deprived him of his public horse also strongly suggests Africanus was dead by the censorship of 184. Polybius and Rutilius may have got the date wrong. That Polybius should have erred is not inconceivable. Despite his privileged position, Polybius was duped by the bogus tale of the joint aedileship of Africanus and L.Scipio (X.4). Africanus' demise may have been put back to 183 in order to synchronize the deaths of Africanus, Hannibal and Philopoemen (see Livy, XXXIX.52.7-9. Kienast, Cato der Censor, (1973) 148 n.61).

Yet it is possible that Scipio did die in 183. The censors of 184 entered office on the *Ides* of March 184 (Livy, XXXIX.52.5-6) and held office for eighteen months (i.e. until September 183). Now the *lectio* was normally the first task accomplished by the censors (see Mommsen, StR^3.II.420; Willems, Le Sénat, I.240f), but perhaps the *lectio* dragged on into 183 on account of Cato's zealousness and Scipio died before its completion, or Scipio might have been appointed *princeps* but then died before the censors left office and they adjusted the *lectio* accordingly appointing Flaccus in his stead (see infra on Ap.Pulcher and M.Scaurus).

Alternatively, it is not absolutely unthinkable that Scipio was alive when Flaccus was appointed. The *princeps* was not strictly appointed for life (Zonaras, VII.19), and Scipio's *inimicus,* Cato, might have appointed Flaccus whilst Africanus lived on the pretext that Scipio's self-imposed exile at Liternum prevented him from attending the senate and discharging the functions of the *princeps senatus*.

Probability and the weight of evidence favours the notion that Scipio was dead before the *lectio* of 184. See also F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 300, 386-7.

As in 209, and 199, Flaccus was not the senior patrician *censorius* when chosen. T.Quinctius Flamininus (cos.198, cens.189) died in 174 (Livy, XLI.28.11). If Mommsen was right, Flamininus was ineligible as the Quinctii were not a *gens maior* (thus Kienast, Cato der Censor, (1973) 74, 149 n.72).

M.Aemilius Lepidus (68) Cos.187, 175, Cens.179.

179 Livy, XL.51.1

174 Livy, XLI.27.1

M.Lepidus or M.Fulvius Nobilior[1]

Q.Fulvius Flaccus or

Livy, XL.51.1, XLI.27.1, XLIII.15.6, Per.XLVI, Per. XLVII, Per.XLVIII; Plut., Aemilius 38.9; Polyb., XXXII.6.5.	169 Livy, XLIII.15.6	A.Postumius Albinus C.Claudius Pulcher or Ti.Sempronius Gracchus
	164 Livy, Per.XLVI; Plut., Aemilius 38.9	L.Aemilius Paullus[2]
	159 Livy, Per.XLVII; Polyb., XXXII.6.5	P.Scipio Nasica Corculum or M.Popillius Laenas
	154 Livy, Per.XLVIII	M.Valerius Messalla or C.Cassius Longinus

1. Taken literally Livy, XL.51.1 would suggest Lepidus was appointed by Fulvius but given Livy's carelessness regarding procedural matters in the appointment of the *princeps senatus* (see Chapter V) we cannot be certain.

2. Plutarch states that Paullus was responsible for the reappointment of Lepidus in 164.

Plutarch wrongly states that Lepidus had already been appointed *princeps* four times in 164, when in fact, this was his fourth appointment. The Epitome of Livy contains a similar error. Periocha XLVII has Lepidus appointed for the sixth time in 159 which in truth was Lepidus' fifth appointment. The Mss read: "princeps sex" which was corrected by Jahn to "princeps senatus sextum." But as Per.XLVIII seems to indicate Livy was aware Lepidus was only appointed six times in total, the "sex" of the Mss is perhaps a corruption of (princeps) "senatus" (a similar point was made independently by F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 301 n.68).

As in 184 the senior patrician *censorius* T.Quinctius Flamininus was bypassed in 179. Flamininus died in 174, perhaps before the *lectio* of that year.

P.Cornelius Scipio Nasica Corculum (353) Cos.162, 155, Cens.159	147	L.Lentulus Lupus or L.Marcius Censorinus
	142 ?	P.Scipio Aemilianus or L.Mummius
Diod., XXXIV/XXXV.33.1; Val.Max., VII.5.2.		

Valerius Maximus unambiguously attests that a P.Scipio Nasica was *princeps senatus,* but betrays manifold confusion as to the Nasica concerned (confusion of the different generations of Nasicae is common in the sources see Münzer, RE.IV.1494). Valerius speaks of a Nasica who was *princeps senatus* "per aliquot annos gloriatus est", but refers to this man as consul during the Jugurthine War (i.e. the consul of 111 - Corculum's grandson), as the man who received the image of the Magna Mater (i.e. the consul of 191 - Corculum's father), as the man who suppressed many *seditiones* (a reference to Corculum's son P.Scipio Nasica Serapio cos.138), and as the man who suffered a *repulsa* when a candidate for the curule aedileship (possibly Serapio or the consul of 111 see Appendix II). It is certain, however, that the consuls of 191, 138, and 111 were never *princeps senatus*. The possibility that the consul of 191 was *princeps* is excluded by the uninterrupted sequence of *principes* between the date at which he might have been appointed (i.e. after his consulship in 191), and the date of his death (sometime after 171). Likewise there is no room between the tenure of Corculum and Ap.Pulcher for the appointment of Nasica Serapio (see below). Nor can the consul of 111 have been *princeps,* as he died during his consulship at a time when M.Scaurus was already *princeps*. That leaves Corculum as the only possible candidate, and his appointment is corroborated by Diodorus who states the grandfather of the consul of 111 (to whom he erroneously assigns the Magna Mater episode) was *princeps senatus*. Plutarch, Aem.15.3 says that Corculum was highly influential in the senate, but does not say he was *princeps senatus* (see the unambiguous expression used at Flam.18.2, Cato Maior 17.1, Aem.38.8, 9 and Ti.Gracchus 4.1).

The *terminus post quem* for Corculum's appointment is the sixth and final nomination of M.Lepidus as *princeps* in 154 (Lepidus died c.152). Corculum will have been appointed in the *lectio* of 147 when he was almost certainly the senior patrician *censorius* (the patrician censors from before 174 were all certainly dead;

A.Postumius Albinus (cens.174) is last heard of in 167; C.Pulcher (cens.169) died in 167 - Livy, XLV.44.3; and L.Paullus (cens.164) died in 160 - Livy, Per.XLVI). One of the censors of 147, L.Cornelius Lentulus Lupus, was like Corculum, opposed the destruction of Carthage (so Astin, Scipio Aemilianus, Oxford, (1967) 53, 278) and so may have favoured the appointment of Corculum (though it is not known which of the censors made the appointment in 147). The date of Corculum's death is unknown but a statement attributed to him by Plutarch, De capienda ex inimicis utilitate, 88A implies he survived the destruction of Carthage and Corinth (in 146). Though not attested thereafter, most commentators believe Corculum survived long enough to be reappointed in the *lectio* of 142 (thus Mommsen, Rh.Mus., 19 (1864) 455; Willems, Le Sénat, I.113; Münzer, RE.IV.1494-5, 1501, RAA, 251, 260; MRR.I.463, 475; Suolahti, Censors, 384, Arctos, 7 (1972) 216-7. F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 304-5 withheld judgement).

P.Cornelius Scipio Nasica Serapio (354) Cos.138.	*136 ?*	*Ap.Claudius Pulcher or M.Fulvius Nobilior*

Diod., XXXIV/XXXV.33.1, 7; Val.Max., VII.5.2.

In addition to stating that Scipio Nasica Corculum was *princeps senatus* Diodorus claims P.Scipio Nasica Serapio (cos.138) was *princeps senatus* when he killed Ti.Gracchus. Willems, Le Sénat, I.113 accepted Diodorus' testimony, suggesting Corculum was appointed *princeps* in 147 and 142, Serapio in 136 and Ap.Pulcher in 131. But the claim that Serapio was *princeps senatus* was an erroneous assumption based on the role he played in the suppression of Ti.Gracchus. Despite the claim of Diodorus, and the garbled account of Valerius Maximus, there is no room for Serapio in the list of *principes*. Serapio could only have been appointed in the *lectio* of 136 (he could not have been appointed before he was consul and he was dead before the *lectio* of 131). That Serapio was *princeps* in 136 is, however, excluded by tenure of Ap.Pulcher who was *princeps* in the lifetime of Ti.Gracchus and hence by the *lectio* of 136. Consequently, there was no opportunity for Serapio to have been appointed *princeps senatus* (see Münzer, RE.IV.1494-5, 1501, RAA, 251; MRR.I.486, 488 n.2, 500, 501 n.1; Suolahti, Censors, 399, 401, 409, Arctos, 7 (1972) 214-6; M.Bonnefond-Coudry, Le Sénat de la République romaine de la guerre d'Hannibal à Auguste: Pratiques délibératives et Prise de décision, Rome (1989) 705-6; F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 302-306). Willems' willingness to accept Serapio as *princeps* also caused him difficulties when it came to dating the tenure of P.Lentulus and Lentulus Lupus (see Le Sénat, I.114 and below).

Ap.Claudius Pulcher (295) Cos.143, Cens.136.	136	Ap.Pulcher or M.Fulvius Nobilior
	131 ?	Q.Metellus Macedonicus or Q.Pompeius

Plut., Ti.Gracchus 4.1.

According to Plutarch, Ap.Pulcher was *princeps* prior to the death of Ti.Gracchus - hence Appius was appointed at the latest in 136. The *lectio* of 136 was also probably Appius' first nomination. Appius cannot have been appointed in 147 when Corculum was *princeps,* and Appius had not yet been consul. It is also most unlikely, Appius was appointed in 142. In 142 Appius had not been censor and it was not until 125 that that prerequisite was set aside. Further, one of the censors of 142, Appius' *inimicus,* Scipio Aemilianus, is unlikely to have favoured the appointment of Appius (though it may have fallen to Scipio's colleague L.Mummius to make the appointment). It is probable, therefore, that Corculum was reappointed in 142 and Appius was first appointed in 136 (thus Mommsen, Rh.Mus., 19 (1864) 455, RF.I.93-4; Münzer, RAA, 251, RE.III.2848; MRR.I.486, 488 n.2, 500, 501 n.1; Suolahti, Censors, 399, 401, 409, Arctos, 7 (1972) 214-216; cf. F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 306-8).

How long did Appius remain *princeps senatus* ? Since Appius' death is usually dated in, or before,

131 it has hitherto been assumed he was not reappointed by the censors of 131. But the date of Appius' death requires closer scrutiny. A combination of the literary and epigraphic sources yields a fairly precise date. Appian, BC.I.18 states that Appius died after Ti.Gracchus. While the testimony of Cicero, De Rep., I.14, 31 shows Appius died before the *feriae Latinae* of 129. Hence Appius died between late 133 and early 129 (see Münzer, RE.III.28.48, RE Suppl.III.254. Ti.Gracchus was killed in the latter months of 133 see Badian, ANRW, I.1 (1972) 721-2. The *feriae Latinae* were normally celebrated in April see W.Warde Fowler, The Roman Festivals of the Period of the Republic, (1925) 95-7; H.H.Scullard, Festivals and Ceremonies of the Roman Republic, (1981) 111f). Greater precision is possible if we take into consideration Appius' service on the Gracchan agrarian commission. The original board consisted of Tiberius, his brother Gaius, and his father-in-law Appius (Livy, Per.LVIII; Vell., II.2.3; Plut., Ti.Gracchus 13.1; App., BC.I.13). Tiberius was succeeded on his death by P.Crassus Mucianus (Plut., Ti.Gracchus 21.2). The commission then consisted of C.Gracchus, Ap.Pulcher, and Crassus Mucianus (the majority of the surviving *termini* name these three commissioners see ILLRP nos.467f). Following the death of Ap.Pulcher and Crassus Mucianus the commission was made up of C.Gracchus, M.Fulvius Flaccus, and C.Papirius Carbo (Livy, Per.LIX; App., BC.I.18). Now we know that Fulvius was appointed to the commission before Carbo (this is implied by App., BC.I.18 and confirmed by the *terminus* discovered at Celenza Valfortore which contains only the names of Fulvius and C.Gracchus and so dates between the death of Carbo's predecessor and Carbo's appointment see L'Annee Epigr., (1973) no.222; MRR.III.188; A.Russi and A.Valvo, Miscellanea greca e romana, 5 (1977) 225-49). But whom did Flaccus and Carbo succeed ? Velleius, II.6.4 states Fulvius succeeded to the place of Tiberius Gracchus (which Plutarch makes clear had been occupied by Crassus Mucianus in the interim). Appian, BC.I.18 says Tiberius and Ap.Pulcher were succeeded by Fulvius and Carbo in that order. The sequence is clear and consistent - Fulvius was appointed to Tiberius' place (i.e. succeeded Mucianus), and Appius was succeeded by Carbo. However, the evidence of Velleius and Appian is in apparent conflict with the testimony of De viris illustribus, 65.4. The latter has the commission under C.Gracchus consisting of Gaius, Fulvius Flaccus and "C.Crassus" (sic) i.e. Mucianus. If that were correct, Crassus Mucianus must have been succeeded by Papirius Carbo and Ap.Pulcher by Fulvius Flaccus. Gabba, Appiani Bellorum Civilium Liber Primus[2], (1967) 56, J.Seibert, Riv.Stor. dell' Ant., 2 (1972) 73-5, Valvo and Broughton, MRR.III.188 all accepted the account of De viris illustribus. Surely, the testimony of Velleius and Appian is to be preferred (as per Carcopino, Autour des Gracques[2], Paris, (1967) 134f, 185f, 246f). The notice in De viris illustribus is doubly inaccurate. It ascribes the creation of the commission to C.Gracchus, and equips Mucianus with the *praenomen* Gaius (conflating the names of P.Crassus Mucianus and C.Carbo - Münzer, RE.XIII.1.335).

If the testimony of Velleius and Appian is upheld, Fulvius succeeded Mucianus, and Carbo succeeded Ap.Pulcher. That being so, Mucianus predeceased Ap.Pulcher, since Fulvius' appointment to the commission preceded Carbo's. It follows, the death of Mucianus provides a *terminus post quem* for the demise of Appius. Mucianus was defeated and killed by Aristonicus early in 130 (see Obsequens, 28 where the defeat is registered in 130 and Velleius, II.4.1 where Mucianus is titled proconsul. Iustin, XXXVI.4 wrongly implies Mucianus was killed late in 131 see Münzer, RE.XIII.3.336). Hence Appius died after early 130 but before April/May 129. It is most likely Appius died in 130 (Carcopino, Autour des Gracques[2], Paris, (1967) 134f, 185f, 246f long ago correctly divined the relative order of the deaths of Appius and Mucianus and established the chronology but he employed this knowledge in the service of an erroneous thesis see Badian, ANRW, I.1 (1972) 704f). It is likely, therefore, that Appius was reappointed *princeps senatus* in the *lectio* of 131. Yet Appius was apparently succeeded as *princeps* by Lentulus Lupus in the censorship of 131 (see below). It would seem Appius was appointed *princeps* by the censors in the *lectio* of 131 but died in 130 while they were still in office and the censors adjusted the *lectio* accordingly, appointing Lentulus Lupus in Appius' place (see Broughton, MRR.I.500; Astin, Scipio Aemilianus, Oxford, (1967) 92, 238 n.4; cf. Ryan, Precedence in the Republican Senate, Diss., (1993) 308f).

Appius was appointed ahead of two more senior patrician *censorii*: L.Lentulus Lupus (cos.156,

cens.147) and Scipio Aemilianus (cos.147, 134, cens.142).

L.Cornelius Lentulus Lupus (224) Cos.156, Cens.147.	130 ?	Q.Metellus Macedonicus or Q.Pompeius

Acro on Hor., Sat., II.1.68.

The evidence of the Scholiast on its own would not be worth a great deal as some scholiasts were wont to use the title *princeps senatus* in a non-technical sense (see infra on the Schol.Gronov., p.322 St; and Ps.Asc., p.185 St on P.Servilius Vatia and Q.Hortensius). However, Lupus' part in the *concilium deorum* in Book I of Lucilius' Satires confirms the Scholiast's testimony is accurate. The comment of Serv., Ad Aen., X.104 that Lupus was "dux in rep[ublica]" is also suggestive (see Baehrens, Hermes, 54 (1919) 83).

Marx, C.Lucilii Carminum Reliquiae, Teubner, (1963), pp.XXX, XL, CXXXV and Studia Luciliana, Bonn, (1882) 59f argued Book I of the satires of Lucilius which was composed after the death of Lentulus Lupus must be dated after the death of Carneades (see verse 31) in 129/8 and before the tribunate of M.Iunius Pennus in 126 (accepted by Münzer, RE.IV.1374-5, 1387; Kappelmacher, RE.XIII.1625 and Krenkel, Lucilius Satiren, (1970) I.25). Marx maintained as Ap.Pulcher was *princeps senatus* in 136 and died c.133, P.Lentulus was appointed *princeps* no later than the *lectio* of 125, and the *terminus ante quem* for the composition of Book I was 126, Lupus must have been appointed *princeps senatus* in 131 as successor to Ap.Pulcher and predecessor of P.Lentulus (Studia, 59-61; XXXVI-XL). Marx placed the death of Lupus in 126 (Studia, 61, 63f; p.XL. Followed by Münzer, RE.IV.1374-5, 1387, Rh.Mus., 61 (1906) 21).

Cichorius, Untersuchungen zu Lucilius, Berlin, (1964) 58 accepted Lupus was made *princeps* in 131 following the death of Ap.Pulcher. However, he argued, contra Marx, that Book I must be dated after 126. He argued Book XXX, which predates Book I, contains a reference to the revolt of Fregellae in 125 (line 1089 M), and Book I contains a reference to the *publicani* in Asia (lines 671-2 M), and must therefore be dated after the legislation of C.Gracchus (pp.72-86, 209, 219f. Accepted by Baehrens, Hermes, 54 (1919) 80f and Warmington, Remains of Old Latin, Loeb, (1961) vol.III pp.xiii, 2-3). Hence on Cichorius' reckoning, Lupus remained *princeps* in 125. But since P.Lentulus was *princeps* by 121, Cichorius suggested P.Lentulus was appointed in an otherwise unattested censorship in 123, following the death of Lupus in that year.

However, Cichorius' argument has multiple weaknesses. The notion that Lucilius' reference to the *socii* is related to the revolt of Fregellae is not an inevitable interpretation. Marx, II.346 plausibly related the fragment to friction arising from the activities of the Gracchan agrarian commission (Gruen, Culture and National Identity in Republican Rome, (1993) 301 n.153 objected the line cannot relate to the revolt of Fregellae since the latter were *Latini* not *socii*. But while Republican authors do generally observe the distinction, it is doubtful whether strict usage can be relied upon in the colloquial context of satirical verse). The argument that the activities of the *publicani* in Asia must post-date the legislation of C.Gracchus is also vulnerable on several grounds (see W.Raschke, JRS, 69 (1979) 79f). Furthermore, the discovery of the *Fasti* of Antium demonstrated there was no censorship between 125 and 120. In addition, Baehrens, Hermes, 54 (1919) 84f produced evidence to suggest that Lupus did not survive the *lectio* of 125. Book I contains the line: "si non amplius, at lustrum hoc protolleret unum" (I.7 M). Baehrens plausibly interpreted the line to mean Lupus, appointed *princeps* in the *lectio* of 131, did not survive the *quinquennium* dying before the censorship of 125. Subsequent attempts to reconcile Cichorius' date for Book I with the fact of P.Lentulus' appointment as *princeps* in 125 have not met with much success. O.Leuze, Zur Geschichte der römischen Censur, (1912) 30f suggested that Lupus was perhaps succeeded by P.Lentulus as *princeps* in Lupus' lifetime, or alternatively, that the satire appeared while Lupus was still alive. Both propositions were effectively refuted by Baehrens, Hermes, 54 (1919) 83f. Baehrens, Ibid., 86 suggested instead that although Lupus died just before the *lectio* of 125, and the *concilium deorum* satire was written in the same year, that Lucilius withheld publication of Book I until 123 for fear of reprisals - thereby accounting for the references in Book I to events later than 125. But

Lucilius was famous precisely for the reason that he lampooned the *primores populi* to their faces, without fear or favour (see Hor., Sat.II.1.62-70; Pers., Sat.I.114; Juv., Sat.I.151f), and he had mocked Lupus during Lupus' lifetime (see Lucilius lines 784-90 M = Book XXVIII, cf. 1312-1313 M). Thus it is scarcely credible that Lucilius should have felt compelled to delay publication of his satire on the death of Lupus for two years after Lupus' death due to "die politische Gefahr."

It is necessary, therefore, to return to Marx's dating (thus Münzer, Rh.Mus., 61 (1906) 21, RE.IV.1387; E.Bolisani, Lucilio e i suoi Frammenti, Padua, (1923) 43; Broughton, MRR.I.500, 501 n.1; Suolahti, Censors, 409, Arctos, 7 (1972) 214-6; Raschke, loc cit., 78f; and Gruen, Ibid., 284 n.67. Willems, I.114 had thought Lupus possibly *princeps* in the *lectio* of 120. Initially Mommsen, RF.I.94 omitting Scipio Nasica Corculum conjectured Lupus' appointment belonged between the death of M.Lepidus and the nomination of Ap.Pulcher. Later when he added Corculum to the list, Lupus' tenure as *princeps* was rejected altogether see Rh.Mus., 19 (1864) 455 - "L.Cornelius Lentulus Largus" sic. F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 308-11, 334 for no very compelling reason, repudiated the appointment of Lupus). Yet one minor alteration to Marx's schema is required. As Ap.Pulcher died sometime after the beginning of 130, Lupus must have been appointed *princeps* in 130 not in 131.

Lupus was the senior patrician *censorius* in 131, but the enmity that existed between the censors of 131 (Metellus Macedonicus and Q.Pompeius) and Lupus' nearest rival, Scipio Aemilianus, may have played some part in the decision to prefer Lupus to Scipio.

P.Cornelius Lentulus (202) Cos.Suff.162.	125	Cn.Servilius Caepio or L.Cassius Longinus
	120 ?	Q.Metellus Balearicus or L.Calpurnius Piso Frugi
Cic., Div. in Caec.69, Phil. VIII.14, De leg.ag.II.82; Dio, XLVI.20.5.		

Lentulus was *princeps senatus* when he took part in the suppression of C.Gracchus (in 121) and must, therefore, have been appointed no later than the *lectio* of 125 (Cic., Phil.VIII.14. See Marx, C.Lucilii Carminum Reliquiae, Teubner, (1963), XXXVIf). The appointment of Lentulus Lupus precludes a date earlier than 125 (Mommsen, RF.I.94 initially thought Lentulus was appointed in 131 to succeed Ap.Pulcher, but the date of Appius' death and the appointment of Lupus rules this out. Later Mommsen seems to have thought Lentulus was only appointed in 120 - StR.III.970 n.2). As Lentulus was still alive c.119 (Val.Max., V.3.2), and M.Scaurus was not appointed until 115, it is likely that Lentulus was reappointed in the *lectio* of 120 (see Mommsen, RF.I.93, StR.III.970 n.2; Münzer, Rh.Mus., 61 (1906) 21f; MRR.I.525 n.2; Suolahti, Censors, 412, 416, Arctos, 7 (1972) 216-7; F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 312. Willems, Le Sénat, I.114 was not certain Lentulus survived long enough to be appointed in the *lectio* of 120). Cichorius, Unter. zu Luc., (1964) 72-86 as a result of his arguments on the date of Lentulus Lupus' death and Book I of Lucilius' satires (see previous entry) suggested P.Lentulus was appointed in an otherwise unknown censorship in 123 but the discovery of the *Fasti* Antium proved there was no such censorship.

Lentulus was the first non-censor appointed *princeps* for more than a century (i.e. since Q.Fabius Maximus Gurges. This was initially accepted by Mommsen, RF.I.94. Later Mommsen, StR.III.970 n.2 erroneously equipped Lentulus with a censorship - making him the colleague of Q.Metellus Balearicus in 120 see Münzer, Rh.Mus., 61 (1906) 19f. Cichorius also posited a non-existent censorship for Lentulus in 123 vide supra). Yet there was a patrician censor available - Cn.Servilius Caepio (cos.141, cens.125). Lentulus was unquestionably the senior consular at the time, but since the claims of seniority had been disregarded on a number of occasions since 209, the choice of Lentulus over Caepio is puzzling (see Appendix IV). The answer may be political. If, Mommsen was correct, Servilius was ineligible as the Servilii were not a *gens maior* (see Münzer, Rh.Mus., 61 (1906) 21f).

M.Aemilius Scaurus (140) Cos.115, Cens.109. Cic., Rab.Perd. 21, Pro Sestio 39, De Or.II.197; Sall., Iug.25.4; Val.Max., IV.4.1, VIII.5.2; Sen., De Ben.IV.31.4; Asc., 18, 22 C; Plut., De fort.Rom.4.	115 Sall., Iug.25.4 109 ? Cic., Pro Sestio 39 Val.Max., VIII.5.2 108 Cic., Pro Sestio 39 Val.Max., VIII.5.2 102 Cic., Pro Rab.Perd. 21 97 Cic., De Or.II.197 92 Asc., 22 C 89 ?	L.Metellus Diadematus or Cn.Ahenobarbus M.Scaurus or M.Livius Drusus Q.Fabius Eburnus or C.Licinius Geta Q.Metellus Numidicus or Q.Metellus Caprarius L.Valerius Flaccus or M.Antonius Cn.Ahenobarbus or L.Licinius Crassus P.Licinius Crassus or L.Iulius Caesar

Sallust claims that Scaurus was already *princeps senatus* in 112, implying he was first appointed in the *lectio* of 115. However, Pliny, NH.II.144, after referring to Scaurus' consulship, comments Scaurus "mox princeps fuit." That might be construed as evidence that Scaurus was appointed *princeps* after the censorship of 115. But Pliny's *mox* may only mean the *lectio* was not completed until 114 (cf. Pliny, NH.VIII.223; Meier, op cit., 195 n.37). Alternatively, Pliny may mean nothing more than Scaurus 'was afterward *princeps* (*civitatis*).' Note that when Cn.Domitius Ahenobarbus (cos.96), the son of the censor of 115, was not co-opted into the augural college, he blamed M.Scaurus (Asc., 21 C). Yet it is likely that before the passage of the *Lex Domitia,* when co-optation was still in force, each member of the college had the right to nominate a candidate for any vacancy occurring in that college (as was the case after the *Lex Domitia* see Linderski, HSCP, 76 (1972) 191f). Consequently, the fact that Ahenobarbus singled out Scaurus for blame suggests he considered Scaurus was under some obligation to foster his candidacy. But there is no known bond between Scaurus and the Ahenobarbi whether political, familial or financial. Perhaps Gnaeus' father appointed Scaurus *princeps* when censor in 115, and Gnaeus thought Scaurus should have discharged this debt by nominating him for the vacancy in the college.

It is unclear whether Drusus survived long enough in 109 to permit the completion of the *lectio*. The only recorded activity of the censors of 109 is the public works conducted by Scaurus (see Suolahti, Censors, 425) which might suggest the *lectio* had already been completed. Hence Scaurus' second nomination as *princeps* may have occurred in 109, or 108 (Willems, Le Sénat, I.392 asserted the latter).

Scaurus was still *princeps* when indicted by the tribune Q.Varius in 90 (Asc., 22 C. It is not certain the *lectio* was accomplished in 92 - Willems, I.394 was doubtful. Crassus and Ahenobarbus quarrelled bitterly and resigned without having accomplished the *census* or *lustrum*. But this does not necessarily mean they did not perform the *lectio*).

Whether Scaurus was reappointed *princeps* in 89 is open to doubt on two counts. One, it is not certain the *lectio* was accomplished in 89 (Willems, Le Sénat, I.114, 392 argued it was not). The censors of 89 did carry out a partial *census* and performed the *lustrum* (see Broughton, MRR.II.32-3; Suolahti, Censors, 449-50; Wiseman, JRS, 59 (1969) 63f). It seems more likely than not they also accomplished the *lectio*.

Two, it is questionable whether Scaurus survived long enough to be reappointed. The date of his death can be fixed relatively closely. Scaurus was succeeded by Scipio Asiaticus as *augur* in 88 (ILS.9338 no.4). If, as is probable, the *comitia sacerdotum* at this date were conducted between the consular and praetorian *comitia,* Scaurus must have died after the elections of 89 (for 88), as he was not succeeded by Scipio in the augural college until the following year (the *comitia sacerdotum* were certainly conducted between the consular and praetorian *comitia* after the passage of the *Lex Labiena* in 63 and as the *Lex Labiena* was essentially a re-enactment of the provisions of the *Lex Domitia* it is probable that prior to the repeal of the *Lex Domitia* in 82-1 the *comitia sacerdotum* were scheduled between the consular and praetorian *comitia* see L.Mercklin, Die cooptation der Römer. Eine sacralrechtliche Abhandlung, (1848) 144f, 147; Mommsen, StR^3.II.32 n.1; A.Gemoll,

De cooptatione sacerdotum Romanorum, (1870) 14f; L.R.Taylor, AJP, 63 (1942) 388; J.Linderski, HSCP, 76 (1972) 191f). Now elections in this period were, it would seem, usually held late in the year - between late September and November (see Mommsen, StR^3.I.583-4; L.R.Taylor, Historia, 17 (1968) 190f; B.Katz, L'Ant.Class., 45 (1976) 504f; Badian, Chiron, 14 (1984) 103f).

The elections of 89 took place late. Appian, BC.I.52 says they were conducted in winter. Given the military situation in 89, it is probable campaigning extended throughout the autumn and that the elections were postponed until the onset of winter proper (technically, marked by the setting of the Pleiades about the 7-9th of November see F.W.Walbank, A Historical Commentary on Polybius, (1957) I.390, (1967) II.529, 634; J.Briscoe, Historia, 26 (1977) 248-50). That may be indirectly confirmed. The consular elections for 89 were conducted by Cn.Pompeius Strabo (his consular colleague having been killed earlier in the year). But Pompeius was still at Asculum on the 17th of November 89 (ILS.8888. See Cichorius, Römische Studien, (1922) 130f; Gelzer, Römische Studien, Leipzig, (1943) II.68), though he had returned to Rome by the 25th of December (when he celebrated his triumph see Inscrip.It., XIII.1.84-5, 563). It is likely, therefore, that the elections of 89 were conducted between the 18th of November and the 24th of December (Badian, Foreign Clientelae, (1958) 231 n.5; Lintott, CQ, 21 (1971) 446. If C.Caesar Strabo sought the consulship of 88, not 87, as per Badian, Studies, 51, Historia, 18 (1969) 482f; T.J.Luce, Historia, 19 (1970) 190f; Sumner, Orators, 88, 105-6; and Keaveney, Latomus, 38 (1979) 451f; contra Münzer, RE.II.IVA1.848; Gruen, JRS, 55 (1965) 72f; Lintott, CQ, 21 (1971) 446f; and Mitchell, CP, 70 (1975) 200f, since Strabo's candidacy was opposed by the tribunes Sulpicius and Antistius, the elections must have been conducted after Sulpicius and Antistius entered office on the 10th of December 89). It follows, Scaurus must still have been among the living in November, possibly in December 89. By the same token Scaurus must have died prior to the elections of 88, conducted late in 88, when he was succeeded by Scipio Asiaticus in the augural college.

But the date of Scaurus' demise can be narrowed down still further. Sulla married Metella, the widow of Scaurus, after his election to the consulship (Livy apud Plut., Sulla 6.10-11 - i.e. after November-December 89), but before his departure from Rome early in 87 (Sulla left Rome after Cinna entered office hence not before January 87 - Plut., Sulla 10.4). As Metella must have observed the statutory ten month period of mourning between the death of Scaurus and her marriage to Sulla (on this requirement see S.Treggiari, Roman Marriage, (1991) 493f. As late as the year 40 Octavia Maior required a special dispensation to marry M.Antony within the prescribed period - Plut., Ant.31.3), Scaurus' death can have occurred no later than February 88 (reckoning from a marriage in January 87 - the latest possible date. The earliest possible date for the marriage is October 88 - presuming the elections of 89 and the death of Scaurus took place in November). It is probable, therefore, that Scaurus died between mid-November 89 and February 88.

By late 89 the censors may well have completed the *lectio*, but it is likely that they were still in office in the following year. If Scaurus died subsequent to the completion of the *lectio,* but before the censors had retired from office, presumably they then nominated another *princeps* in his place rather than leave the position vacant until the next *lectio* (see above on Ap.Pulcher). If so, it becomes likely that L.Valerius Flaccus was appointed to succeed Scaurus in 89, not in 86. Due to the uncertainty as to the date of Scaurus' death Münzer, RE.VIII.A.1.24 canvassed the possibility that Flaccus was first appointed in the *lectio* of 89, but he concluded on the basis of the links between Flaccus and Philippus and the Perpernae, that it was more probable Flaccus was made *princeps* during the censorship of 86. See also F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 315-6.

Scaurus had not been censor at the time of his appointment (115) though he attained that rank in 109. There were almost certainly no patrician *censorii* alive in 115 (the only possibility being Cn.Servilius Caepio cos.141, cens.125). Scaurus was not, however, the senior patrician consular as T.Quinctius Flamininus (cos.123), and Q.Fabius Maximus Eburnus (cos.116) were still alive (see Chapter III). If Mommsen was correct, Flamininus was not eligible as the Quinctii were not a *gens maior.*

L.Valerius Flaccus (176) Cos.100, Cens.97.	by 86 Livy, Per.LXXXIII	M.Perperna or L.Marcius Philippus

Livy, Per.LXXXIII.

Livy makes clear that Flaccus was *princeps* in 84 and thus was appointed no later than 86. It is possible Flaccus was first appointed in the *lectio* of 89 (see above on the death of M.Scaurus). Flaccus was the only surviving patrician *censorius* in 86 (Q.Fabius Maximus Eburnus cos.116, cens.108, if still alive, was in exile at Nuceria see Münzer, Rh.Mus., 61 (1909) 23-27). Flaccus retained the title till his death in 79/8 (see Chapter V and Appendix VI). Since the next *lectio senatus* was not accomplished until 70 the post of *princeps senatus* remained vacant for most of the 70's.

Mam.Aemilius Lepidus Livianus (80) Cos.77.	70	L.Gellius Poplicola or Cn.Lentulus Clodianus

Val.Max., VII.7.6.

Valerius Maximus clearly states that Lepidus was *princeps senatus*. Valerius only ever uses the term on two other occasions each time of persons otherwise attested as *principes senatus* (at VII.5.2 of a P.Scipio Nasica - though he muddles the identity of the man concerned see above - and at VIII.5.2 of M.Scaurus). Hence we have no reason to accuse Valerius of terminological inexactitude (as did Willems, Le Sénat, I.118; cf. Borghesi, Oeuvres, IV.29-30). Willems argued it was significant that Cicero only calls Mam.Lepidus a "clarissimus vir" at Pro Cluentio 99, which Willems asserted, was "absolument insuffisant pour désigner un prince du Sénat" (I.118). Cicero did not apparently share that opinion, as he used the very same designation for the *principes senatus* P.Lentulus (In Cat.III.10, IV.13) and M.Scaurus (De Off.I.138). In fact, Willems' main objection to the appointment of Lepidus was that he believed Q.Lutatius Catulus was appointed *princeps* in 70 and 61, and P.Servilius Vatia Isauricus in 55 and 50, leaving no room for the appointment of Livianus. But neither Catulus, nor Vatia was ever *princeps senatus* (see below). The contention of Suolahti, Censors, 662-3, Arctos, 7 (1972) 209, 211, 216, 218 that Lepidus was "unofficial princeps senatus" (whatever that is supposed to connote) is equally baseless. As Mommsen, Rh.Mus., 19 (1864) 456-7 rightly observed, since Livianus has a very low profile in the sources, it is improbable that he would have been equipped with the title unless he actually possessed it (unlike P.Scipio Nasica Serapio whose influence and role in the events of 133 mislead Diodorus into assuming he was *princeps senatus*. cf. Sumner, JRS, 47 n.71).

As to the date of Lepidus' appointment the censorship of 70 is the earliest and indeed the only possible date. The *lectio* was not accomplished by the censors in 65 (Plut., Crassus 13.1 and Dio, XXXVII.9.3-5), or by their successors in 64 (Dio, XXXVII.9.4. See Chapter III. Hence the contention of Ryan, Precedence in the Republican Senate, Diss., (1993) 320f that Catulus was appointed *princeps* in 65 or 64 is unsustainable). Therefore, as no *lectio* was conducted between the censorhips of 70 and 61 (Dio, XXXVII.46.1) and Lepidus was dead by 63 (vide infra), the *lectio* of 70 is the only possible date for his appointment (which also agrees with the date of the death of the *princeps* L.Flaccus).

The date of Lepidus' death can only be established indirectly.

Lepidus was alive in the late 70's. Lepidus should be identified with the "Mamercus" who served as a legate under Lucullus and Antonius Creticus in the East in 74/3 (Sall., Hist.III.5 M and Oros., VI.2.16-18). Broughton initially distinguished the legate Mamercus under Lucullus from his homonym under Creticus and suggested one might be identified with Lepidus (see MRR.II.109 n.7). Hauler had also identified Creticus' legate with Lepidus but Maurenbrecher, C.Sallustii Crispi Historiarum Reliquiae, (1893) II.111 repudiated the notion on the grounds that the consul of 77 would not have served as a legate ! Sumner, JRS, 54 (1964) 47 thought the two legates might be identified and suggested an otherwise unknown son of Lepidus. Later Broughton, MRR.III.133 was of the opinion that Mamercus was a *gentilicium*. However, the *gentilicium*

Mamercus/Mamercius is uncommon (see W.Schulze, Zur Geschichte lateinischer Eigennamen, Berlin, (1966) 465f and RE) and Mamercus in Sallust, as in Cicero and elsewhere, invariably designates the consul of 77 (see Sall., Hist.I.86, III.48.10 M; Cic., De Off., II.58, Brut.175; Diod., XXXVII.2.10; cf. Iuv., Sat.VIII.192 where Mamerci is a synonym for the Aemilii). That Mamercus is a *praenomen* and not a *gentilicium* is also suggested by Sallust's reference (Hist.III.6 M) to the legates "Manius" (Hist.III.6 M - M'.Glabrio cos.67 or M'.Lepidus cos.66 ?) and "Publius" (Hist., frg 5M = McGushin, frg 41). Note also that a C.Iulius also served under Antonius c.73/2 (SIG^3.748). He is most plausibly identified with the young Caesar (Broughton, TAPA, 79 (1948) 63-7, MRR.II.113, III.105) and it would not be unexpected to find Caesar serving alongside Lepidus who had been his protector in 81 (Suet., Iul.I.2).

Lepidus was still alive in 65 (Sumner, JRS, 54 (1964) 41-48 convincingly argued it was Mam.Lepidus not M'.Lepidus who testified against C.Cornelius). Yet Lepidus was very probably dead by late 63 as he is conspicuous by his absence from Cicero's list of consulars in December 63 (Ad Att., XII.21 and Phil., II.12-14. See Sumner, JRS, 54 (1964) 47; cf. L.R.Taylor, AJP, 63 (1942) 411).

Given that Lepidus was dead by late 63, and the only *lectio* performed prior to 63 was the *lectio* of 70, Lepidus must have been appointed *princeps senatus* in 70 (as Mommsen, Rh.Mus., 19 (1864) 455, apud Borghesi, Oeuvres, IV.27-8 n.4; MRR.II.127, 130 n.1, III.8-9; Gelzer, Caesar, 25 n.3; Gruen, LGRR, 44 n.135. Suolahti, as so often, was inconsistent - compare Censors, 661-3, Censors, 463 and Arctos, 7 (1972) 216, 218). That conclusion accords admirably with the timing of the death of his predecessor L.Valerius Flaccus (vide supra).

Lepidus, like P.Lentulus and M.Scaurus, had not been censor when he was appointed, but he was almost certainly the senior patrician consular.

Cn.Cornelius Lentulus Clodianus (216) *Cos.72, Cens.70.*	*70 ?*	*L.Gellius Poplicola or* *Cn.Lentulus Clodianus*

Suolahti, Censors, 663 conjectured Lentulus Clodianus was appointed *princeps* in 70 (contradicting his suggestion at Censors, 463 that Lepidus was possibly appointed in 70. cf. F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 324). He based the conjecture on the premise that the censorship was still a necessary prerequisite for the *princeps senatus*. But non-censors had of course been appointed in 125 and 115. Nor is there any suggestion in the sources that Clodianus was *princeps senatus*. Moreover, if Clodianus was *princeps*, 70 is the only possible date for his appointment (he was dead by the *lectio* of 61) which would require the dispossession of Lepidus (Lepidus cannot have been appointed after 70 and consequently not in 61 or after as per Suolahti, Arctos, 7 (1972) 216, 218). Since Lepidus, unlike Clodianus, is stated to have been *princeps senatus* Suolahti's conjecture must be rejected.

The Evidence for Plebeian *Principes Senatus*

Prior to the work of Mommsen three scholars had posited plebeian *principes senatus*. Panvinius, Fastorum libri a Romulo rege, Heidelberg, (1588) 96 suggested C.Duillius (cos.260); Q.Metellus Macedonicus; Q.Metellus Pius; and P.Servilius Vatia Isauricus had all born the title. He produced no proof to support Duillius' purported appointment but cited Velleius, I.11 as authority for Macedonicus' nomination, Val.Max., VIII.15.8 in support of the appointment of Metellus Pius, and Val.Max., VIII.5.6 as the basis for his conjecture concerning Vatia. And Panvinius, P.Wesseling, Diod. Sic., Amsterdam, (1746) 605, and Borghesi, Oeuvres Complètes, IV.27-8 all reckoned Q.Lutatius Catulus (cos.78) was *princeps senatus* on the basis of Dio, XXXVI.30.4; Cicero, In Pis., 6, De Domo 132; and Vell., II.43.4. However, none of the evidence they adduced bears close scrutiny see Mommsen, Rh.Mus., 19 (1864) 455-6 (on Catulus see further below).

Subsequently Mommsen argued the post of *princeps senatus* was a monopoly of patricians of the *gentes maiores*. However, Willems, Le Sénat, I.111f contested Mommsen's findings and contended that three of the *principes senatus* of the late Republic were plebeian - namely Q.Lutatius Catulus (cos.78), P.Servilius

Vatia Isauricus (cos.79) and Cicero (followed by F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 325-31, 334). The evidence he assembled was as follows:

Catulus: - Cic., In Pisonem 6: "Q.Catulus, princeps huius ordinis" (i.e. the senate).
Dio, XXXVI.30.4: "τὰ πρῶτα τῆς βουλῆς"
Plut., De vit.pud., 15: " ἦν μὲν ἐν ἀξιώματι τῶν Ῥωμαίων μεγίστῳ."
Plut., Reg.apophthegm.: "πρωτεύων τῶν Ῥωμαίων." [This passage so cited by Willems is a reference to Plut., Apophth. Caes. 2, not Apophth.Cat. as MRR.II.130 n.1, which however reads: "πρωτεύοντα Ῥωμαίων."]
Vell., II.43.4: "omnium confessione senatus princeps."

Servilius: - Schol.Gronov., p.442 Orelli = p.322 Stangl: "Iste florebat: in senatus princeps erat, amabatur a populo."

Cicero: - Cremutius Cordus apud Sen., Suas.VI.19 on the death of Cicero: "brevi ante princeps senatus Romanique nominis titulus."
Cic., Phil., XIV.17: "Quod si quis de contentione principatus laborat, quae nulla esse debet, stultissime facit, si vitiis cum virtute contendit; ut enim cursu cursus, sic in viris fortibus virtus virtute superatur....Sed si principatus ageretur, quem nunquam expetivi.."
Cic., Ad Fam., XII.24.2: "Ego tamen me principem senatui populoque Romano professus sum."

The evidence does not support Willems' contention. It is convenient to begin with the Greek sources. A cursory examination of the usage of Plutarch and Dio reveals the passages cited as evidence that Catulus was *princeps senatus* mean no such thing. Plutarch refers to the *princeps senatus* on five occasions, each time specifying they were registered as such on the *album senatorium* - Flamininus, 18.2: "προέγραψε τῆς Βουλῆς"; Cato Maior 17.1: "προέγραψε....τῆς συγκλήτον"; Aemilius, 38.8: "προγράψαι τὸν ἄριστον" and 38.9: "τῆς δὲ Βουλῆς προέγραψε"; Ti.Gracchus 4.1: "προγεγραμμένος κατ' ἀξίωμα τῆς Ῥωμαίων Βουλῆς"; De fort.Rom., 4: "προγράφεται τοῦ μεγάλου συνεδρίου." Note also the usage of Polybius and Diodorus Siculus. Polybius, XXXII.6.5: "πρῶτος τῆς συγκλήτου γραφόμενος" Diodorus, XXXIV/XXXV.33.1: "προεκάθισαν τοῦ συνεδρίου καὶ πρώτην ἐπεῖχου γνώμην" and XXXIV/XXXV.33.7: "προηγούμενος τῆς συγκλήτον." Similarly, Dio refers to a *princeps* four times in his extant work and his usage is equally unmistakable - XLVI.20.5: "προκρίτου ποτὲ τῆς Βουλῆς"; LIII.1.3: "πρόκριτος τῆς γερουσίας"; LVII.8.2: "πρόκριτός τε τῆς γερουσίας"; and LXXIV.5.1: "πρόκριτος γὰρ τῆς γερουσίας" Dio is doubtless also behind Zonaras, VII.19: "εἷς δέ τις, ὃν πρίγκιπα μὲν τῆς γερουσίας ὠνόμαζον (λέγοιτο δ' ἄν καθ' Ἕλληνας πρόκριτος)." Clearly, therefore, the passages of Plutarch and Dio cited by Willems do not conform to the invariable usage of those authors and cannot be said to mean Catulus was *princeps senatus* (cf. Ryan, Ibid., 325-6).

The passages of Velleius, the Scholiast of Gronovia and Cremutius Cordus may be taken together. Each uses the term *princeps senatus* in a rhetorical, not technical, sense. This is most obvious in the case of Velleius where the phrase "omnium confessione" betrays the rhetorical nature of the passage. This would be a singularly inappropriate description of the actual *princeps senatus,* who was appointed, not by popular acclamation, but "a censoribus in senatum lectus fuerat" (Gell., NA.IV.10.2). Velleius' description of Catulus is pure hyperbole, meaning only that it was widely acknowledged that Catulus was the leading figure in the senate at that time (as Münzer, RE.XIIA.2.1815). The same is true of the Scholiast's description of Servilius Isauricus. The phrase "in senatu princeps" is evidently intended as a compliment to the notion "amabatur a populo." That is, Servilius achieved the difficult distinction of being a leading figure in the senate, and at the same time, popular with the masses. Indeed, Willems himself admitted there was no "témoignage positif" to support

Servilius' appointment and doubted the value of the Scholiasts's testimony (I.120. Note in summation at I.122 Willems speaks of only two plebeian *principes senatus* - Catulus and Cicero). Cremutius Cordus' description of Cicero belongs in the same category. Cremutius in his history heaped obloquy on the authors of the proscriptions and lavished praise on the opponents of the Triumvirs (Sen., Ad Marciam I.1, 26; Tac., Ann.IV.34; Quint., Inst.Or., X.104). Cicero, the foremost victim of the proscriptions, received a fulsome eulogy (Sen., Suas.VI.19). At the apogee of this encomium, Cremutius accorded Cicero the title *princeps senatus* and it is in this context that it must be evaluated. The title was employed for rhetorical effect, as a suitable climax to Cicero's epitaph, not as a formal description of Cicero's position - the title was not used in the technical sense (cf. Borghesi, Oeuvres, IV.29-30). Note as a further instance belonging to this class the description of Q.Hortensius by Pseudo Asconius, p.98 Orelli = p.185 Stangl as "princeps in senatu, propter nobilitatem et in foro ob eloquentiam rege causarum." The *propter* clause establishes the non-technical nature of the usage - it means only that Hortensius was accounted a leading senator due to his birth and eloquence. Willems, I.119 n.1 declared the passage not comparable to the others, but that is special pleading.

Finally, the passages of Cicero adduced by Willems are also incapable of substantiating his claims. To begin with, the term *princeps* was one of Cicero's favourite commendations, and he employed a bewildering array of permutations (see H.Wagenvoort, Philologus, 91 (1936) 206-221, 323-345). It is essential, therefore, to insist on precise terminology when appraising the usage of Cicero. Cicero's praise of Catulus at In Pisonem 6 is significant for what it does not say, rather than for what it does. The expression "princeps huius ordinis" is a conspicuously evasive periphrasis. If Catulus was *princeps senatus,* why not equip him with his full title, rather than this ambiguous circumlocution ? The inescapable conclusion is that Cicero quite deliberately avoided the formal title as Catulus was not entitled to it. Note that Cicero, In Cat., II.12 used the same expression of a group of senior senators in 63 ("principes eius ordinis"). Clearly, they cannot all have been *princeps senatus*. It follows, the expression only means that Catulus was, in Cicero's opinion, a/the leading senator. Willems did not cite a passage of Cicero which at first glance appears to confirm the suggestion that Catulus was *princeps*. At De Domo 132 Cicero complained that Clodius had dared to consecrate the house of a citizen "cui princeps senatus, tum autem ordines omnes, deinde Italia tota, post cunctae gentes testimonium huius urbis atque imperii conservati dedissent." Some have taken this as a reference to Catulus who was the first to declare Cicero *parens patriae* (so Borghesi, Oeuvres, IV.27-8; R.G.Nisbet, De Domo Sua, Oxford, (1939) 181; Shackleton Bailey, Cicero Back from Exile, (1991) 94 with the qualification that the title had been abolished by Sulla). But Mommsen, Rh.Mus., 19 (1864) 456 n.1 explained the true meaning of the passage. *Princeps senatus* "heißt hier nicht 'der Vormann des Senats', sondern 'der Senat zuerst', sodann die übrigen Stände" (cf. Mommsen apud Borghesi, Oeuvres, IV.27-8 n.4. Thus also Garatoni see Nisbet, loc.cit.). Cicero makes analogous use of the word *princeps* in the Verrines, II.2.2, and the Pro Sestio 70, 73. If the passage is otherwise interpreted, the senatorial order, the "princeps ordo" (Cic., De Prov.Cons.25), is omitted from this otherwise all-encompassing phrase. Further support for this interpretation, if it be needed, is to be found at De Domo 73f where the abbreviated formula used at Domo 132 is fully expounded.

The passages of Cicero adduced as evidence that Cicero was *princeps senatus* are equally unsatisfactory. Cicero's statement to Q.Cornificius in Ad Fam., XII.24.2 is self-evidently not technical. Cicero declared himself ready to fulfil the role of *princeps* 'senatui populoque Romano.' That is quite different from an assertion that he bore the title *princeps senatus*. Like the passage of Velleius, the words "professus sum" betray the rhetorical nature of the passage (cf Ryan, Ibid., 330; Wagenvoort, op cit., 210). Clearly, Cicero cannot have declared himself *princeps senatus* in the formal sense. Both in Ad Fam., XII.24.2 and Philippics XIV.17 Cicero is concerned with the leadership of the senate and the direction of public policy. At this time Cicero repeatedly complains about the number, quality, and performance of the *principes*, i.e. the consulars (see Phil., VIII.22, Ad Fam., X.28.3, XII.4.1, 5.2-3; cf. Syme, RR, 164f). He maintained some showed no interest in guiding senatorial policy, some were unable to by reason of their age and infirmity, and others had not the capacity. In these passages Cicero declares himself willing and capable to fill the void, commending himself as

the leading figure in the senate, not as a candidate for the formal title *princeps senatus*. Most commentators have appreciated that these passages were not technical (see Mommsen, Rh.Mus., 19 (1864) 455f, apud Borghesi, Oeuvres, IV.27-8 n.4, StR.III.868 n.4; O'Brien Moore, RE Suppl. VI.699-700; Herzog., op cit., I.886 n.4; Münzer, RE.XIIA.2.1815; Broughton, MRR.II.130 n.1; Sumner, JRS, 54 (1964) 48; and M.Bonnefond-Coudry, op cit., 706-7).

Willems' proposition that Catulus, Servilius and Cicero were *principes senatus* also involves practical difficulties. Willems argued Catulus was appointed *princeps* in 70, and probably reappointed in 61, Servilius in the *lectiones* of 55 and 50, and Cicero in 43. Two obvious problems emerge. First, Willems' schema left no room for the appointment of Mam.Lepidus Livianus. Hence Willems was forced to deny Lepidus was *princeps* although, unlike Willems' nominees, Lepidus is expressly termed *princeps senatus* in the technical sense and on any objective assessment is a more credible candidate than Willems' plebeians. Second, Servilius Isauricus died in 44 and Cicero was executed on the 7th of December 43 and in the interim there was no censorship. Consequently, Willems was forced to argue that Cicero was made *princeps* "par un décret du Sénat" (I.122. Followed by Ryan, Ibid., 330). But this unheard of procedure is unthinkable. Ryan, Ibid., 324, 328 preferred to suggest Catulus was first appointed in 65 or 64, but the *lectio* was not accomplished in 65 and 64 (vide supra).

Appendix IV

THE *GENTES MAIORES* AND THE MONOPOLY OF THE POST OF *PRINCEPS SENATUS*

Mommsen asserted that only representatives of the *gentes maiores* were eligible for the post of *princeps senatus*.[1] A claim which has subsequently become canonical.[2] And Mommsen went on to identify the *gentes maiores* as the Aemilii, Claudii, Cornelii, Fabii, Manlii and Valerii.[3] Both propositions are dubious.

First, Mommsen's argument was circular. He inferred the post of *princeps senatus* was restricted to the *gentes maiores* on the basis of the list of known incumbents and candidates. Yet he also deduced that the Aemilii, Claudii, Cornelii, Fabii, Manlii and Valerii were *gentes maiores* from the fact they provided *principes senatus*. In other words, the proof the *princeps senatus* had to come from a *gens maior* was that the known *principes* were drawn from these *gentes* and the proof that these *gentes* were *maior* was that they produced *principes senatus*.[4]

Second, it is improbable on general grounds that these six *gentes* alone made up the *gentes maiores*. None of the ancient sources indicate how many *gentes maiores* there were or names any of them. But the Romans believed the *maiores gentes* were those families that had provided the first 150 or 200 senators during the reigns of the kings from Romulus to Ancus Marcius.[5] They were distinguished from the *minores gentes* which were made up of the 100 or 150 senators adlected by Tarquinius Priscus.[6] It is scarcely credible the Romans believed that only six *gentes* produced 150 to 200 senators which suggests the *gentes maiores* were a larger group. It is only reasonable to assume the *gentes maiores* encompassed considerably more than six *gentes,* including some of those *gentes* prominent in the early Republic but later in obscurity or extinct such as the Herminii, Horatii, Lucretii, Menenii, Pinarii, Romilii and the like. Moreover, since the Romans defined the *gentes maiores* as the senatorial families created prior to the reign of Tarquinius Priscus, any *gens* which according to the tradition provided senators before the reign of Priscus, ought to be considered *maior*. Hence

[1] RF.I.258f, StR.III.31, 868.

[2] See for instance Münzer, Rh.Mus., 61 (1909) 22, RAA, 11f, 98f; O'Brien Moore, RE Suppl.VI.699; Taylor, Party Politics in the Age of Caesar, (1968) 196; Sumner, JRS, 54 (1964) 47-8; Suolahti, Arctos, 7 (1972) 208f. M.Bonnefond-Coudry, MEFR, 105 (1993) 107f admitted that the supposed monopoly of the *gentes maiores* was without solid foundation but nevertheless accepted it. Willems, Le Sénat, I.116 was one of the few dissenting voices. Chr.Meier, Gedächtnisschrift für Wolfgang Kunkel, Frankfurt, (1984) 192f expressed some doubts.

[3] This also has become orthodox. Willems, Le Sénat, I.116, however, argued the Claudii and Fabii could not belong to the *gentes maiores* (on which Mommsen, StR.III.868 n.4). And Münzer, RAA, 11f, 99 was uncertain whether the Manlii were a *gens maior*. A few other scholars have attempted to identify the *gentes maiores* and *minores*. See for example A.Magdelain, Hommages à J.Bayet, (1964), 469-70; R.E.A.Palmer, The Archaic Community of the Romans, (1970) 197f, 344f; P.-Ch.Ranouil, Recherches sur le "Patriciat" (509-366 avant J.-C.), (1975) 125f.

[4] This point was made independently by F.X.Ryan, Precedence in the Republican Senate, Diss., (1993) 341.

[5] See Cicero, De Rep., II.35; Livy, I.35.6; De vir.ill., VI.6; Suet., Aug., II.1 (who erroneously thought the *minores* were plebeians); cf. Dion.Hal., II.47.1, III.67.1; Zonaras, VII.8; Kübler, RE.VII.1193-6; Siber, RE.XXI.107-9; O'Brien Moore, RE Suppl.VI.666-7.

[6] Tacitus, Annals XI.25 is the only source for the claim the *minores* were created by P.Valerius Poplicola and L.Iunius Brutus. Other sources mention the expansion of the senate by Poplicola and Brutus but they refer to the new senators as *conscripti* (see Livy, II.1.10-11; Festus, 304 L; Plut., QR, 58; Ser., Aen., I.426).

the Alban *gentes* (the Cloelii, Curiatii, Geganii, Iulii, Quinctii and Servilii) which according to the tradition were adlected into the senate and patriciate by Tullus Hostilius before the creation of the *gentes minores* ought surely to be numbered amongst the *maiores*.[7]

Third, Mommsen considered it significant that neither the Papirii, the only known *minor gens*, nor any of the Alban *gentes*, can show a *princeps senatus*.[8] But when considering Mommsen's inference that the post of *princeps* was limited to the six *gentes* which he identified as *maiores*, it should be remembered that the inference is only as good as the list on which it is based. Between 509 and 210 the list consists of only four possibly five names (1 Valerius, 3 Fabii, and probably 1 Lucretius). Thus the early list is so lacunose that its evidential value is extremely limited. Yet even so, it contains one probable exception to Mommsen's rule - L.Lucretius Tricipitinus Flavus. If the tenure of Lucretius is accepted, either the Lucretii must be added to Mommsen's list of *gentes maiores*, or Mommsen's hypothesis must be abandoned. Between 209 and 70 the list is complete and consists of eleven *principes* (3 Aemilii, 1 Claudius, 4 Cornelii, 1 Fabius, and 2 Valerii) and one unsuccessful candidate (1 Manlius) representing six *gentes*. The six are of course Mommsen's *maiores*, but how remarkable is their apparent monopoly of the post in the period ? An analysis of patrician occupancy of high office by *gens* shows that these same six *gentes* enjoyed a disproportionate share throughout the Republic. In the period when the list of *principes* is complete these *gentes* were steadily increasing their share of the highest offices at the expense of other patrician *gentes*. This development is particularly evident in the censorship which for some period before 209 until 125 was a necessary prerequisite for the *princeps senatus*. In the period from the outbreak of the Hannibalic War to the fall of the Republic there are twenty-six patrician censors known to us (including L.Caesar cos.64, cens.61. The unknown censor of 64 may or may not have been patrician). Of these nineteen were drawn from the six patrician *gentes* listed above (there were 3 Aemilii, 4 Claudii, 7 Cornelii, 1 Fabius and 4 Valerii). Only seven patrician censors in the period came from *gentes* other than these six (214 P.Furius Philus, 210 L.Veturius Philo, 189 T.Quinctius Flamininus, 174 A.Postumius Albinus, 125 Cn.Servilius Caepio, 89 L.Iulius Caesar, 61 L.Iulius Caesar). And of these seven few had the opportunity to be nominated *princeps senatus*. Two died in office (P.Furius Philus and L.Veturius Philo). One was deprived of any chance by the longevity of Lepidus (A.Albinus cens.174 is last heard of in 167 but Lepidus was *princeps* from 179 to 152). Another was assassinated before he might be nominated (L.Caesar cens.89 was killed in 87). And by the time L.Caesar (cos.64) was censor (in 61) it is possible the post was defunct.[9] Of those remaining T.Quinctius Flamininus (cos.198, cens.189) was twice passed over and Cn.Servilius Caepio once, but we are not entitled to presume this was due to the fact they purportedly did not belong to *gentes maiores*. In 184 a less senior candidate, L.Valerius Flaccus (cos.195, cens.184), was preferred to Flamininus but the appointment was blatantly political. Flamininus was the senior *censorius* and by any measure outstripped Flaccus but after 209 the claims of seniority were often ignored and the censor who made the appointment, M.Cato, was an old colleague of Flaccus and an *inimicus* of Flamininus. In 179 Flamininus was again passed over - this time in favour of M.Aemilius Lepidus (cos.187, 175, cens.179). Lepidus was probably preferred to Flamininus as the latter's reputation was on the wane by 179. Flamininus' later years were marked by inactivity and he had encountered criticism for his persecution of Hannibal.[10] By contrast Lepidus' star was in the ascendant. He had only recently been elected *pontifex maximus*, and as censor in 179, it is possibile that Lepidus nominated himself *princeps*.[11] The strongest argument in favour of Mommsen's

[7] See Livy, I.30.2; Dion.Hal., III.29.2.

[8] RF.I.258-9.

[9] See Chapter V above.

[10] See Plut., Flamininus 20f.

[11] The perceived merits of the candidates also probably explains why in 115 in lieu of patrician *censorii* M.Aemilius Scaurus (cos.115) was preferred to Flamininus' homonymous grandson the consul of 123

hypothesis would appear to be the puzzling appointment of P.Cornelius Lentulus (cos.suff.162) over Cn.Servilius Caepio (cos.141, cens.125) in 125. Why should the censors of 125 have chosen to fall back upon the oldest living consular when there was a patrician censor available ? It cannot have been due to qualms about appointing a serving censor (this had been done in 199, 184, 179 and 136). Mommsen's thesis seemingly provides a ready explanation - Servilius as a representative of a *gens minor* was unqualified. But this is not the only possible explanation. Caepio need not have been passed over because he was ineligible for the post. Observe an analogous appointment in 70. In that year Cn.Lentulus Clodianus (cos.72) was censor but was passed over in favour of the non-censor Mam.Aemilius Lepidus Livianus (cos.77). Evidently the choice was not predicated on Clodianus' ineligibility for he belonged to the patrician Cornelii - one of Mommsen's *gentes maiores*. In both cases the senior patrician *consularis*, though never censor, was preferred to the serving patrician censor. Now seniority alone cannot explain these decisions for after 209 the principle of seniority was not invariably observed. It might be conjectured that Caepio and his censorial colleague L.Cassius Longinus Ravilla were *inimici* and the choice fell to Cassius but there is no evidence to support this. Better perhaps the explanation be sought in contemporary concerns regarding senatorial corruption. Throughout his career from the passage of the *Lex Cassia tabellaria* to the trial of the Vestals Cassius had waged a war on corruption and was known for his *severitas*. It was suggested to me by Martin Stone that the choice of Lentulus may have been influenced by his legendary honesty.[12] It is to be noted that one of Lentulus' first acts as *princeps* was to undertake the prosecution of the notoriously venal M'.Aquillius (cos.129). However, that may be, the fact is the failure to appoint Flamininus and Caepio is perfectly explicable without resort to the hypothesis that they were excluded because they did not belong to *maiores gentes*.

In sum, that the Aemilii, Claudii, Cornelii, Fabii, and Valerii monopolized the post of *princeps senatus* between 209-70 is hardly surprising when placed in the context of the declining share of other patrician *gentes* in office in general and in the censorship in particular. Few representatives of other *gentes* became censor in the period, and of those that did, even fewer had the opportunity to be nominated *princeps senatus*. The suggestion would be more compelling if we possessed a complete, or at least more complete, list of *principes senatus* prior to 209. If these same six *gentes* enjoyed a similar monopoly at an earlier period, when their predominance in high office was less marked, and the proportion of other patrician *gentes* in the consulship and censorship was much higher, the argument would be stronger.[13]

Mommsen also accepted the claim of Cicero that the *gentes maiores* were consulted before the *gentes minores* by Tarquinius Priscus and connected this with the supposed restriction of the post of *princeps* to the *maiores*.[14] But according to Dionysius of Halicarnassus this privilege existed by the reign of Numa before the distinction between *maiores* and *minores* came into being. Dionysius says the Albans who had assisted Romulus in founding Rome and made up Romulus' original 100 strong senate already claimed this right over all those adlected later.[15] Among those the Albans claimed priority over were the Sabines added to the senate by Romulus and Titus Tatius which included the Valerii[16] and according to one tradition the Claudii.[17] Unless we assume the Sabines adlected by Romulus and Tatius later came to enjoy this privilege, the Claudii and who was then the senior patrician *consularis*. Just as Scaurus was preferred to the more senior Q.Fabius Maximus Eburnus (cos.116) on account of his influence and ability.

[12] On which see Gran.Lic., Bk.XXVIII p.9-10 Flemisch.

[13] Note the Papirii, the only known *gens minor*, was well represented in the consulship and censorship from the late Fifth until the Third Century.

[14] De Rep., II.35-6.

[15] II.62.1.

[16] Dion.Hal., II.46.3-4; Plut., Popl.1, Numa 5; Münzer, De gente Valeria, Diss., (1891) 5f.

[17] Suet., Tib.1.

Valerii ought to belong to the group that did not have priority in debate. In fact, the notion that the *gentes maiores* were consulted before the *minores* in the Regal senate is probably a late Republican aetiological fiction.[18]

Furthermore, if some special 'sanctity' attached to the *gentes maiores* as identified by Mommsen, we might expect that this would have manifested itself in other political and religious monopolies - perhaps in the provision of *interreges*, *reges sacrorum*, or the *flamines maiores*. But the *minores* as identified by Mommsen are evident in all these posts.

Finally, we should consider the appointment of C.Iulius Caesar Octavianus as *princeps senatus* in 28. Mommsen initially accepted his appointment.[19] But later he denied the emperors bore the title *princeps senatus*.[20] One suspects Mommsen's change of heart was due mainly to the fact the Iulii were not one of his *gentes maiores*. In reality Augustus proudly advertised the title.[21] And far from eschewing the title so as to preserve the illusion he was *primus inter pares*, as Mommsen would have us believe, Augustus seized upon it with alacrity. It is in connection with his appointment in 28 that we should understand an anecdote related by Suetonius and Dio.[22] We are told that Augustus now and then dragged M.Aemilius Lepidus (cos.46, 42) out of seclusion at Circeii and forced him to participate in the senate.[23] Yet he reacted angrily to Antistius Labeo's suggestion that Lepidus should be registered on the *album senatorium* in 28. Labeo's proposal appears entirely unobjectionable - since Lepidus still functioned as a senator, albeit only occasionally, he ought to be included on the *album senatorium*. Why therefore did Augustus react so ? The reason is at once self-evident when it is borne in mind that Augustus intended to assume the title *princeps senatus* as this time (as in fact he did). As there were then no patrician *censorii* alive the choice would fall on one of the patrician consulars - Lepidus was therefore something of an embarrassment for it might be contended he had a superior claim to the title as he was almost certainly the senior surviving patrician consular, was *pontifex maximus*, and great-grandson of the *princeps senatus* and *pontifex maximus* M.Lepidus (cos.187, 175). Hence Augustus' irrational response to the proposal of Labeo. Unfortunately, Octavian's appointment does not constitute decisive evidence that *gentes* other than the six identified by Mommsen were eligible for the post. Mommsen's postulate might be defended by arguing Octavian's nomination was a departure from Republican practice. Octavian was self-appointed and given his propensity for reshaping Republican institutions to suit his ends he might readily have made such an innovation.

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[18] See Chapter V and Appendix V.

[19] See his comments apud Borghesi, Oeuvres, IV.27-8 n.4, cf. Rh.Mus., 19 (1864) 457.

[20] StR^3.II.895f, III.971.

[21] Res Gestae, 7.2; Dio, LIII.1.3. Dio, LVII.8.2 also says Tiberius used the title. And later Pertinax revived the title see Dio, LXXIV.5.1; ILS.408-9, 5842, 5845. See also Talbert, op cit., 164-5; and Bonnefond-Coudry, MEFR, 105 (1993) 103-4, 127-134. For what it is worth, the emperors Valerian and Claudius Tacitus are also accorded the title in the Historia Augusta see Vita Valer., 5, Vita Gord., 9.2, Vita Tac., 3.

[22] Suetonius, Aug.LIV; Dio, LIV.15.7-8.

[23] Dio, LIV.15.4-6.

Appendix V

THE ALLEGED PRIORITY OF THE PATRICIATE ON THE *ALBUM SENATORIUM* AND IN SENATORIAL DEBATE

Mommsen and Willems contended that the order of priority in senatorial debate and on the *album senatorium* was determined by rank and seniority, but that within each grade patricians spoke and were listed before their plebeian counterparts - with patricians of the *gentes maiores* having priority over members of the *gentes minores*.[1] Willems argued this patrician prerogative was no longer operative in the First Century.[2] Mommsen, though uncertain, thought it doubtful after Sulla.[3] Mommsen and Willems have been followed to varying degrees by many scholars.[4]

Mommsen extrapolated these alleged patrician privileges from six pieces of evidence. First, Cicero's claim that the *gentes maiores* enjoyed priority over the *gentes minores* in the Regal senate.[5] Second, Mommsen's own conjecture that the *princeps senatus* had to be a representative of the *gentes maiores*. Third, Festus' statement that the kings, consuls and consular tribunes "coniunctissimos sibi quosque patriciorum et deinde plebeiorum legebant."[6] Fourth, by analogy from the division of the patrons of Canusium in A.D. 223 into *clarissimi viri* and *equites Romani*.[7] Fifth, on the basis of the order of the three witnesses to the *senatus consultum de Bacchanalibus* of 186: M.Claudi[us] M.f., L.Valeri[us] P.f., Q.Minuci[us] C.f..[8] And sixth, from the term *patres conscripti*.[9]

However, there is no solid basis for the alleged priority of the patriciate on the *album senatorium,* or in senatorial debate in the middle or late Republic, and if the practice ever existed, it had been discontinued by the Hannibalic War.

First, Mommsen argued that Cicero's claim that the *gentes maiores* were consulted before the *gentes minores* in the Regal senate was probably based on a privilege which still existed in historical times.[10] That is, Mommsen contended that in the senate of the Republic within each magisterial grade patricians of the *gentes maiores* were asked for their *sententia* first, followed by patricians of the *gentes minores* and finally the plebeian senators were consulted. However, it is evident that this supposed custom could not have been

[1] See Mommsen, RF.I.254-84, StR.III.967-9 and Willems, Le Sénat, I.122-3, 259-60, 708, 712.

[2] Willems based this conclusion on the order of senators in the *consilium* of the *senatus consultum de agro Pergameno* which he dated c.98-94.

[3] Mommsen, StR.III.967 n.4 argued, contra Willems, that the order of names in the *s.c. de agro Pergameno* does not necessarily establish that this supposed patrician prerogative had lapsed by that time.

[4] See for instance Herzog, Geschichte und System der römischen Staatsverfassung, (1884) I.886; F.Zühlke, Mommsen und Willems in ihrer der Sonderstellung der Patricier in dem Senat, Insterburg, (1891) 26f; O'Brien Moore, RE Suppl.VI.698f, 711f; Degrassi, ILLRP.II.511; H.J.Wolff, BIDR, 64 (1961) 3; R.J.A.Talbert, The Senate of Imperial Rome, Princeton, (1984) 245; Chr.Meier, Gedächtnisschrift für Wolfgang Kunkel, Frankfurt, (1984) 185, 198; M.Gwyn Morgan, Athenaeum, 69 (1991) 359, 362; and Bonnefond-Coudry, MEFR, 105 (1993) 106.

[5] Cic., De Rep., II.35.

[6] Festus, 246 M = 290 L.

[7] See CIL.IX.338 = ILS.6121.

[8] See CIL.I^2.581 = ILS.18.

[9] See especially Festus, 304 L: "qui patres, qui conscripti vocati sunt in curiam." And Livy, II.1.11: "traditum inde fertur, ut in senatum vocarentur qui patres quique conscripti essent."

[10] RF.I.258.

observed in the Republican senate. Mommsen accepted that during the Republic priority within each grade was determined by seniority. Suppose then that the senior *consularis* or *praetorius* was a plebeian and the next most senior was a patrician of a *maior gens*, or that the senior senator was a patrician of a *gens minor* and the next most senior a patrician of a *maior gens* - was principle of seniority flouted and the more junior senator consulted first ? Hardly. One exception to the principle of seniority might be granted to the *princeps senatus* (who was not necessarily the senior *consularis*) without undermining the general validity of the principle, but if this supposed custom was observed, the principle of seniority would have been rendered meaningless by the number of exceptions that would have been necessary in each grade.[11] Self-evidently the two contrary procedures cannot have coexisted, and since there is good evidence that priority in debate and in the *lectio* was determined by rank and seniority, the notion that the order to which a senator belonged was influential must lapse. In reality the supposed priority of the *gentes maiores* in debate in the Regal senate was probably a late Republican aetiological fiction intended to explain the distinction *maior* versus *minor gens*.[12]

Second, Mommsen's suggestion that the *gentes maiores* monopolized the post of *princeps senatus* is a dubious conjecture. The proposition was based on a circular argument and supported by an inference from a very lacunose list of *principes senatus*.[13]

Third, the testimony of Festus is a dubious prop at best and Mommsen's interpretation of the passage was refuted by Willems.[14] Festus states:

> Post exactos eos [reges], consules quoque et tribuni militum consulari potestate coniunctissimos sibi quosque patriciorum et deinde plebeiorum legebant, donec Ovinia tribunicia intervenit, qua sanctum est, ut censores ex omni ordine optimum quemque curiatim in senatum legerent.

As Willems remarked: "C'est faire violence, ce nous semble, au sens propre du mot *deinde* de prétendre avec Mommsen que ce terme indique la priorité de rang accordée aux sénateurs patriciens sur la liste sénatoriale. Le terme propre eût été alors: *deinceps*.[15] *Deinde* marque essentiellement le *temps*: en conséquence il faut entendre le passage en ce sens que les tribuns consulaires (patriciens) nommaient de préférence sénateurs leurs amis qu'ils choisirent d'abord parmi les patriciens et *plus tard* (quand il y eut des tribuns consulaires plébéiens), parmi les plébéiens." Moreover, even if Mommsen's interpretation were endorsed, the passage, for what it is worth, implies that after the *Lex Ovinia* senators were registered without regard for their order.

Fourth, the supposed analogy provided by the list of the patrons of Canusium is entirely illusory. The patrons are divided into *clarissimi viri* (i.e. those who had held some office in Rome) and *equites Romani*. That is, the distinction is a basic distinction of rank and has nothing to do with distinctions between the patrician and plebeian orders in Rome, or with the order of precedence in the senate of Rome or Canusium.[16] If any analogy is to be drawn from this document, we should note that the senate of Canusium is registered in descending order of rank (from *quinquennalicii* down to *praetextati*) and according to seniority (the serving *quinquennales* of A.D. 233 - M.Antonius Priscus and L.Annius Secundus - are registered at the bottom of the list of

[11] The odds that the order of seniority in any grade would coincide to any significant extent with the order when ranked according to the distinction patricians of *maiores gentes*, patricians of *gentes minores*, plebeians would needless to say be infinitesimally small. Hence in most grades the principle of seniority would have to abandoned for all intents and purposes.

[12] See further Chapter V and Appendix IV.

[13] See Appendix IV.

[14] Le Sénat, I.62.

[15] Willems cited as an example Cicero, Pro Cluentio, 148.

[16] On the organisation of municipal senates see in general Marquardt, StV^2.I.183-93. On the *album* of Canusium in particular see Marquardt, StV^2.I.187f.

quinquennalicii). This is just what we should expect for Ulpian, Digest, L.3.1 explicitly states in the section entitled *de albo scribendo* that an *album decurionum* should list the decurions in descending order of rank and seniority. Moreover, Ulpian continues the same order was to be observed "in sententiis dicendis." And no evidence has been produced which suggests the procedure in the Roman senate was any different.

Fifth, the argument from the order of the witnesses in the *senatus consultum de Bacchanalibus*. Following Willems, Mommsen identified the witnesses as M.Claudius Marcellus (cos.196, cens.189), L.Valerius Flaccus (cos.195, cens.184), and Q.Minucius Rufus (cos.197).[17] And Mommsen, like Willems, claimed the priority of Marcellus was due to the fact that he was a *censorius* whereas the other two were mere consulars. Mommsen also agreed with Willems that the patrician L.Valerius Flaccus was listed before the plebeian Q.Minucius Rufus, despite the fact the latter was the more senior *consularis*, because patricians were accorded priority in the *lectio* and in debate. Later scholars claimed to have found additional examples of the priority of patricians in *senatus consulta* from the Principate of Augustus. O'Brien Moore, L.R.Taylor, and M.Bonnefond-Coudry cited the *s.c. de Mytilenaeis* of 25 in which Paullus Aemilius Lepidus (cos.suff.34) is listed before the plebeian C.Asinius Pollio (cos.40).[18] And Wiseman cited a second example in the same document where a non-consular senator, presumed to be a member of the patrician Claudii Pulchri (all that survives is part of his filiation and tribe viz: [Απ]πιου υιος Παλα[τινα]), was listed ahead of a [K]ηνσωρινος - i.e. the plebeian L.Marcius Censorinus (cos.39).[19] O'Brien Moore also cited the fact that in the *s.c. de ludis saecularibus* of 17, one of Augustus' newly created patricians, M.Iunius Silanus (cos.25), is registered before C.Asinius Pollio (cos.40).[20]

However, this argument which is predicated on three premises is vulnerable. It is assumed that the order of witnesses in *senatus consulta* reflects the order of precedence observed on the *album senatorium* and in senatorial debate. It is assumed that the witnesses to *senatus consulta* and members of *consilia* were invariably listed in order of rank and seniority. And the argument based on the *s.c. de Bacchanalibus* depends on the additional assumption that within the senate there existed a censorial grade which ranked above the consulares. All three assumptions are questionable.

First, there is no proof that the order of witnesses to *senatus consulta* reflects the order followed in the *lectio* or in senatorial debate.[21] If this were invariably so, it is curious that in a number of cases junior senators

[17] F.Ryan, Precedence in the Republican Senate, Diss., (1993) 117-8 argues, without success, in favour of alternative identifications.

[18] All that is preserved of the names is: [Παυλος Αιμιλιος Λευ]κιον υιος Παλατινα Λεπεδος and Γαιος Ασιν[ιος Γναιου υιος Αρνιησσις Πωλλιω]ν. What remains of the filiation of Lepidus makes clear this cannot be the Triumvir Lepidus. See O'Brien Moore, RE Suppl VI.698-9; Taylor, VDRR, 169 n.4 and Bonnefond-Coudry, MEFR, 105 (1993) 106 n.11. For the text of the *s.c. de Mytilenaeis* of 25 see R.K.Skerk, Roman Documents from the Greek East to the Age of Augustus, (1969) no.26 col.b, line 40. Note that the Asinii Marcelli the descendants of Asinius Pollio were patricians and it is possible that Pollio was adlected *inter patricios* by Caesar in 45 or by Augustus in 29 (see Heiter, De patriciis gentibus, Berlin, (1909) 45 and Pistor, Prinzeps und Patriziat, (1965) 18-9). But even if Pollio was a patrician after 45/29 it does not greatly affect the present argument (see infra).

[19] Wiseman, HSCP, 74 (1970) 209. See Sherk, RDGE, col.c, lines 10-12. The filiation proves that this man cannot be Ap.Claudius C.f. Pulcher (cos.38). Wiseman follows Groag, PIR^2 C 983 in identifying this man as Ap.Claudius Ap.f. Pulcher, the son of C.Claudius Pulcher, adopted by his uncle Ap.Pulcher (cos.54). The identity of Censorinus is clear and uncontested. Censorinus cannot be identified with C.Marcius Censorinus (cos.8) who like the other *nobiles* who were consul in the period will have attained that office in his early thirties (see J.Morris, Listy Filologicke, 87 (1964) 316-37 and 88 (1965) 22-31) and hence was only a boy in 25.

[20] RE Suppl VI.698. For the *s.c. de ludis saecularibus* of 17 see CIL.VI.877 = VI.32324. Mommsen himself noted this (Gesammelte Schriften, Berlin, (1913) VIII.583).

[21] As Bonnefond-Coudry, MEFR, 105 (1993) 106 n.11 conceded.

head the list of witnesses.[22] Further, if the order of witnesses reflects the order observed in debate, and some of the witnesses to *senatus consulta* in the Second Century are correctly identified as *quaestorii,* this conflicts with the contention that *quaestorii* did not possess the *ius sententiam dicendi* before the dictatorship of Sulla.[23] In addition, if the order of witnesses reflects the order followed in debate, the consuls designate are conspicuous by their absence. In the late Republic the consuls designate took precedence over the consulars in debate in the latter half of the year. Yet in two senatorial decrees of late September 51 the consuls designate do not figure among the witnesses.[24] Moreover, from the mid-70's until the reign of Caligula the principle of seniority was not observed in the consular grade in senatorial debate.[25] Consequently, the order of consular witnesses in *senatus consulta* in that period could only reflect *either* the order observed in senatorial debate (i.e. that determined by the presiding consul or the emperor irrespective of seniority), *or* the order observed on the *album* (where the principle of seniority was retained). Clearly, the two divergent procedures could not be represented simultaneously.

Second, though it is universally assumed that rank and seniority invariably determined the order of witnesses in *senatus consulta* and *consilia* this is demonstrably not the case.[26] With most surviving *senatus consulta* and *consilia* dates and identities are so uncertain that this assertion cannot be tested, but where we have good information, it is evident rank and seniority were not invariably strictly observed.[27] The *consilium* recorded in the *s.c. de Oropiis* of 73 includes: Γαιος Κλαυδιος Γαιου υιος Γλαβερ, Μααρκος Κασιος

[22] Willems, Le Sénat, I.249-51 identified the senator M'.Acilius M'.f. Vol. listed first in the *s.c. de Thisbensibus* of 170 and the senator L.Tremellius Cn.f. listed first in the *s.c. de Prienensibus et Samiis* of 135 as *quaestorii*. Willems identified the former as M'.Acilius Glabrio (36) cur.aed.166, cos.suff.154. Mommsen, Gesammelte Schriften, Berlin, (1913) VIII.285 suggested an Acilius Balbus was also possible. Taylor argued the tribe was intended to distinguish Acilius from the Glabriones and favoured an Acilius Balbus (see MRR.III.1). Willems identified Tremellius as the quaestor of 143/2 (see MRR.I.472, III.208) and son of Cn.Tremellius tr.pl.168, pr.159. Tremellius was praetor at an unknown date. Broughton, MRR.I.487 suggested before 135. That is possible but it makes for a rather short gap between his and his father's praetorship. The senators listed first in the *s.c. de Iudaeis* of c.134 and the *s.c. de Asclepiade* of 78 are of indeterminate but junior rank (see Willems, Le Sénat, I.251-2; MRR.II.489, 490, 494). See also F.Ryan, Precedence in the Republican Senate, Diss., (1993) 120.

[23] Mommsen, RF.I.257, 264, StR.III.964, 982; Willems, Le Sénat, I.225f.

[24] In the *s.c. de provinciis consularibus* of September 29 51 and the vetoed *s.c. de provinciis praetoriis* of September 30 51 the only witnesses in the consular grade are L.Domitius Ahenobarbus (cos.54) and Metellus Scipio (cos.52) see Cic., Ad Fam., VIII.8.5-8. Yet the consuls designate L.Aemilius Paullus and C.Claudius Marcellus surely participated in the debate. The *s.c. de provinciis consularibus* directed that Paullus and Marcellus initiate debate on the disposition of the consular provinces early in their term. The decree is unlikely to have passed without their assent. Note also that if, as Reynolds argued, the M.Valerius Messalla listed first in the *s.c. de Aphrodisiensibus* of October 2 39 is M.Messalla Rufus (cos.53), and prior to promulgation of the *s.c.* the Triumvirs had already designated consuls for the years 38 to 31 (see infra), Messalla Rufus though a consular comes ahead of the consuls designate Ap.Claudius Pulcher (cos.38), L.Nonius Asprenas (cos.suff.36), and L.Scribonius Libo (cos.34).

[25] See Chapter V above.

[26] This presumption is accepted by all the scholars I have consulted. See for instance (in addition to Mommsen, StR.III.967; Willems, Le Sénat, I.248-61, 708, 712, II.207-9; O'Brien Moore, RE Suppl. VI.698-9, 802; Taylor, VDRR, 169, 170, 175 n.21, 176 n.22, 177; and Bonnefond-Coudry, MEFR, 105 (1993) 106) Cichorius, Römische Studien, (1922) 136f and Untersuchungen zu Lucilius, (1964) 2f; Broughton, MRR.I.487, II.114-5, 246-7, III.54, 109, 148, 204 passim; H.B.Mattingly, AJP, 93 (1972) 419f; Badian, Phoenix, 25 (1971) 140 n.32, ZPE, 55 (1984) 106f, LCM, 11 (1986) 16; L.Moretti, Rendic.Pont.Accad.Arch., 55-6 (1982-4) 368. J.M.Reynolds, Aphrodisias and Rome, London, (1982) was more cautious (see below).

[27] Thus for example little can be done with the *s.c. de agro Pergameno* owing to uncertainty about its date and our ignorance concerning the majority of the senators listed.

Μααρκου υιος, Γαιος Λικινιος Γαιου υιος Σακερδως.[28] C.Claudius Glaber is most naturally identified as the praetor of 73.[29] But as Glaber is listed before C.Licinius Sacerdos, the praetor of 75, another Glaber, praetor before 75, has been invented in order to salvage the postulate that the witnesses are listed strictly according to seniority.[30] Nor is this an isolated instance. In the case of the *s.c. de Aphrodisiensibus* of 39 a whole series of assumptions are necessary to preserve the hypothesis.[31] The Μαρκος Ουα[λε]ριος Μαρκου υιος Μεσσαλα listed first must be identified as the elderly Messalla Rufus (cos.53). Otherwise seniority was not observed, since Messalla precedes, among others, Ap.Claudius Pulcher (cos.38), L.Nonius Asprenas (cos.suff.36), and L.Scribonius Libo (cos.34), and the only possible alternative identifications are M.Messalla (cos.suff.32), or M.Messalla Corvinus (cos.31).[32] Also, tenth on the list occurs a Ποπλιος Σεστιος Λευκιου υιος Κολλεινα. He is identified as Cicero's friend P.Sestius who was quaestor in 63, tribune of the plebs in 57, and probably praetor in 54.[33] The difficulty is that in the *s.c. de Aphrodisiensibus* Sestius is registered after L.Nonius Asprenas (praetor after 44?, cos.suff.36), whereas in the *s.c. de Panamareis* also of 39, he is listed before Asprenas. Reynolds explained this by arguing that between the passage of the *s.c. de Panamareis* (on the 14th of August 39) and the *s.c. de Aphrodisiensibus* (on the 2nd of October 39) Octavian, M.Antonius and Sextus Pompeius met at Misenum and designated the consuls for the years 37 to 31. Hence, when the *s.c. de Aphrodisiensibus* was drafted, Asprenas as consul designate for 36, took precedence over Sestius who had formerly outranked him as a more senior *praetorius*.[34] But the solution proposed by Reynolds is at odds with the testimony of Appian.[35] And it creates further problems. In the *s.c. de Aphrodisiensibus* Sestius precedes a [Γναιο]ς Πομπηιος Κοιντου υιος Αρνησσις who is identified with Cn.Pompeius Q.f. (cos.suff.31), whereas if Pompeius was one of those designated in 39, he ought to precede Sestius also. In order to account for this Reynolds fastened on Syme's conjecture that Pompeius was not one of those designated in 39 but was inserted

[28] See Skerk, RDGE, no.23 lines 6-8.

[29] As per Münzer, Philologus, 55 (1896) 388, RE.III.2724; and Broughton, MRR.II.114.

[30] See Taylor, VDRR, 176 n.22, 204; Badian, Historia, 12 (1963) 133; Broughton, MRR.III.54. Note also if, as Badian, Historia, 12 (1963) 135-6 suggested, the Μααρκος Κασιος Μααρκου υιος who is listed after Glaber is identified with M.Caesius, the praetor of 75, and Glaber is the praetor of 73, seniority was not observed. But he may be a Cassius in spite of the unusual *praenomen* and filiation (see Cody, CP, 64 (1969) 177-8; MRR.III.44-5).

[31] See J.M.Reynolds, Aphrodisias and Rome, London, (1982) 63f. The *s.c. de Aphrodisiensibus* was erroneously dated to 56 by Willems, Le Sénat, I.252 and to 35 by Skerk, RDGE, no.29.

[32] M.Messalla Appianus (cos.12) may be ruled out. Given the age at which *nobiles* reached the consulship in the period Appianus will have been only a child in 39. Clearly, if Messalla is not identified with Messalla Rufus a more junior patrician senator was listed ahead of more senior patricians and plebeians. M.Messalla (cos.suff.32) and Messalla Corvinus may not even have been *praetorii* in 39 (on Corvinus see MRR.III.213).

[33] On the praetorship of Sestius see MRR.II.222 and Badian, ZPE, 55 (1984) 106.

[34] See Reynolds, Ibid., 69f; cf. MRR.III.197. Note also that it is uncertain that Asprenas was ever praetor. The praetorship often credited to Asprenas is an inferrence based on his place in the *s.c. de Panamareis* and the *s.c. de Aphrodisiensibus* (see Badian, Phoenix, 25 (1971) 138-42 esp.140 n.32; Sumner, Phoenix, 25 (1971) 260, 367-8; Broughton, MRR.III.147-8).

[35] As Reynolds admitted, Dio and Appian contradict one another concerning the designations of 39. Dio, XLVII.19.4 says that in 43 the Triumvirs designated the consuls for many years ahead. Dio also twice says that in 39 consuls were designated for eight years ahead i.e. - for 38 to 31 (XLVIII.35.1-2, L.10.1-2). Appian, on the other hand, states that in 43 the Triumvirs designated the consuls five years in advance (BC.IV.2). While in 39 consuls were designated for the four years 34-31 (BC.V.73). Reynolds favoured Dio's account (as did Willems, Le Sénat, I.606-7). However, if Appian's testimony is preferred, as by Mommsen, StR^3.I.586, the consuls for 37-35 must have been designated before 39 and hence Asprenas ought to come before Sestius in both the *s.c. de Panamareis* and the *s.c. de Aphrodisiensibus* not just in the latter.

later by Octavian when the rift between Octavian and M.Antonius had widened.[36] Reynolds acknowledged that her explanation was based on a series of hypotheses and described it as "not, perhaps, completely implausible."[37] Furthermore, there is the problem posed by Γαιος M[.....]. It has been argued this man is none other than Cicero's client C.Messius.[38] If so, seniority was not observed since Messius though still an *aedilicius* in 46 is here listed ahead of Sestius who had been praetor in 54.[39] No one has as yet found a means of explaining this difficulty away. Understandably, Reynolds was forced to conclude that the observance of seniority was not proven to be an absolute rule.[40] In the *s.c. de Mytilenaeis* of 25 the patrician Paullus Lepidus (cos.suff.34) is registered ahead of the plebeian Asinius Pollio (cos.40) and the patrician [Ap.Claudius] Ap.f. Pala[tina Pulcher] precedes the plebeian L.Marcius Censorinus (cos.39). However, this inverted sequence cannot be explained by Lepidus' and [Pulcher's] patrician status. For not only is the patrician [Pulcher] listed before Censorinus, so is a Γαιος Νορβα[νος] Γαι[ου υιος] - i.e. the plebeian C.Norbanus Flaccus (cos.38).[41] Moreover, the patrician [Pulcher] comes ahead not only of the plebeian consular Censorinus, but also of a patrician consular - M.Valerius Messalla.[42] In short, the witnesses were not ranked according to any discernible criterion.[43] As to the *s.c. de ludis saecularibus* a new fragment has recently come to light revealing the witnesses as: M.Iunius M.f. Sab. Silanus, Cn.Corn[elius] Lentulus, [.....]rinus, C.Asinius Cn.f. [A]rn. Pollio, and L.Vinic[ius].[44] The witnesses Cn.Lentulus and L.Vinicius were previously unknown. They are most plausibly identified with Cn.Lentulus (cos.18), and L.Vinicius (cos.suff.33).[45] Thus the order is: M.Iunius

[36] Syme, RR, 279.

[37] op cit., 71.

[38] Reynolds attributes this suggestion to Wiseman. See also Badian, ZPE, 55 (1984) 104-7.

[39] That Messius was an *aedilicius* in 46 is stated in Bell.Afr., 33.2. This difficulty was noted by Badian, ZPE, 55 (1984) 106.

[40] Ibid., 67.

[41] Cagnat, IGRRP, IV.33; Groag, RE.XVII.1.1270, 1272 and Petersen, PIR^2 N 166 all rightly identified Norbanus as the consul of 38. The position of Norbanus cannot be explained by identifying him as C.Norbanus C.f. Flaccus (cos.24) and supposing his priority is a consequence of his being consul designate. The evidence does suggest the consuls designate continued to have priority in the consular grade in senatorial debate in the latter half of the year in the Triumviral period and Principate (see Cic., Phil., V.38, VI.8; R.J.A.Talbert, The Senate of Imperial Rome, (1984) 242f). But as was argued above the order of witnesses in *senatus consulta* often does not correspond to the order observed in senatorial debate. Further, the second portion of the *s.c. de Mytilenaeis* to which Norbanus was a witness was passed in May or June of the year 25 (see Sherk, RDGE, 155) and in the period after 27 B.C. when Augustus 'restored the Republic', it seems, he no longer openly designated consuls for years in advance, as had been done in the Triumviral period (see Syme, RR, 370; Talbert, Ibid., 341f). Hence if the witness Norbanus was identified as C.Norbanus Flaccus (cos.24) he would not yet have been consul designate when the decree was passed in May or June 25.

[42] Only the first letters of Messalla's name are preserved but he must be identified as M.Messalla (cos.suff.32) or M.Messalla Corvinus (cos.31). Hanslik, RE.VIIIA1.154 opted for Messalla Corvinus. M.Messalla Appianus (cos.12) and M.Messalla Messallinus (cos.3) would have been too young in 25. Note also that if Pollio was a patrician in 25 (vide supra) seniority was flouted by listing Pollio after Lepidus.

[43] One wonders whether the priority accorded to Paullus Aemilius Lepidus and C.Norbanus in the *s.c. de Mytilenaeis* might be connected with the fact that both may have recently served as proconsul of Asia (on Paullus Lepidus see PIR^2 A 373; Syme, Athenaeum, 65 (1987) 15, AA, 110. On Norbanus see Syme, RR, 303 n.3 and R.J.Evans, Historia, 36 (1987) 126-8. Evans prefers to identify the proconsul as C.Norbanus Flaccus cos.24). This could not of course explain the apparent lack of order in the listing of other witnesses.

[44] See L.Moretti, Rendic.Pont.Accad.Arch., 55-6 (1982-4) 361-79; L'Annee Epig., (1988) 20.

[45] It is possible, though less likey, that Cn.Lentulus is the consul of 14. L.Vinicius cannot be the consul suffect of 5 as he was not even a senator in 17 (he was only a *monetalis* in 16 see Syme, AA, 52).

Silanus (cos.25) - patrician; Cn.Cornelius Lentulus (cos.18) - patrician; *Ignotus*; C.Asinius Pollio (cos.40) - plebeian; and L.Vinicius (cos.suff.33) - plebeian. That appears to agree admirably with O'Brien Moore's claims. But there is one problem. The third witness, whose name ends in the letters 'rinus', is almost certainly the plebeian L.Marcius Censorinus (cos.39). Hence Asinius Pollio is preceded, not only by the patricians Silanus and Lentulus, but also by the plebeian Censorinus - all of whom were more junior consulars.[46] In view of all this the only credible conclusion is that witnesses to *senatus consulta* and members of *consilia* were not invariably listed in strict order of seniority. Consequently, the fact that patricians are occasionally registered before more senior plebeians cannot be considered significant and this argument for patrician priority in the *lectio* and in debate falls.[47]

Third, it was argued in Chapter V that there was no distinct grade of *censorii,* and that in the *lectio* and in debate *censorii* were subsumed under the category of *consulares,* which was the highest grade in the senate. Therefore, Willem's and Mommsen's explanation of the order followed in the *s.c. de Bacchanalibus* is untenable. The priority of M.Claudius Marcellus (cos.196) over the more senior consul Q.Minucius Rufus (cos.197) cannot be put down to the fact that Marcellus was a *censorius*. Rather it would seem seniority was not observed in the order of witnesses in the *s.c. de Bacchanalibus,* just as it was demonstrably flouted on later occasions.

Finally, Mommsen argued the term *patres conscripti* originally described two distinct groups of senators - the *patres* (*et*) *conscripti*. The *patres* were the patrician senators and the *conscripti* the plebeian senators and the distinction signified the patrician senators were registered on the *album senatorium* ahead of the plebeian senators.[48] Others maintained that *conscripti* is an adjective qualifying *patres* and that the expression means '*patres* who are enrolled.'[49] But it will not be necessary to enter that debate. Whatever the term originally connoted, in the historical period it was applied to the entire patricio-plebeian senate and there is conclusive evidence that by the late Third Century patrician senators were not given priority of registration in the *lectio senatus.*[50] In the *lectio* of 216 the dictator M.Fabius Buteo registered senators according to their magisterial grades in descending order of rank and within each grade according to seniority.[51] Evidently the

[46] Vexed by this Moretti, Ibid., 368 suggested Asinius Pollio and Vinicius are otherwise unknown members of these families. Note that if Pollio was a patrician in 17 (vide supra) the order of registration is even more chaotic.

[47] Two instances argue against the assertion that patricians were accorded priority over plebeians within each magisterial grade in the post-Sullan period. In the *s.c. de provinciis consularibus* and the vetoed *s.c. de provinciis praetoriis* of 51 the plebeian L.Domitius Ahenobarbus (cos.54) is listed before the patrician Metellus Scipio (cos.52) see Cic., Ad Fam., VIII.8.5-8. And in the *s.c. de Oropiis* a L.Claudius L.f. Lem. appears near the bottom of the list. Claudius, like all those registered after M.Cicero, is accounted a *quaestorius* (see MRR.II.115). However, Claudius was probably a member of an obscure branch of the patrician Claudii (see Taylor, VDRR, 203; MRR.III.54; Ryan, Precedence in the Republican Senate, Diss., (1993) 168-9) and yet he is listed after numerous plebeians of the same grade (Taylor conjectured that Claudius was *rex sacrorum* and owed his place in the *consilium* to his priesthood but there is no evidence the *rex* was entitled to a seat in the senate).

[48] RF.I.250f, 262f, StR.III.836f. See also O'Brien Moore, RE Suppl.VI.674; Kübler, RE.XVIII.4.222f; Magdelain, Hommages à J.Bayet, (1964) 453f; Staveley, Historia, 32 (1983) 28f; J-C.Richard, Social Struggles in Archaic Rome, (1986) 120f; Momigliano, Social Struggles in Archaic Rome, (1986) 182f; D.Musti, MEFRA, 101 (1989) 207-227.

[49] See Willems, Le Sénat, I.38f and R.M.Ogilvie, A Commentary on Livy Books 1-5, Oxford, (1965) 236f; Badian, *Imperium Sine Fine*, (1996) 209 n.34.

[50] F.Ryan, Precedence in the Republican Senate, Diss., (1993) 133f anticipated me in this argument.

[51] Livy, XXIII.23.5-6: "Recitato vetere senatu, inde primos in demortuorum locum legit qui post L.Aemilium C.Flaminium censores curulem magistratum cepissent necdum in senatum lecti essent, *ut quisque eorum primus creatus erat*; tum legit, qui aediles, tribuni plebis, quaestoresve fuerant..."

order to which senators belonged was not a relevant criterion in determining priority. Rank and seniority were no doubt also used to determine the order in which senators delivered their *sententiae* in senatorial debates.[52]

In sum, the evidence assembled to support Mommsen's thesis that into the late Republic patricians preceded their plebeian counterparts on the *album senatorium* and in senatorial debate is nugatory. Moreover, there is conclusive evidence that by the Hannibalic War rank and seniority were the only criteria acknowledged in determining priority in the *lectio*. And the same criteria almost certainly dictated the order in which senators were consulted in senatorial debate.

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[52] As the testimony of Ulpian, Digest, L.3.1 (vide supra) suggests. This same conclusion was reached independently by F.Ryan, Precedence in the Republican Senate, Diss., (1993) 130-178 though not all the arguments he uses are persuasive or pertinent.

Appendix VI

THE DATE OF THE INAUGURATION OF LENTULUS NIGER

Macrobius, Saturnalia III.13.10-11 preserves an account of the banquet that took place in honour of the inauguration of L.Cornelius Lentulus Niger (234) as *flamen Martialis*. For present purposes the guest list will suffice:

> refero enim pontificis vetustissimam cenam quae scripta est in indice quarto Metelli illius pontificis maximi in haec verba: *ante diem nonum kalendas Septembres, quo die Lentulus flamen Martialis inauguratus est, domus ornata fuit, triclinia lectis eburneis strata fuerunt, duobus tricliniis pontifices cubuerunt, Q.Catulus, M.Aemilius Lepidus, D.Silanus, C.Caesar, rex sacrorum, P.Scaevola Sextus, Q.Cornelius, P.Volumnius, P.Albinovanus et L.Iulius Caesar augur qui eum inauguravit; in tertio triclinio Popilia, Perpennia, Licinia, Arruntia virgines Vestales, et ipsius uxor Publicia flaminica et Sempronia socrus eius.*[1]

Macrobius states he derived his account from the *index quartus* of the *pontifex maximus* Metellus - that is Metellus Pius *pontifex maximus* from 81 till his death in 64/3. We are also told the banquet took place *ante diem nonum kalendas Septembres* (i.e. on the 22nd of August) but the year is not specified.[2] As the date of the banquet has a bearing on a number of important questions, it is worth attempting to fix the date as precisely as possible.

Mommsen established the basic chronological parameters noting the banquet must be dated after Caesar's entry into the pontifical college, which he placed in 74, and before the death of Metellus Pius, which he dated to 63.[3] He preferred a date not long before 63. Mommsen's dating was accepted by Bardt, Münzer,

[1] The text is printed without the suggested alterations now accepted by most commentators. Presuming Taylor's postulate is correct the 'M.Aemilius Lepidus' in Macrobius' list should be emended to 'Mam.Aemilius Lepidus' and identified with the consul of 77 (see AJP, 63 (1942) 391f Note the conjecture of L.Jan, Macrobii Ambrosii Theodosii Opera Quae Supersunt, Quedlinburgh and Leipzig, (1852) II.312, cf. Mommsen, RF.I.87 n.34, overlooked by Taylor, that 'M.Aemilius Lepidus' might in fact be M'.Lepidus (cos.66). The corruption of M'. to M. is quite common but Taylor's conjecture is preferable). Regarding the textual difficulties pertaining to the name of the *rex* and the significance of the word 'sextus' see below.

[2] The earliest dated mention of Lentulus Niger as *flamen Martialis* comes from Cicero, Ad Att., II.24.2 which dates to October 59 B.C..

[3] RF.I.87 n.34. Marquardt, StV^2.III.243 n.4 using the same criteria, dated the banquet between 73 and 63. Unfortunately, the date of Caesar's entry into the pontifical college and the death of Metellus Pius are not precisely known. Caesar succeeded to the place of his uncle C.Aurelius Cotta (Vell., II.43.1), but the date of Cotta's death is not recorded. Either late in his consular year (75), or in 74, Cotta proceeded to his province of Gaul where he won a significant victory. Upon returning to Rome, he was granted permission to celebrate a triumph, only to die before the day set down. It is not known whether Cotta's death took place late in 74 or early in 73. Caesar was nominated in his absence to succeed Cotta and upon receipt of the news hurried back to Rome from the East for his inauguration. Though certainty is precluded, it is probable Caesar was only inaugurated as Cotta's successor late in 74, or better still early in 73 (see Bardt, Die Priester der vier grossen Collegien aus römisch-republikanischer Zeit, (1871) 13, 15; Taylor, CP, 36 (1941) 117, 119-20 and Broughton, TAPA, 79 (1948) 65-6). If so, the banquet cannot have taken place on the 22nd of August 74, as Caesar was not then a member of the pontifical college. Likewise the date of Metellus Pius' death can only be roughly established. He is last heard of in connection with the trial of C.Cornelius in 65 (Asc., 60, 79 C; Val.Max., VIII.5.4). However, if as seems likely, the assembly convened to elect the *pontifex maximus* was scheduled in the later Republic between the consular and praetorian *comitia*, since Caesar did not succeed Metellus Pius as *pontifex maximus* until 63, it follows that Pius was still alive in July 64 (the *comitia sacerdotum* introduced by the *Lex Domitia* and re-enacted under the *Lex Labiena* were regularly conducted between the consular and praetorian *comitia* see L.Mercklin, Die cooptation der Römer. Eine sacralrechtliche Abhandlung, (1848) 144f, 147; Mommsen, StR^3.II.32 n.1; A.Gemoll, De cooptatione sacerdotum Romanorum, (1870) 14f; L.R.Taylor, AJP, 63 (1942) 388 and CP, 37 (1942) 421-4; and J.Linderski, HSCP, 76 (1972) 191-3. It is not certain

and Klose.[4] L.R.Taylor whilst accepting Mommsen's parameters argued the banquet must be dated earlier than 63.[5] Taylor argued the lists in Macrobius and Cicero, De Haruspicum Responsis 12 register the members of the pontifical college in order of their entry into the college, and as Lentulus Niger is listed before the *pontifex* P.Sulpicius Galba by Cicero, it follows Niger's inauguration must have preceded the co-optation of Galba. Taylor argued the date of Galba's entry into the college could be fixed approximately since he issued coins as aedile depicting the emblems of the pontificate suggesting he was already a *pontifex* by the time he held that office.[6] As Galba was an unsuccessful consular candidate for 63, and hence praetor by 66, Taylor contended he was aedile at the latest in 69.[7] Thus according to Taylor, Galba was a *pontifex* by 69 and the banquet should be dated no later than that year. Taylor therefore fixed the date of the banquet between 74/3 and 69.[8]

More recently Marinone used a novel argument in an attempt to fix the date of the banquet more precisely.[9] He argued Macrobius' source was the *annales maximi*.[10] Macrobius purportedly found the account of the banquet "in indice quarto" of the *annales maximi*, the indices being "una specie di appendice agli

whether this schedule also applied to the *comitia pontificis maximi* in the late Republic. By the late Third Century the election of the *pontifex maximus* already appears to have been conducted at a fixed time. Hence when the *pontifex maximus* L.Lentulus Caudinus died in 213 his successor as *pontifex* was co-opted immediately (Livy, XXV.2.1-2), but his successor as *pontifex maximus* was not elected until the following year (Livy, XXV.5.2-4. The election took place sometime between the Ides of March 212 when the consuls of 212 entered office and their departure from Rome on the 27th of April 212 see Livy, XXV.2.3-7, 12.1. Q.Fulvius Flaccus cos.212 was himself an unsuccessful candidate. That is, in 212 the election of the *pontifex maximus* was conducted independently of the magisterial elections of 212. However, since the procedure put in place by the *Lex Domitia* was manifestly based on the procedure followed in the election of the *pontifex maximus* it is likely that prior to Domitius' tribunate the procedure had been altered and the *comitia pontificis maximi* was presided over by a consul and scheduled between the consular and praetorian *comitia*. Alternatively, Domitius himself may have brought the schedule for the election of the *pontifex maximus* into line with those for the other members of the major priestly colleges). By the same token as Caesar succeeded Pius as *pontifex maximus* in 63 it may be presumed Pius died before July 63 when Caesar was elected to succeed him (None of the sources that refer to Caesar's election provide a precise date see Sall., Cat.49.2; Vell., II.43.3; Suet., Iul.13; Plut., Caes.7; Dio, XXXVII.37.1-2. Plutarch and Dio are certainly mistaken to place it after the execution of the Catilinarians see Taylor, Ibid., 422 n.6 and Broughton, MRR.II.172 n.3 for the elections of 63 were conducted as usual in July. The delay Cicero caused after hearing of the purportedly treasonable remarks of Catiline - Cic., Pro Murena 50-3 - probably lasted only a few days see D.Stockton, Cicero: A Political Biography, Oxford, (1982) 336-7). Consequently the banquet cannot have taken place on the 22nd of August 63 as Pius was already dead and Caesar was *pontifex maximus*. It is probable, therefore, the parameters for the banquet should be adjusted to between 73 and 64. Mercklin, Ibid., 94 suggested the banquet be dated c.81 but that is self-evidently impossible. See now also Linderski, *Imperium Sine Fine*, Stuttgart, (1996) 148 n.14.

[4] Bardt, Ibid, 13; Münzer, RE.IV.1391, VIII.A.25; and Klose, Römische Priesterfasten, (1910) 24.

[5] AJP, 63 (1942) 389, 400, 411.

[6] Taylor, AJP, 63 (1942) 395 n.29 noted that at least three Sulpicii Galbae (RE nos.49, 50, 56) were *pontifices* in the late Third and early Second Centuries alone and that it was possible the symbols referred to an ancestor of Galba, but like Mommsen, Geschichte des römischen Münzwesen, (1860) 621 n.452 and Münzer, RE.IV.A.1.758, she was inclined to believe they referred to Galba himself.

[7] AJP, 60 (1939) 200, AJP, 63 (1942) 395. On the date of Galba's aedileship see further below.

[8] Taylor's arguments were endorsed by Broughton, MRR.II.134-5. The position of Szemler, The Priests of the Roman Republic, (1972) 127-8 is not entirely clear.

[9] N.Marinone, Maia, 22 (1970) 272-3.

[10] Marinone, op cit., 272 identifies Macrobius' source with "i *commentarii* o piuttosto con gli *annales*" but then goes on to assume it was the *annales maximi*. He unaccountably declares the matter is "irrilevante per il nostro caso" ! Whereas in fact, if Macrobius' source was other than the *annales maximi*, his argument falls apart, since his computation of the date relies on the assumption of a strictly annalistic format. The suggestion that Macrobius' source might be the *commentarii* of the *pontifices* is to be discounted. The *commentarii* of the *pontifices* dealt with matters of pontifical ritual and the *decreta* of the college and will not have included material of this kind (see Linderski, HSCP, 89 (1985) 207-234, esp. 218ff).

annales." Since the *annales maximi* were, as the name suggests, compiled annually and the banquet was described in the *index quartus* the event should belong to the fourth year of Pius' supreme pontificate.[11] However, according to Marinone when the *pontifex maximus* was absent from Rome he delegated all his duties, including the compilation of "documenti ufficiali" to another member of the pontifical college - either the *rex* or a senior *pontifex*.[12] Since the banquet was recorded in the *index quartus* of the *annales* of the *pontifex maximus,* it must be dated in the fourth year in which Pius was personally present as *pontifex maximus* in Rome. And as Pius was elected *pontifex maximus* in 81, but was absent in Spain in the years 79 to 71, that was the year 69.

Self-evidently the argument has serious flaws. It is founded on three very insecure premises. Firstly, it is simply assumed Macrobius' source was the *annales maximi*. That may in fact be the case, but there is at least some room for doubt.[13] Some scholars have argued that the *pontifex maximus* P.Mucius Scaevola (cos.133, *pont.max*. 130-115) did not merely discontinue the practice of exhibiting the *tabula dealbata* which contained the *annales,* but that he discontinued the compilation of the *annales maximi* altogether.[14] Consider also the substance of the report quoted by Macrobius. After the guest list there follows a detailed record of the lavish fare served to the banqueters.[15] This is difficult to reconcile with the notion the report derived from the *annales maximi* on two counts. That the menu should have been included in *annales maximi* at all is surprising - the subject seems out of place in a document of this kind. Moreover, the extent of the detail is disconcerting, for Cicero states the *annales maximi* consisted of very terse entries containing the barest description of events.[16] Secondly, Marinone would have us believe the *annales maximi* lapsed in the absence of the *pontifex maximus*.[17] This is most implausible. The compilation of the *annales maximi* was not the exclusive responsibility

[11] This idea goes back to Jan, Macrobii Ambrosii Theodosii Opera Quae Supersunt, (1852) II.311 who commented: "Nisi ergo mavis existimare indices illos fuisse appendices quasdam ad annales maximos quarti anni quo fuerit Metellus pontifex maximus, sunt intelligendi annales, quum Servius ad Virg. Aen. I.373. doceat pontifices maximos quotannis in tabula dealbata notavisse digna memoratu, in quibus quidem coenae pontificalis singula fercula esse relata mireris." Note, however, the practice of posting up *tabula dealbata* was discontinued by the *pontifex maximus* P.Mucius Scaevola long before Metellus Pius' tenure of the supreme pontificate (see below).

[12] Marinone, op cit., 273.

[13] Neither H.Peter, Historicorum Romanorum Reliquiae, Stuttgart, I^2 (1914), nor B.W.Frier, Libri Annales Pontificum Maximorum: The Origins of the Annalistic Tradition, (1979) included the passage in their collection of fragments of the *annales*. Mommsen, RF.I.87 n.34 gave Macrobius' source as the "Aufzeichnungen" of Metellus Pius, but did not specify what these were. However, it is not easy to come up with a satisfactory alternative to the *annales*. Pius is not known to have written memoirs, or any other work, and the manner of Macrobius' reference, and the formal introduction (*ante diem nonum kalendas Septembres*), suggest some official document.

[14] See E.Rawson, CQ, 21 (71) 160 and R.Drews, CP, 83 (88) 289-99; cf. J.P.V.D.Balsdon, CQ, 3 (1953) 162.

[15] Sat., III.13.12-13 - "cena haec fuit: ante cenam echinos, ostreas crudas quantum vellent, peloridas, sphondylos, turdum asparagos subtus, gallinam altilem, patinam ostrearum peloridum, balanos nigros, balanos albos: iterum sphondylos, glycomaridas, urticas, ficedulas, lumbos capruginos aprugnos, altilia ex farina involuta, ficedulas, murices et purpuras. in cena sumina, sinciput aprugnum, patinam piscium, patinam suminis, anates, querquedulas elixas, lepores, altilia assa, amulum, panes Picentes."

[16] See Cicero, De leg. I.6 (accepting Ursinus' emendation of 'iucundius' to 'ieiunius') and De Or.II.52-3; cf. Cato apud Gell., NA.II.28.4-7. Only Servius, Ad Aen., I.373 suggests the entries were more complete (a claim accepted by F.Bömer, SO, 29 (1952) 34f; Historia, 2 (1953) 189f).

The inordinate interest in the bill of fare might be partly accounted for by the fact that Metellus Pius in his later years became a notorious gourmand (see Sallust, Hist., II.70 M; Columella, X.182; Plut., Sertorius 22.2).

[17] According to Marinone's schema the material collected by the *rex* or *pontifex* in the absence of the

of the *pontifex maximus*. He was assisted in this task by the other members of the college, especially by the *pontifices minores* who functioned as the scribes of the *pontifices*.[18] Work on the *annales* will therefore have continued unabated even in the absence of the *pontifex maximus*.[19] Thirdly, if Macrobius was familiar with the *annales maximi,* it was in the book form known to late antiquity.[20] That edition recorded events from the Regal period onwards and yet was comprised of only eighty books. The corollary is clear. Marinone's contention that each year of Pius' tenure as *pontifex maximus* was contained in a separate book is unacceptable. In fact, three citations from Book IV of this edition have survived and all refer to the period of the Alban kings.[21] Finally, Macrobius says *index quartus* not *liber quartus* and *index* must in this instance mean either an appendix, or some kind of internal division of a book - hence it was numbered independently of the book to which it was attached. In view of all this, even if we concede the *annales maximi* continued after Scaevola, and that this was Macrobius' source, Marinone's hypothesis that the *index quartus* recounted events dating in the fourth year in which Metellus Pius was present as *pontifex maximus* in Rome must still be abandoned.

As Taylor and Marinone realized, the single most important factor in determining the date of the banquet is whether Metellus Pius was present or not. One preliminary observation is requisite. That Pius' name does not appear on the guest list does not constitute evidence for his absence.[22] It will be noted that Lentulus Niger likewise does not feature in the list and there can be no doubt that Niger was present.[23] In both cases the omission can be readily accounted for.[24] Now if Pius was not present the banquet must belong in August 73, 72 or 71.[25] But if Pius was present, and the arguments adduced by Taylor are accepted, the banquet can only

pontifex maximus was not published in the *annales maximi*. But if this material was not incorporated into the *annales*, the *annales* must have contained significant lacunae (as in the years 132-130 when the *pontifices maximi* P.Scipio Nasica and P.Crassus Mucianus were in Asia, and if it continued into the First Century in the years 79-71, 61-60, 58-49 when the *pontifices maximi* Metellus Pius and Caesar were away from Rome). And if the material supposedly recorded by the *rex* or *pontifex* was not incorporated into the *annales*, what was the purpose of recording the material in the first place ?

[18] Note Macrobius, Sat., III.2.17 says the *annales* were compiled by the *pontifices* but were called *maximi* "*quasi* a pontificibus maximis factos." Whilst Diomedes, Ars Grammatica, I.484 H.Keil refers to the *annales maximi* as those which "pontifices scribaeque conficiunt." And Pseudo Vopiscus, vita Tac.I.1 also says all the pontifical college was responsible for the production of the *annales maximi*.

[19] Thus it cannot be argued that if the banquet was recorded in the *annales maximi*, Metellus Pius must have been present.

[20] It was in this form that the *annales maximi* was known to Aulus Gellius, NA., IV.5.6; Servius, Ad Aen., I.373; and the anonymous author of the Origo gentis Romanae (probably via the works of Verrius Flaccus). It was traditionally assumed this edition was the work of Scaevola but Frier, op cit., 179-200 has argued it was the work of an unknown scholar and was published in the last decade of the First Century B.C.. If the traditional argument is endorsed, this work will not have contained any material subsequent to the pontificate of Scaevola.

[21] The citations appear in the Origo gentis Romanae. Most scholars now accept these citations as genuine (see A.Momigliano, JRS, 48 (1958) 56f; E.Rawson, CQ, 21 (71) 168; Frier, op cit., 50f; R.M.Ogilvie, JRS, 71 (1981) 200). The IXth Book contained a portent of uncertain but probably early date involving a statue of Horatius Cocles.

[22] This is surely the main reason why some scholars have hesitated concerning the presence of Metellus.

[23] Neither Pius or Niger is assigned a place on either of the two *lecti* that accommodated the attendant male banqueters. This was noted by Jan, op cit., II.311-312.

[24] Either the names of Metellus and Niger have dropped out of the text, which is entirely plausible as the list contains at least two lacunae (see below), or else their names were omitted as their presence was considered self-evident - Niger because the banquet was in his honour and Metellus because he was the source of the report itself.

[25] That is after Caesar's co-optation probably early in 73 (see note above) and before the return of Pius. Unfortunately, the precise date of Pius' return to Italy is unknown but it is certain he did not enter Rome

be dated in August 70 or 69.[26] Indeed, Taylor thought it probable that Metellus Pius was present and the banquet should be dated in 70 or 69 but preferred to err on the side of caution and relegated this observation to a footnote.[27] Marinone, as we saw, asserted Pius was present but the evidence he produced in support was faulty. Yet Taylor's reticence and Marinone's spurious reasoning were unnecessary. One critical fact has been ignored - Lentulus Niger can hardly have been inaugurated as *flamen Martialis* unless Metellus Pius was present. The presence of the *pontifex maximus* was an essential prerequisite for the inauguration of the *flamines maiores*.[28] It was the *pontifex maximus* who was charged with selecting one of the three candidates nominated

until very late in 71 or early in 70. Whilst Pius awaited his Spanish triumph he was prohibited from crossing the *pomerium*. Now it is disputed whether Pius' triumph was celebrated shortly before Pompey's (as Gelzer, Pompeius, Munich, (1949) 68-9 and Degrassi, Inscript.It., XIII.1.565); or simultaneously with Pompey on the 29th of December 71 (as Münzer, RE.III.1224. For the date - Vell., II.30.2); or after Pompey's triumph sometime early in 70 (as A.M.Ward, Marcus Crassus and the late Roman Republic, (1977) 44 n.41). The latter scenario best agrees with the evidence. For what it is worth, Pius certainly returned to Italy after Pompeius (App., BC.I.121). More importantly, Eutropius, VI.5 has the following to say concerning these events: - "Ita uno tempore multi simul triumphi fuerunt, Metelli ex Hispania, Pompeii secundus ex Hispania, Curionis ex Macedonia, Servilii ex Isauria." Firstly, Eutropius indicates there were two separate triumphs, ruling out a joint triumph of Metellus and Pompey. Secondly, Eutropius' chronology is curious. He places the triumphs of Metellus and Pompey which took place no earlier than late 71, before that of C.Curio which probably occurred in 72 (see MRR.II.118 and Degrassi, Ibid., 564-5), and all of these prior to the triumph of P.Servilius Vatia which was probably celebrated in 74 (MRR.II.105 and Degrassi, Ibid.). The obvious explanation of this sequence is that Eutropius unwittingly reversed the order of events. If that conjecture is accurate, the correct sequence may be restored as follows: P.Servilius Vatia in 74; C.Curio in 72; Pompey on December 29th 71; and Pius in early 70. In any case Pius did not enter Rome in August 71 to attend the banquet. There is no way around this. It might be argued Pius had returned to Italy by August 71 and the *domus* at which the banquet took place was some private dwelling outside the *pomerium* where Pius might have attended the banquet without forfeiting his claim to a triumph. But that is a desperate and insecure resort. An official engagement of this nature would have been held in one of two venues. Either the *domus publica*, the official residence of the *pontifex maximus*, a venue also possibly suggested by the presence of the Vestal Virgins who resided in the *Atrium Vestae* adjoining the *domus publica*. Or, as it was customary for the newly inducted priest to put on an inaugural banquet for the other members of the college (see Cic., Ad Fam., VII.26.2; Varro, De Re Rustica, III.6.6; Pliny, NH.X.45), Niger rather than Metellus was perhaps the host (as per Jan, op cit., 311, cf. Mercklin, op cit., 127), in which case the official residence of the new *flamen Martialis* would be the obvious site for the feast (this is not specifically attested but it is to be surmised that the *flamen Martialis* had a *domus* in Rome provided by the state as did the *flamines Dialis* and *Quirinalis* see S.B.Platner & T.Ashby, A Topographical Dictionary of Ancient Rome, Oxford, (1929) 179). And the residence of the *flamen Martialis*, like those of the *flamines Dialis* and *Quirinalis*, will have been within the *pomerium*. Marinone, op cit., 272 assumed from the presence of Publicia and Sempronia that the banquet took place "in casa di Lentulo" by which he appears to mean the private residence of Lentulus Niger (the location of which is unknown). That assumption is unjustified. Publicia as Niger's wife was the *flaminica Martialis* and therefore bound to be present and we have no reason to assume that the immediate family of the *flamen* and *flaminica*, such as Publicia's mother Sempronia, were not entitled to attend. However, the location of the banquet is beside the point. The inauguration itself must have taken place as always in the very centre of Rome. The *inauguratio* was performed by the *pontifex maximus* in the *comitia* (*curiata*) *calata* (see Gell., NA.XV.27.1-2) which had to be held within the *pomerium* (see Mommsen, StR.III.378f) and was convened in the *curia Calabra* on the Capitol (see Kübler, RE.III.1330-4; cf. Varro, De Ling.Lat., VI.27; Macrob., Sat.I.15.10. One cannot press into service Mommsen's hypothesis, StR.III.307 n.1, that alone of the *flamines maiores* the *flamen Martialis* was inaugurated in a *comitia centuriata calata* in the *campus Martius* - i.e. outside the *pomerium* - which is to be discounted see Kübler, RE.III.1331; Valeton, Mnemosyne, 19 (1891) 422f; Bleicken, Hermes, 85 (957) 354 n.1; and Linderski, ANRW, II.16.3 (1986) 2257f).

[26] That is, after Pius' entry into Rome probably in early 70 (see previous note) and Galba's entry into the pontifical college no later than 69. If, on the other hand, the arguments of Taylor are rejected the banquet might be dated anywhere between Pius' entry into Rome in 70 and his death in 64/3.

[27] Taylor, Ibid., 400 n.48 followed by Broughton, MRR.II.137 n.13.

[28] As also for the inauguration of the *rex sacrorum* and the Vestal virgins (see Mommsen, StR^3.II.25f; Marquardt, StV^2.III.230f; S.Brassloff, Hermes, 48 (1913) 458-463, Studi in onore Pietro Bonfante, Milan, (1930) II.363-79; Samter, RE.VI.2.2486 and Linderski, in K.A.Raaflaub (ed.), Social Struggles in Archaic Rome: New Perspectives on the Conflict of the Orders, University of California Press, (1986) 256f, ANRW, II.16.3 (1986) 2215f). The presence of the *pontifex maximus* was not critical when it came to the appointment

by the pontifical college in the *captio* phase, and it was he who performed the *inauguratio* in the *comitia calata*. Unless, therefore, it is argued that Metellus Pius' prolonged absence induced the pontifical college to devise some alternative procedure, Lentulus Niger cannot have been inaugurated in the absence of the *pontifex maximus*.[29] That being so, Niger's inauguration and the banquet to mark the occasion cannot have taken place earlier than the year 70.

At this point one further modification of Taylor's thesis is called for. As Taylor saw the aedileship of P.Galba provides a *terminus ante quem* for the banquet and Taylor dated Galba's aedileship no later than 69. That date was predicated on the assumption that Galba, praetor by 66, observed a *biennium* between his aedileship and praetorship. However, Badian demonstrated a *biennium* between the curule aedileship and praetorship was not always observed in this period.[30] Consequently, Galba may have been aedile as late as 68.[31] It follows, the latest possible date for the banquet is August 22nd 68 not 69. Of the three possible dates for the banquet - the 22nd of August 70, 69, or 68 - the year 70 is the most probable for a number of reasons. Pius will have wanted to fill the vacancy in the flaminate of Mars at the earliest opportunity and he had ample time to do so in 70. Moreover, as we have seen the young C.Caesar was one of the *pontifices* who attended the banquet and it is probable Taylor was correct to argue on a separate occasion that Caesar was quaestor in 69.[32] She rightly argued Caesar will have departed for his Spanish *provincia* before late August 69.[33] For if Caesar only left Rome in late August, allowing for the time spent travelling, and the fact that Caesar left the province *ante tempus* in 68, this would scarcely have left time for the performance of his duties as quaestor.[34] Hence it is *prima facie* less probable Caesar could have attended the banquet had it taken place on the 22nd of August 69. The year 69 is also less likely if Galba was aedile in that year, since Niger's inauguration must precede Galba's entry into the pontifical college and if the banquet took place in 69 we must assume Galba was co-opted into the college and issued his coins very late in his year as aedile (i.e. after the 22nd of August 69). That is not impossible, but it is a preferable conjecture that the banquet was held in August 70 and Galba was of the other priests - hence the inauguration of Caesar as a *pontifex* could proceed in 73 despite the absence of Metellus Pius.

[29] Though not the first *pontifex maximus* to journey beyond the bounds of Italy, Pius was the first to be absent for any significant length of time. The problem will not therefore have arisen previously. It is difficult to see how the inauguration could have been effected in the absence of the *pontifex maximus*. The pontifical college might have informed Pius of the three nominees but Pius could scarcely perform the *captio* and *inauguratio* by proxy - to whom might these tasks be delegated ? Moreover, no one can have known how long the Sertorian War would last and the college will have endured the vacancy in the hope Pius would return in the not too distant future. That the flaminate was vacant for this length of time is not difficult to credit - it will be recalled the *pontifices* allowed the flaminate of Iuppiter to stand vacant for seventy-five years. In the meantime the *pontifices* will have attended to the duties of the *flamen Martialis* (see below).

[30] Badian, JRS, 49 (1959) 84f.

[31] See Appendix II.

[32] Taylor, CP, 36 (1941) 122-4 contra Drumann and Groebe, GR^2.III.135f and Münzer, RE.X.189f who opted for 68. Accepted by Syme, CP, 50 (1955) 131, JRS, 53 (1963) 57; Badian, JRS, 49 (1959) 87 n.53; Broughton, MRR.II.132, 136 n.7, III.105-6 and Gelzer, Caesar: Politician and Statesman, (1968) 31f.

[33] Taylor, CP, 36 (1941) 124 believed Caesar went to Spain in the spring or summer of 69. So also Broughton, MRR.II.136 n.7. Marinone, op cit., 273 dated Caesar's quaestorship and the banquet to 69 but assumed Caesar left for Spain after banquet.

[34] It is unknown whether Caesar travelled to Spain overland or by sea. Whereas the journey overland took approximately a month, it was possible to sail from Ostia to Gades in Hispania Ulterior in only seven days (see Pliny, NH.XIX.3-4 and L.Casson, Travel in the Ancient World, London, (1979) 149f). Caesar might have made the journey under sail in late August or in September but by then the sailing season was nearing its end and travel by sea would become increasingly dangerous. When going to Spain in 61 and 49 Caesar preferred the land route on both occasions (Plut., Caes.11.3; Dio, XLI.24.1-3). If he did likewise in 69, he will have had even less time in which to gain a reputation in the province for "mirabilis virtus et industria" (Vell., II.43.4).

co-opted at some point between the 23rd of August 70 and early in his year as aedile.[35] The year 68 is also less credible due to Caesar's service in Spain. Suetonius tells us that Caesar returned from Spain *ante tempus*.[36] But in view of his duties, it is unlikely that Caesar was released before the expiration of the summer of 68 (i.e. too late to have returned to Rome by the 22nd of August).[37] This presumption may be indirectly confirmed. On the return journey to Rome Caesar visited the Latin colonies in Cisapline Gaul.[38] Evidently, he returned from Spain overland, since the voyage by sea bypassed that region. As the journey overland took much longer than the journey by sea, and we are told Caesar was in a hurry, the decision to travel by land must have been forced upon him by the closure of the sailing season.[39] That implies Caesar's return journey was undertaken after mid-September 68.[40] In sum, the 22nd of August 70 B.C. is the most probable date for the banquet in honour of Lentulus Niger's inauguration.

That conclusion conflicts with the commonly accepted date of the death of Lentulus Niger's predecessor as *flamen Martialis* - the aged *princeps senatus* L.Valerius Flaccus (cos.100). But in truth no conflict exists, for as we have seen, the testimony of Sallust establishes Flaccus was dead by early 77.[41] However, if Flaccus was dead by early 77, how is it that his successor was not inaugurated until 70 ? The explanation has already been alluded to. Flaccus passed away sometime between the end of the year 80 and prior to 77. Between the years 79 and 71 the *pontifex maximus* Metellus Pius was continuously in Spain. The sequence of events is now transparently clear. Flaccus died at some point not long after Metellus' departure for Spain. During the absence of the *pontifex maximus* the flaminate of Mars perforce remained vacant - the duties of the *flamen* in the interim devolving upon the pontifical college.[42] When Pius returned from Spain late in 71, he remained outside Rome until his triumphal entry into the city early in 70. Shortly thereafter he set about the selection of a new *flamen Martialis*. Pius chose L.Cornelius Lentulus Niger and Niger was inaugurated in August 70, the occasion being celebrated by a sumptuous banquet in Niger's honour on the 22nd of that month.

If the foregoing arguments are accepted, one feature of Macrobius' guest list requires comment - some names are conspicuous by their absence. If the banquet took place on August 22nd 70, it is difficult to

[35] Since vacancies in the major priestly colleges were filled immediately when co-optation was in force (see Taylor, CP, 37 (1942) 422) either scenario is possible but it is surely preferable to assume Galba did not enter the college and issue his coinage only near the end of his year as aedile. If, however, Galba was aedile in 68 this argument falls as the banquet might then have taken place in August 69 and Galba's co-optation and coinage could be dated at some point between the 23rd of August 69 and early 68.

[36] Suet., Iul., VIII.

[37] As Hispania Ulterior remained peaceful in the governorship of Antistius Vetus it was presumably during the spring or summer of 68 that Caesar travelled the province to hold court in the major cities (see Suet., Iul., VII).

[38] Suet., Iul., VIII.

[39] For Caesar's impatience see Suet., Iul., VI-VII. On the comparative speed of the overland and sea routes to Hispania Ulterior see above.

[40] The sailing season proper extended from the 27th of May to the 14th of September and the outside limits of the season were the 10th of March to the 10th of November. Sea voyages were only undertaken outside those limits in cases of extreme necessity (see L.Casson, Ships and Seamanship in the Ancient World, (1995) 270f).

[41] Historiae, I.77 M. Flaccus is last certainly attested alive when serving as magister equitum to the dictator Sulla between 82-80. He was dead when the *s.c.u.* was passed in January 77 to counteract the revolt of Lepidus since Sallust declared L.Marcius Philippus at that time to be the oldest serving senator (see Chapter V). It is also probable that Mam.Aemilius Lepidus Livianus was made *princeps senatus* in the *lectio* of 70 which presupposes Flaccus was dead by that time (see Chapter V and Appendix III).

[42] When the *flamen Martialis* Flaccus died during Pius' Spanish command, the pontifical college will have temporarily taken over the sacral responsibilities of the *flamen,* as they did in the case of the flaminate of Iuppiter when that priesthood was vacant between 87 and 11 B.C. (Tac., Ann.III.58).

explain why P.Servilius Vatia Isauricus (cos.79), M.Terentius Varro Lucullus (cos.73), Q.Caecilius Metellus Creticus (cos.69), M'.Acilius Glabrio (cos.67) and M.Valerius Messalla Niger (cos.61) do not appear on Macrobius' guest list.[43] All were probably members of the pontifical college by this date.[44] Taylor offered two possible explanations for this anomaly: either they were absent when the banquet was held, or the omissions are due to the fragmentary nature of the list.[45] The former explanation cannot withstand close scrutiny. P.Servilius Vatia Isauricus, M.Terentius Varro Lucullus, and M'.Acilius Glabrio were all present at the trial of Verres conducted between January and October 70.[46] Lucullus was perhaps only present for the beginning of the trial but not so Vatia and Glabrio.[47] Likewise Metellus Creticus was certainly in Rome at least for the latter half of 70, since he was elected consul for 69 in the elections of that year. And it is possible Messalla Niger was also in Rome for some part of the year 70. If he is to be identified with the M.Valerius Messalla who received a *nota* from the censors, but was later censor himself, the censorship of 70 is the likely occasion for this reprimand.[48] Thus absence can certainly not account for the omission of Vatia, Glabrio or Creticus and possibly not that of Lucullus and or Messalla. That having been said, the number of *lecti* provided for the banqueters suggests it was known that not all members of the college would be in attendance.[49] And whilst courtesy doubtless required the presence of all the members of the college who could not produce sufficient cause for their absence, attendance on such occasions was not absolutely obligatory.[50] Perhaps, therefore, though Vatia, Lucullus, Glabrio, Creticus and Messalla were either in Rome, or its environs, in

[43] One might have expected Metellus Pius to have been registered at or near the top of the list since he was probably the longest serving *pontifex* at this date (he entered the college in early youth - De vir.ill., 63) and was then *pontifex maximus*. Either the name has fallen out, or it did not appear on the list as the account was recorded in the annals of the *pontifex maximus* and thus Pius' presence was taken for granted.

The absence of the other two Vestal virgins, Fabia and Fonteia (see Klose, Römische Priesterfasten, (1910) 41-2 and Broughton, MRR.II.136), is easily accounted for - they will have been deputed to tend the sacred flame.

[44] See Taylor, AJP, 63 (1942) 391f; Broughton, MRR.II.113-4. Mommsen in fact supposed that the word 'sextus' which appears in the text of Macrobius was a corruption of the name of Servilius Vatia (see below).

[45] AJP, 63 (1942) 389, 400.

[46] See Alexander, Trials, 88-89. Vatia, like Catulus, was one of the jurors in the trial and Glabrio, then praetor, presided over the court (MRR.II.127).

[47] Lucullus was a witness in the first *actio* of the trial (see Alexander, Ibid., 89), so he was not bound to stay for the duration. He was possibly absent from Rome in the latter part of the year since he was one of the commissioners dispatched by the senate to assist his brother L.Lucullus organize the territory of Pontus (see MRR.II.129). The date of the legation is uncertain but Broughton considered 70 the most likely date.

[48] Val.Max., II.9.9 see Münzer, RE.VIIIA.1.163-4; Broughton, MRR.III.214. The alternative is that this Messalla was Niger's great-grandfather M.Valerius Messalla (cos.161, cens.154). However, it is possible that Niger was censured in 70 in his absence.

[49] An approximation of the maximum number of banqueters expected can be obtained from the number of *lecti* provided and their capacity. We are told there was a total of three *lecti* - the third for reasons of decorum being reserved for the six female guests. That leaves two couches for the male banqueters. If Marquardt, Das Privatleben der Römer^{2}, Leipzig, (1886) I.302f was correct to argue the *lecti* normally held nine persons, there was only room for eighteen men on the remaining two couches. Bardt, op cit., 13 and Jan, op cit., 312 counting twelve men reckoned they were apportioned six to a couch. But there were at least thirteen male guests present: Metellus Pius, Catulus, Lepidus, Silanus, C.Caesar, the rex sacrorum, Scaevola, Sextus [****], Lentulus Niger, Q.Cornelius, P.Volumnius, P.Albinovanus and L.Caesar. If P.Servilius Vatia Isauricus, M.Terentius Varro Lucullus, Q.Caecilius Metellus Creticus, M'.Acilius Glabrio and M.Valerius Messalla Niger were also present, that makes a total of eighteen male guests or a capacity crowd (see Marinone, op cit., 273f). Yet it is clear even so that at least three pontifices were expected to be absent - four if 'Sextus' is identified with the *flamen Quirinalis* Sex.Caesar.

[50] See Cic., Ad Att., XII.13, 14, 15 which it has been argued pertains to an augural banquet.

August 70, they excused themselves on some grounds not now recoverable.

The other possibility is that a lacuna, or lacunae, may be responsible. Bardt maintained the list in Macrobius had been preserved intact. More recent commentators have rightly conceived doubts.[51] Attention has focused on the text following the name of D.Silanus - it reads: "C.Caesar rex sacrorum, P.Scaevola Sextus, Q.Cornelius." Since neither C.Caesar, nor P.Scaevola, was *rex sacrorum* the natural conclusion to be drawn is that the name of the *rex* has fallen out of the text.[52] Bardt contended the name of the *rex* was unnecessary as it was known to all.[53] The logic of this escapes me - we are to understand that whereas it was necessary to faithfully record the names of the *pontifices* who were among the most distinguished men in the Roman state, the *rex*, who played a marginal role in the state religion of the late Republic and held no political or military offices, could be omitted as the incumbent of that priesthood was purportedly a household name. That argument is scarcely persuasive.[54] The list was intended as a record of the banquet for posterity and as such it must be presumed it was originally a complete list. Similarly, something is clearly amiss with the text between the *nomen* of the *pontifex* P.Scaevola and that of the *pontifex minor* Q.Cornelius. Juxtaposed between the two appears the word 'sextus.' 'Sextus' demonstrably bears no relationship to the *nomen* of the *pontifex minor* which is certified by Cicero.[55] Mommsen reckoned it a corruption of the name of P.Servilius Vatia.[56] But as the majority of those guests endowed with *cognomina* are registered in Macrobius' list by *praenomen* and *cognomen* alone, it cannot be assumed had Vatia been present that his *gentilicium*, from which the 'corruption' sextus notionally derives, would have appeared on the list.[57] In addition, if the guests were listed in order of seniority Vatia would have been entered at or near the top of the list - certainly not near the bottom after the most junior *pontifex* P.Scaevola. Bardt, on the other hand, suggested 'sextus' was a gloss intended to distinguish Caesar and Scaevola from the person of the *rex* by signifying Scaevola was the sixth individual on the list.[58] That possibility cannot be entirely ruled out, but it is not the most satisfying interpretation. Scholars who engaged in annotating manuscripts presumably did so with the intention of elucidating obscure items in the text. That being so, were 'sextus' a gloss it is a remarkably cryptic and defective one - for the note, which would be remarkable for its brevity, would hardly serve to clarify the point supposedly at issue. Better therefore to seek an alternate explanation. 'Sextus' is evidently not an *agnomen* of Scaevola's.[59] Nor yet a

[51] Jan, Eyssenhardt, Bornecque, Willis and Marinone all considered the list contained lacunae see below. As did Taylor.

[52] Clearly, neither Caesar nor Scaevola can have been *rex sacrorum* as the *rex* was prohibited from holding other *honores* (thus eliminating Caesar) and remained a patrician monopoly (ruling the plebeian Scaevola out of contention). Jan, op cit., (1852) II.312 noted that the name of the *rex* had been omitted but he did not suggest by whom or why. Most editors accept that the rex's name has fallen out of the text (see below).

[53] Bardt, op cit., 13. Marquardt, StV^2.III.243 n.3 = Le culte chez les Romains, Paris, (1889) I.291 n.2 thought the name of the *rex* had dropped out or had been intentionally omitted ("absichtlich nicht gennant wird"). He did not, however, venture any reasons why if the latter were true the name of the *rex* should be deliberately withheld. Contrary to the statement of Szemler, op cit., 128, neither Mommsen nor Taylor endorsed Bardt's explanation.

[54] Note Cicero, De Har.Resp.12 clearly did not feel the *rex* was so well known that his name could be omitted from the roll of the pontifical college.

[55] De Har.Resp.12. Noted by Bardt, op cit., 13.

[56] RF.I.87 n.34. Mommsen's explanation was rejected by Bardt, Ibid., 13.

[57] The only exceptions are M[am].Lepidus and L.Caesar who are inexplicably accorded their full *tria nomina*.

[58] Bardt, op cit., 13. Marquardt, op cit., III.243 n.3 stated the *nomen* Sextus was either corrupt (though he gave no hint as to its origin) or a gloss as Bardt thought.

[59] Sextus as *cognomen* or *agnomen* was not common under the Republic and those attested as bearing it are predominantly of low birth (see Bardt, Ibid., 13; and Kajanto, The Latin Cognomina, (1965) 174). Nor is there any evidence the *pontifex* bore the *agnomen* Sextus. Crawford, RRC.I.413 no.403 suggested the *pontifex*

corruption of the *nomen gentilicium* Sext<i>us.[60] Rather it must surely be understood as the *praenomen* of another priest whose *gentilicium* has dropped out of the text.[61] Editors have therefore routinely reproduced the text to reflect both these lacunae as follows: "C.Caesar, **** rex sacrorum, P.Scaevola, Sextus ****, Q.Cornelius."[62]

Given therefore that the list contains at least two lacunae after the name of C.Caesar, it is a reasonable may be identified with the *monetalis* who issued a denarius c.70 B.C. with a 'Kalenus' and is only identified by the legend 'Cordus.' Crawford argued Scaevola took the name to recall his ancestor, the famous would be assassin of Porsenna (cf. Sydenham, no.797, p.131). If this is accepted, the *pontifex* bore the *agnomen* Cordus but there is no sign of 'Sextus' (Note the P.Mucius Scaevola honoured with an inscription from Tarraco - G.Alföldy, Die römische Inschriften von Tarraco, Berlin, (1975) no.1 - who is not equipped with any *agnomina* cannot be identified with the homonymous *pontifex*, as is usually suggested, if the inscription is dated, as by most commentators, in or after 49 since the *pontifex* was dead by 57 see Cic., De Har.Resp.12).

[60] There are no suitable Sextii at the appropriate juncture. The noble Sextii Calvini appear to have been in decline at this period and going by the normal mode of reference in the list a Sextius Calvinus would probably have been cited by *praenomen* and *cognomen* hence 'sextus' could not be a corruption of the *gentilicium*. Nor are there likely candidates among the other Sextii of the time. Further, it is improbable that 'sextus' could be a corruption of the plebeian *gentilicium* Sextius as that would bring the total of plebeians in the college at the time to nine, whereas if the balance of orders in the college was being maintained in the 70's, as it was in 57, 'sextus' should be a patrician.

[61] It is curious as Szemler, op cit., 128 remarked that the *praenomen* should be spelt out in full whereas all the other *praenomina* are cited by their regular abbreviations. However, the citation of nomenclature in the list is erratic - as noted above Mam.Lepidus and L.Caesar are accorded their full *tria nomina* whilst others are cited by *praenomen* and *cognomen* alone.

Taylor, AJP, 63 (1942) 402, 411 speculated that 'Sextus' was the *praenomen* of another *pontifex* - namely an otherwise unattested Sex.Quinctilius Varus (which was accepted by Broughton, MRR.II.134, 137 n.10, 186; Gundel, RE no.16; and Syme, AA, 313; cf. Szemler, op cit., 132 n.4). Taylor reasoned as follows. Based on the premise that the lists in Macrobius and Cicero are arranged in order of seniority Taylor argued we can identify eleven of the fifteen *pontifices* at the time of the banquet - eight plebeians and three patricians. If the college of the 70's consisted of eight plebeians and seven patricians, as in 57, Sextus ought to be a patrician. Of the patrician *gentes* then in evidence only the Iulii Caesares and the Quinctilii Vari used the *praenomen* Sextus and since there was already a Caesar in the college Sextus ought to be a Quinctilius Varus. But this is inadmissible for a number of reasons and the *pontifex* Sex.Quinctilius Varus should be expunged. The pontifical college in 57 consisted of eight patricians and seven plebeians not vice versa (see Chapter VI) and we cannot be absolutely certain that plebeians did not occupy more than eight places in the pontifical college in the 70's. Hence, the assumption that the college in the 70's contained eight plebeians and seven patricians and that Sextus must therefore be a patrician is unsafe. Further, as Taylor, Ibid., 402 n.57 admitted, the rule that purportedly forbade two *gentiles* from serving simultaneously in the priestly colleges cannot have applied to the pontifical college. So Sextus might have been another Caesar. Nor is it a necessary presumption that Sextus was a *pontifex* - the banquet was attended by other priests attached to the pontifical college who included the *rex sacrorum* and the *flamines maiores*. Now Sextus was clearly not the *rex sacrorum* since he was registered before the *pontifex* Scaevola. Neither was Sextus the *flamen Dialis* or *flamen Martialis*. The flaminate of Juppiter was vacant between 87 and 11 B.C. and Lentulus Niger was *flamen Martialis*. L.Jan, op cit., II.312 and J.H.Vanggaard, The Flamen: A Study in the History and Sociology of Roman Religion, (1988) 56 tentatively suggested 'Sextus' might be identified with Sex.Iulius Caesar who was *flamen Quirinalis* by 57 (Cic., De Har.Resp.12. N.Marinone did not suggest this identification as Champlin, CP, 84 (1989) 58 claimed). That, however, creates other problems. Taylor, AJP, 63 (1942) 397, 412 argued judging by Sex.Caesar's place in Cicero's list he was inaugurated as *flamen* between 60 and 58, whereas if the proposition of Jan and Vanggaard is accepted, Sex.Caesar was already installed as *flamen* before the inauguration of Lentulus Niger. If the latter were correct, Taylor's thesis that the lists are arranged in order of seniority falls since Sex.Caesar is listed by Cicero after Lentulus Niger and after a number of *pontifices* who entered the college later than Niger. N.Marinone, I Saturnali di Macrobio Teodosio, Turin, (1967) 72, 418, Maia, 22 (1970) 274f therefore proposed that Sextus was a Sex.Iulius Caesar and *flamen Quirinalis* but was an otherwise unattested father of the *flamen Quirinalis* in Cicero's list who was inaugurated c.72-70 before Lentulus Niger and died c.59-58 whence he was succeeded by his son. Unfortunately, in the current state of the evidence speculation as to the identity of 'Sextus' will remain idle.

[62] Thus F.Eyssenhardt, Macrobius^2, Leipzig, (1893) 197 (accepted by Taylor); so also H.Bornecque, Macrobe Les Saturnales, Paris, (1937) I.366; J.A.Willis, Ambrosii Theodosii Macrobii Saturnalia, Leipzig, (1963) I.194 and N.Marinone, I Saturnali di Macrobio Teodosio, Turin, (1967) 72, 418 and Maia, 22 (1970) 274f.

conjecture there may be others undetected before Caesar's name. Indeed Marinone presupposed the existence of a third lacuna following the name of M[am].Lepidus which accounted for the absence of the names of P.Servilius Vatia Isauricus, M.Terentius Varro Lucullus, Q.Caecilius Metellus Creticus, M'.Acilius Glabrio and M.Valerius Messalla Niger.[63] And that may not exhaust the count.[64]

In conclusion, as the banquet dates after Caesar's and before Galba's entry into the pontifical college, and the inauguration of a *flamen maior* required the presence of the *pontifex maximus,* the banquet can only be dated to the 22nd of August 70, 69 or 68. A number of arguments make the latter dates less probable whilst nothing impedes dating the banquet to the 22nd of August 70.

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[63] Ibid., 277-278.

[64] If the absence of the names of Pius and Niger is to be explained in terms of a fault(s) in the text (see above) and the list is structured in order of seniority it is necessary to conjecture at least one further lacuna. If Pius was registered on the list he ought to have been named first as the senior member of the college - hence perhaps a lacuna before the name of Q.Catulus where Pius' name may have stood. Niger's place is less clear. It is possible he too was placed at the top of the list as the banquet was in his honour and thus the one hypothetical lacuna before the name of Catulus might account for the names of both Pius and Niger. Alternatively, if the principle of seniority was strictly adhered to Niger presumably came last before the *pontifices minores* - who ranked as a separate class beneath the other members of the college - and thus his name might have been lost in the same lacuna which swallowed the *gentilicium* of 'Sextus [****].'

Appendix VII

RECORDED INSTANCES OF SUCCESSION IN THE THREE MAJOR PRIESTLY COLLEGES FROM THE REPUBLIC TO THE TRIUMVIRAL PERIOD

Our knowledge of succession in the priestly colleges is very limited. The bulk of the evidence comes from Livy and in his absence evidence becomes extremely scarce. The testimony of Livy can be supplemented in a few cases by other literary sources and by fragments of the *fasti sacerdotum*.[1] Prior to the passage of the *Lex Licinia Sextia de decemviris sacrorum* and the *Lex Ogulnia* three cases of succession are recorded. As they are all instances of patricians succeeding patricians they are not relevant for present purposes.[2] From the admission of plebeians to the major colleges in 367/300 until the Hannibalic War only one case of succession - from the mid-Third Century - is known.[3] Between 216 and 167 Livy records forty-four instances of succession in the three major priestly colleges (twenty-one in the pontifical college, twelve in the augural college, and eleven in the decemviral college).[4] However, even in this period Livy's lists are incomplete due to lacunae and omissions.[5] Whilst between 166 and 89 the evidence falters entirely. In the years 88-46 six cases of succession are recorded - one by the *fasti*, and five others by various literary sources.[6] After 46 no cases of succession

[1] Some scholars argue the fragments of the *fasti sacerdotum* pertain only to the augural college (thus Mommsen, CIL.I^2.1 p.60, VI.1976, 32318, 37160-1; Hülsen, Klio, 2 (1902) 275-6, JOAI, 13 (1910) 253-6; Münzer, Hermes, 52 (1917) 152f; Groag, RE.IV.1256; Wissowa, RE.II.2319, RKR, (1902) 417 n.2; Badian, Arethusa, 1 (1968) 29f; Linderski, ANRW, II.16.3 (1986) 2245 n.389), others maintain it refers to both the augural and pontifical colleges (see Taylor, AJP, 63 (1942) 386 n.2; Lewis, op cit., 82 n.4; and Frier, Arethusa, 2 (1969) 191. Dessau, ILS.III.2, p.CXVII-CXIX, Broughton, MRR.I.57, 96, 210, III.11-12, 75 and G.J.Szemler, The Priests of the Roman Republic, (1972) 20, 54, 68, 123, 126 were undecided). In the present context the debate is irrelevant - what matters is whether or not successors were drawn from the same order as their predecessor.

[2] Livy, III.23.3 states that C.Horatius Pulvillus (13) cos.477, 457 was succeeded as an *augur* in 452 by C.Veturius (Cicurinus) (10) cos.455. The remaining two cases were disclosed by the *fasti sacerdotum*. One fragment of the *fasti* indicates that in 439 [*Sp.* or *A. Postu*]mius A.f. P.n. Albus [*Regillensis*] (52b or 52a) was succeeded as a *pontifex* or an *augur* by a [*Ser ?*]vilius P.f. - possibly to be identified with Q.Servilius P.f. Sp.n. Priscus Fidenas (75) dictator in 435, 418 (CIL.VI.37161 = ILS.9338 no.2. See Hülsen, JOAI, 13 (1910) 255-6; Dessau, ILS.III.2 pp.CXVII-CXIX; Broughton, MRR.I.57; and Szemler, op cit., 57). The same fragment reveals [*Ser ?*]vilius was succeeded in 390 by a [*Furi ?*]us Q.f. P.n. Fu[*sus*] (see Hülsen, Dessau and Szemler, Ibid.; and MRR.I.96).

[3] The *fasti sacerdotum* records that C.Marcius Rutilus Censorinus (98) one of the plebeians co-opted in 300 as a result of the *Lex Ogulnia* was succeeded in the pontifical or augural college by a Mamilius Turrinus in 260, 259 or 254 (see below).

[4] In addition, Livy records one case of succession in the college of *tresviri epulones* in 180 (vide infra).

[5] The successors to the *pontifex* M.Sempronius Tuditanus (95) who died in 174 and the *augur* L.Quinctius Flamininus (43) who died in 170 are lost in lacunae in Livy's text. Other omissions are due to Livy. Thus Livy reports the deaths of the *augur* M.Aemilius Lepidus (66) who died in 216, the *pontifex* Cn.Cornelius Scipio Hispallus (346) who died in 176, and the *augur* Ti.Sempronius Longus (67) who died in 174 but failed to record their successors. And in the case of a number of priests who were certainly or probably dead by 167 Livy neglects to report their death or successors. In this category belong: Q.Fulvius Flaccus (59) *pontifex* 216-? (after 205 but before 196 see infra); C.Atilius Serranus (62) *augur* by 216-?; Q.Caecilius Metellus (81) *pontifex* 216-? (after 179 - Livy, XL.45.8); M.Aemilius Lepidus (67) *decemvir* 211-? (see C.Bardt, Die Priester der vier grossen Collegien aus römisch-republikanischer Zeit, (1871) 29); C.Laetorius (2) *decemvir* 209-? (after 194 - Livy, XXXIV.45.5); M'.Acilius Glabrio (35) *decemvir* 200-? (after 189 but before 181 see Bardt, Ibid., 29). Further, L.Aemilius Paullus (114), the victor of Pydna, was an *augur* c.192-160 but Livy nowhere mentions his priesthood (see Bardt, Ibid., 21). It would also seem one of the plebeian *decuriae* in the augural college c.216-167 entirely escapes mention in Livy's text.

[6] The literary sources are Velleius Paterculus, Nicolaus of Damascus, Suetonius, Plutarch, and

are attested in the three major colleges until A.D. 7.[7]

Having listed those cases of succession which are directly attested I append two further lists - one of probable instances of succession, and one of cases that have been conjectured by various scholars. Finally, I have recorded such information as we possess concerning unsuccessful candidates for priestly honours.

The date of each succession is given on the extreme left - all dates are B.C.

Patricians are in bold type.

Certified instances of succession in the major priestly colleges

Pontifex or *Augur*

Successor	Predecessor
260/259 or 254 - [*C.* or *Q.Mam*]ilius Q.f. Turrinu[*s*] (11 or 12)	C.Marcius Rutilus Censorinus (98)[8]

Pontifices

Successor	Predecessor
216 - Q.Fulvius Flaccus (59)	Q.Aelius Paetus (103)[9]
216 - **Q.Fabius Maximus Cunctator (116)**	**L.Aemilius Paullus (118)**[10]
216 - Q.Caecilius Metellus (81)	P.Scantinius (2)[11]
213 - **M.Cornelius Cethegus (92)**	**L.Cornelius Lentulus Caudinus (211)**[12]
213 - **Cn.Servilius Caepio (44)**	**C.Papirius Maso (6, 57)**[13]
211 - C.Livius Salinator (29)	M'.Pomponius Matho (17)[14]
210 - C.Servilius Geminus (60)	T.Otacilius Crassus (12)[15]
203 - **Ser.Sulpicius Galba (56)**	**Q.Fabius Maximus Cunctator (116)**[16]

P.Vatinius (vide infra). Apart from the case of M.Aemilius Scaurus (cos.115) and L.Cornelius Scipio (cos.83) the *fasti* also records that L.Sempronius Atratinus (cos.suff.34) succeeded an *augur* in 40 who had entered the college in 88 or 80. Unfortunately, the name of Atratinus' predecessor has not been preserved (for speculation as to his identity see the conjectural cases of succession listed below).

[7] The *fasti* discloses that in that year the *augur* L.Sempronius Atratinus (cos.suff.34) was succeeded by P.Petronius P.f. (cos.suff.19 A.D.) see CIL.I^2.1 p.60 = ILS.9338 no.3.

[8] CIL.VI.37160 = ILS.9338 no.1. See Hülsen, Klio, 2 (1902) 275-6; Dessau, ILS.III.2 pp.CXVII-CXIX; MRR.I.210; Szemler, op cit., 66f). Dessau, Ibid., p.CXIX n.4 suggested Q.Mamilius, the father of C.Mamilius (cos.239), may have been the priest rather than the consul himself. The precise date of Mamilius' co-optation is uncertain. The fragment of the *fasti* preserves only part of the name of one of the eponymous consuls: - a [*Corn*]elio P.f. Sci[*pione*]. As Hülsen Klio, 2 (1902) 276 and Dessau, op cit., p.CXIX n.9 realized the filiation in the inscription must be an error because none of the Scipionic consuls of the Third Century, apart from Africanus, were the sons of a Publius as the inscription avers. Since it is known that Marcius lived at least until 264 (see MRR.I.202) the date of Mamilius' co-optation can be narrowed down. After Cn.Cornelius L.f. Scipio Asina (cos.260, 254), and L.Cornelius L.f. Scipio (cos.259), the next Scipionic consul was elected in 222. As it is chronologically impossible for Marcius to have lived into the 220's Mamilius must have been co-opted in 260, 259, or 254.

[9] Livy, XXIII.21.7.

[10] Livy, XXIII.21.7.

[11] Livy, XXIII.21.7.

[12] Livy, XXV.2.2.

[13] Livy, XXV.2.2.

[14] Livy, XXVI.23.7-8.

[15] Livy, XXVI.23.7-8, XXVII.6.15.

[16] Livy, XXX.26.10.

202 - **C.Sulpicius Galba (49)**
199 - **M.Aemilius Lepidus (68)**
199 - **Cn.Cornelius Scipio Hispallus (346)**
196 - **L.Valerius Flaccus (173)**
196 - M.Claudius Marcellus (222)
183 - M.Sempronius Tuditanus (95)
180 - Q.Fulvius Flaccus (61)
180 - **Q.Fabius Labeo (91)**
177 - M.Claudius Marcellus (225)
174 - **C.Sulpicius Galba (50)**
172 - Cn.Domitius Ahenobarbus (19)
170 - **T.Manlius Torquatus (83)**
170 - M.Servilius (Geminus) (18)
74/3 - **C.Iulius Caesar (131)**
47 - C.Octavius (132)
46 - **Ti.Claudius Nero (254)**

T.Manlius Torquatus (82)[17]
Ser.Sulpicius Galba (56)[18]
C.Sulpicius Galba (49)[19]
M.Cornelius Cethegus (92)[20]
C.Sempronius Tuditanus (90)[21]
P.Licinius Crassus Dives (69)[22]
C.Servilius Geminus (60)[23]
L.Valerius Flaccus (173)[24]
M.Claudius Marcellus (222)[25]
Cn.Servilius Caepio (44)[26]
Q.Fulvius Flaccus (61)[27]
L.Furius Philus (77)[28]
C.Livius Salinator (29)[29]
C.Aurelius Cotta (96)[30]
L.Domitius Ahenobarbus (27)[31]
Q.Caecilius Metellus Pius Scipio (99)[32]

Augures

213 - **L.Quinctius Flamininus (43)**
211 - M.Servilius Geminus (78)
210 - Ti.Sempronius Longus (67)

P.Furius Philus (80)[33]
Sp.Carvilius Maximus Ruga (10)[34]
T.Otacilius Crassus (12)[35]

[17] Livy, XXX.39.6.

[18] Livy, XXXII.7.15.

[19] Livy, XXXII.7.15.

[20] Livy, XXXIII.42.5.

[21] Livy, XXXIII.42.5.

[22] Livy, XXXIX.46.1.

[23] Livy, XL.42.11.

[24] Livy, XL.42.6.

[25] Livy, XLI.13.4.

[26] Livy, XLI.21.8-9.

[27] Livy, XLII.28.10-13.

[28] Livy, XLIII.11.13.

[29] Livy, XLIII.11.13.

[30] Velleius, II.43.1. The date of Caesar's appointment depends on the date of Cotta's death which is not precisely fixed (see Appendix VI).

[31] Nic.Dam., Vit.Aug.4. Not Cn.Domitius as Mommsen, RF.I.87. Octavian was as yet a plebeian.

[32] Suet., Tib.4.1. As Metellus Scipio was a patrician (see Chapters I and VI and Appendices I and II) this was not an instance of interordinal succession.

[33] Livy, XXV.2.2.

[34] Livy, XXVI.23.7-8.

[35] Livy, XXVI.23.7-8, XXVII.6.15. In the former passage when initially reporting the death of Otacilius Livy calls him a *pontifex*. Yet when reporting his death in the latter passage Otacilius is termed both *pontifex* and *augur*. Since Livy had not previously adverted to the fact that Otacilius held two priesthoods and this was not common some commentators have denounced the latter passage (see Mommsen, RF.I.83f n.25; Bardt, op cit., 19-20; Broughton, MRR.I.283, 284 n.6, III.188-9; and Badian, Arethusa, 1 (1968) 31-36. Against which see Marquardt, StV^2.III.233 n.2; Münzer, RE.XVIII.2.1863, 1865, II.2.1433, RAA, 80f; and Szemler, op cit., 73, 190). But there is no adequate reason to question the entry. Livy was conspicuously

208 - P.Aelius Paetus (101)
204 - Ti.Sempronius Gracchus (52)
203 - **Q.Fabius Maximus (104)**
195 - **C.Claudius Pulcher (300)**
184 - **Sp.Postumius Albinus (44)**
180 - **P.Cornelius Scipio (331)**
174 - Q.Aelius Paetus (104)
174 - T.Veturius Gracchus Sempronianus (23)

M.Claudius Marcellus (220)[36]
M.Pomponius Matho (18)[37]
Q.Fabius Maximus Cunctator (116)[38]
Q.Fabius Maximus (104)[39]
Cn.Cornelius Lentulus (176)[40]
Sp.Postumius Albinus (44)[41]
P.Aelius Paetus (101)[42]
Ti.Sempronius Gracchus (52)[43]

careless when recording the composition of the priestly colleges (see n.5 supra) and negligence of this kind is scarcely atypical. Thus for instance at XXVII.6.15 Livy records that C.Servilius Geminus succeeded to the place of Otacilius as *pontifex*. However, there is no indication until the mention of Servilius' death at XL.42.1 that Servilius was also a *Xvir*. Similarly, though the co-optation of Fabius Maximus into the pontifical college is reported in 216 (XXIII.21.7), it is only at Fabius' death (XXX.26.10) that Livy mentions he was also an *augur*. Conversely, the co-optation of Ti.Sempronius Longus as both *augur* and *Xvir* is recorded at XXVII.6.15 but at his death (XLI.21.8) Livy only mentions that Longus was a *Xvir*. The other objection to the passage was that it entails the consequence that between 204-174 there were two Sempronii in the augural college. It is commonly argued that the rule reported by Dio, XXXIX.17.2 forbidding simultaneous membership of the priestly colleges by *gentiles* was strictly observed in the augural college - hence the text must be spurious. However, this rule was demonstrably violated on other occasions. In the First Century Ap.Claudius Pulcher (cos.54) and M.Claudius Marcellus were simultaneously members of the augural college for some years (see Bardt, op cit., 34-5, Festgabe für Wilhelm Crecelius, (1881) 37-40; Szemler, op cit., 190; North in J.Andreau and H.Bruhns (eds.), Parenté et stratégies familiales dans l'Antiquité romaine: actes de la table ronde des 2-4 Octobre 1986, Paris, (1990) 540 n.26). In addition, if Sulla was an *augur* by 84 he and his *gentilis* L.Cornelius Scipio (cos.83) were also simultaneously members of the college for some period. And the rule was openly flouted later. L.Caesar (cos.64) and C.Caesar (cos.59) were both members of the augural college from c.47 until the Dictator's assassination (see Bardt, op cit., 24-5; Lewis, op cit., 38; MRR.II.293, 385; Szemler, op cit., 149, 156) and L.Caesar may still have been alive when C.Iulius Caesar Octavianus entered the college. M.Messalla Rufus and M.Messalla Corvinus were both augurs from 36 till c.27/6 (see Lewis, op cit., 39, 41, 83; MRR.II.406, 426) and c.31 there were two Iunii Silani in the college (see Lewis, op cit., 41, 83 and MRR.II.425-6). Furthermore, though dual priesthoods were not common Livy records four other instances among the contemporaries of Otacilius (namely: Q.Fabius Maximus *augur* and *pontifex*; C.Servilius Geminus *pontifex* and *Xvir*; Ti.Sempronius Longus *augur* and *Xvir*; and M.Pomponius Matho *augur* and *Xvir* - see Szemler, Rh.Mus., 117 (1974) 72f). Consequently, the objections to the passage are insubstantial and there is no cause to drastically emend Livy, XXVII.6.15. Münzer, RAA, 82 suggested a minimal alteration viz.: "C.Servilius pontifex factus in locum T.Otacilii Crassi; Ti.Sempronius Ti.f. Longus augur factus in locum [eiusdem] T.Otacliii Crassi."

[36] Livy, XXVII.36.5.

[37] Livy, XXIX.38.7. M.Pomponius Matho (18) who died in 204 was a member of both the augural and decemviral colleges (see Bardt, op cit., 11; Gundel, RE.XXI.2330; Münzer, RAA, 161; Szemler, op cit., 139; Rh.Mus., 117 (1974) 74-5; see also below under *Xviri*. Broughton, MRR.II.604 erroneously distinguished between the augur and *decemvir* though he elsewhere rightly identified them see MRR.I.309).

[38] Livy, XXX.26.10. Livy says the Cunctator was succeeded by his son Q.Fabius Maximus. However, Fabius' only known son Q.Fabius Maximus (103) cos.213 predeceased him and when Livy reports the death of the Cunctator's successor in 196 he describes him as "admodum adulescens" and says he had not yet held any public office. In view of this, and given that the Cunctator is unlikely to have had two living sons named Q.Fabius Maximus (clearly the *augur*, co-opted in 203, was born prior to the death of the consul of 213), Münzer, RE.VI.1790 argued that the Cunctator's successor was his grandson by an otherwise unknown second son (to be distinguished from Q.Fabius Maximus (105) pr.181 who is presumed a son of the consul of 213). Sumner, Arethusa, 3 (1970) 97 suggested Livy was wrong about the augur's name, age, rank, and relationship to the Cunctator and that the augur was in fact Q.Fabius Buteo the praetor of 196 but the suggestion has little to recommend it (see MRR.III.86).

[39] Livy, XXXIII.44.3.

[40] Livy, XXXIX.34.8.

[41] Livy, XL.42.13.

[42] Livy, XLI.21.8-9.

[43] Livy, XLI.21.8-9. As Mommsen, RF.I.84, 120 saw T.Veturius Gracchus Sempronianus will have been a Sempronius Gracchus adopted by a plebeian Veturius. Contra Münzer, RAA, 123, 126-8, 130f there is

167 - **T.Quinctius Flamininus (46)**
88 - [***L.Cornelius Scip***]**io Asiagene**[*s*] **(338)**
53/2 - M.Tullius Cicero (29)
47 - P.Vatinius (3)

C.Claudius Pulcher (300)[44]
[***M.Aemilius Sca***]**urus (140)**[45]
P.Licinius Crassus (63)[46]
Ap.Claudius Pulcher (297)[47]

Decemviri sacris faciundis

213 - **L.Cornelius Lentulus (187 or 188)**
211 - **M.Aemlius Lepidus (19, 67)**
210 - Ti.Sempronius Longus (67)
209 - C.Laetorius (2)
204 - M.Aurelius Cotta (103)
200 - M'.Acilius Glabrio (35)
180 - Q.Marcius Philippus (79)
174 - C.Sempronius Longus (63)
173 - **A.Postumius Albinus (46)**
172 - **M.Valerius Messalla (252)**
169 - Cn.Octavius (17)

C.Papirius Maso (58 cf. 23)[48]
M'.Aemilius Lepidus Numida (103)[49]
Ti.Sempronius Longus (66)[50]
Q.Mucius Scaevola (19)[51]
M.Pomponius Matho (18)[52]
M.Aurelius Cotta (103)[53]
C.Servilius Geminus (60)[54]
Ti.Sempronius Longus (67)[55]
L.Cornelius Lentulus (187 or 188)[56]
L.Aemilius Papus (109)[57]
M.Claudius Marcellus (223 or 224)[58]

Probable instances of succession in the major priestly colleges

Pontifices

Successor Predecessor

good evidence for the existence of plebeian as well as patrician Veturii (see in addition to Mommsen, Badian, Arethusa, 1 (1968) 34f; Shatzman, CQ, 23 (1973) 65-77). R.M.Geer, AJP, 60 (1930) 466-7 suggested that the augur's name be emended to Ti.Sempronius Gracchus Veturianus but this is unwarranted and insupportable (see Badian, Ibid.).

[44] Livy, XLV.44.3.

[45] CIL.I^2.1, p.60 = ILS.9338 no.4. Though only part of the *cognomen* Scaurus survives the identification is certain. Asconius, 21 C states that M.Aemilius Scaurus (cos.115) was an augur and the date of succession coincides precisely with the death of the aged *princeps senatus* (see Appendix III). The only conceivable alternative, M.Aurelius Scaurus (cos.suff.108), is not attested as holding any priestly office and may be ruled out since he was killed in 105 (see MRR.I.557). For present purposes the vexed question as to whether M.Scaurus was an *augur* or a *pontifex* (on which see R.M.Geer, CP, 24 (1929) 292-294; Broughton, MRR.I.515, 561, 562 n.7, II.44; Badian, Arethusa, 1 (1968) 29f; B.Frier, Arethusa, 2 (1969) 191-3; Sumner, Orators, 99-100; Szemler, op cit., 123-4; J.Schied, MEFR, 93 (1981) 124-5, 168-71; A.Keaveney, AJAH, 7 (1982) 152f; B.Marshall, A Historical Commentary on Asconius, (1985) 129-132) is irrelevant. Here we need only note that Scaurus and his successor Scipio belonged to the same order (i.e. both were patricians).

[46] Plutarch, Cicero 36.1. On the date see Linderski, HSCP, 76 (1972) 190-200.

[47] Vatinius, Ad Fam., V.10a.2.

[48] Livy, XXV.2.2.

[49] Livy, XXVI.23.7.

[50] Livy, XXVII.6.15.

[51] Livy, XXVII.8.4. Apparently inadvertently omitted from Mommsen's list in RF.I.85.

[52] Livy, XXIX.38.7.

[53] Livy, XXXI.50.5.

[54] Livy, XL.42.11-12.

[55] Livy, XLI.21.8-9.

[56] Livy, XLII.10.6. Omitted from Mommsen's list in RF.I.85.

[57] Livy, XLII.28.10-13.

[58] Livy, XLIV.18.7.

Before 196 - C.Sempronius Tuditanus (90) — Q.Fulvius Flaccus (59)[59]

Augures

50 - M.Antonius (30) — Q.Hortensius Hortalus (13)[60]

Conjectural instances of succession in the major priestly colleges

Pontifices

Successor	Predecessor
176 - **L.Furius Philus (77)**	**Cn.Cornelius Scipio Hispallus (346)**[61]
c.152 - **P.Cornelius Scipio Nasica Corculum (353)**	**M.Aemilius Lepidus (68)**[62]
141 - **P.Cornelius Scipio Nasica Corculum (353)**	**P.Cornelius Scipio Nasica Serapio (354)**[63]
c.115 - Q.Mucius Scaevola (22)	P.Mucius Scaevola (17)[64]
103 - Cn.Domitius Ahenobarbus (20)	L.Caecilius Metellus Delmaticus (91)[65]
91 - **Mam.Aemilius Lepidus Livianus (80)**	M.Livius Drusus (18)[66]

[59] As Bardt, op cit., 33 saw C.Sempronius Tuditanus must have succeeded to the place of Q.Fulvius Flaccus. All the other places in the college can be accounted for in the period of Tuditanus' entry into the college sometime prior to his death in 196 (Livy, XXXIII.42.5). Flaccus died sometime after 205 (Livy, XXVIII.45.2). It is possible that there was a short-lived intermediary between the death of Flaccus and the co-optation of Tuditanus but it is more likely that Tuditanus succeeded Flaccus directly.

[60] MRR.II.254. M.Antonius almost certainly succeeded to the place left vacant by the death of Hortensius but this is not directly attested in the sources.

[61] Livy, XLI.16 reports the death of Hispallus in 176 but nowhere records the name of his successor. Bardt, op cit., 33 and Broughton, MRR.I.401 conjectured Hispallus was succeeded by L.Furius Philus. Philus is first mentioned as a member of the college at his death in 170 (Livy, XLIII.11.13). If he did not succeed Hispallus in 176 it must be presumed Philus succeeded Q.Caecilius Metellus (81) who died sometime after 179 (Livy, XL.45.8), or M.Sempronius Tuditanus (95) who died in 174 (Livy, XLI.21.8-9). However, it is highly unlikely that Philus succeeded a plebeian as he was himself succeeded by another patrician - T.Manlius Torquatus (83) - and if Philus was co-opted to fill a plebeian *decuria* this is the first and only known case of interordinal succession in the period and ante-dates the only other known Republican instance by nearly a hundred years.

[62] Corculum was elected *pontifex maximus* in 150 (Cic., De Sen.50). He was doubtless already a member of the pontifical college though the election of Cn.Domitius Ahenobarbus demonstrates not necessarily for any significant length of time. If, therefore, he succeeded to a patrician place he can only have taken either the place vacated c.152 by the death of the *pontifex maximus* M.Lepidus (on the date of Lepidus' death see Bardt, op cit., 4) or possibly the place of C.Galba which is unaccounted for after 171. However, it should also be borne in mind that four of the five plebeian places cannot be accounted for at the approximate time of Corculum's entry into the college.

[63] Serapio was made *pontifex maximus* some time prior to 133. Münzer, RAA, 251, 260 suggested that c.141 Serapio was co-opted to succeed his father as *pontifex* and then was elected his father's successor as *pontifex maximus* (cf. Broughton, MRR.I.478, 479 n.2). Münzer argued that according to the rule cited by Dio, XXXIX.17 two Cornelii Scipiones cannot have been members of the pontifical college simultaneously hence Serapio must have entered the college after Corculum's death. But it is doubtful whether the regulation reported by Dio ever applied to the pontifical college, if it did, it was honoured more in the breach than in the observance (see Mommsen, RF.I.89; Bardt, op cit., 34f and Festgabe für Wilhelm Crecelius, (1881) 37-40; Badian, Arethusa, 1 (1968) 36f; Szemler, op cit., 190; North, op cit., 527f, esp. 533-4). Consequently, Serapio may have been a member of the college during his father's lifetime.

[64] Suggested by Broughton, MRR.I.532 but evidence is lacking.

[65] Thus Broughton, MRR.I.564-5 and Sumner, Orators, 98-9 but direct testimony is lacking.

[66] Taylor, AJP, 63 (1942) 391f argued that the *pontifex* 'M.Aemilius Lepidus' in Macrobius, Sat., III.13.11 was in fact Mamercus Aemilius Lepidus Livianus. Taylor, Ibid., 411 tentatively suggested Lepidus was appointed before 88. Broughton, MRR.II.23, 24-5 n.11 conjectured Lepidus succeeded to the place of

64/3 - **Q.Caecilius Metellus Pius Scipio (99)**	Q.Caecilius Metellus Pius (98)[67]
c.64/3 - C.Fannius (9)	P.Mucius Scaevola (18)[68]
c.61/0 - C.Scribonius Curio (10)	D.Iunius Silanus (163)[69]
c.61/0 - M.Licinius Crassus (56 or 68)	Q.Lutatius Catulus (8)[70]
c.60 - **M.Aemilius Lepidus (73)**	**Mam.Aemilius Lepidus Livianus (80)**[71]
52/1 - C.Scribonius Curio (11)	C.Scribonius Curio (10)[72]

Drusus. There is no evidence to support the conjecture.

[67] Metellus Scipio was a *pontifex* by 57 (De Har.Resp.12) but the date of his appointment is unknown (see Münzer, RE.III.1225). There is nothing in the sources to support the assumption he succeeded to the place made vacant by the death of his 'adoptive' father Metellus Pius in 64/3 (as suggested by Taylor, AJP, 63 (1942) 398, 412 and Broughton, MRR.II.171, 172 n.4). The election in 60 in which he defeated M.Favonius (Cic., Ad Att., II.1.9) was not for a place in the pontifical college (the possibility was enumerated but rightly rejected by Sumner, Orators, 112). This is evident from the fact that the *comitia sacerdotum* under the *Lex Labiena* were conducted between the consular and praetorian *comitia* but the latter were still in prospect when Cicero was writing (noted by Ryan, Athenaeum, 82 (1994) 510-11). Also this would be the only known case of a prosecution for *ambitus* arising out of a priestly election (Cn.Sentius was prosecuted for his support of M.Antonius' campaign for the augurate but was probably indicted *de vi* see Alexander, Trials, no.346). Also Favonius ran again immediately afterward which would necessitate the assumption of a rapid sequence of deaths in the colleges at this time. And because Favonius claimed to be running *rei publicae causa* which could hardly be said of a priesthood. It appears that contest arose out of a suffect election most probably for a curule aedileship (see Appendix II).

[68] Argued by Taylor, AJP, 63 (1942) 398, 412 (cf. Broughton, MRR.II.186-7) but the hypothesis lacks source authority. It is only known that Scaevola's death and Fannius' appointment both occurred prior to 57 (Cic., De Har.Resp.12).

[69] Taylor, AJP, 63 (1942) 399-400; Broughton, MRR.II.182, 186-7. The date of Silanus' death is unknown. He is not heard of subsequent to his consulship. Curio is first attested as a member of the college in 57 (Cic., De Har.Resp.12).

[70] Taylor, AJP, 63 (1942) 399-400; Broughton, MRR.II.182, 186-7. Catulus was probably dead by late 61, certainly by May of 60 (Cic., Ad Att., I.20.3; Dio, XXXVII.46.3-4). The date of Crassus' appointment is unknown though he was a *pontifex* by 57 (Cic., De Har.Resp.12. It does not matter in the present context whether the Crassus concerned was the father or the son).

[71] Taylor, AJP, 63 (1942) 392f; Broughton, MRR.II.187 n.2. If as Taylor argued the Triumvir was not the *pontifex* 'M.Aemilius Lepidus' in Macrobius, Sat., III.13.11 then the earliest evidence for M.Lepidus' membership of the college are the coins he issued c.61 (presuming these do not refer to the priesthood of his famous ancestor). Livianus was dead by late 63 (see Chapter V and Appendix III).

[72] Taylor, AJP, 63 (1942) 405; Broughton, MRR.II.240. The apparent delay between the death of Curio senior and the election of Curio junior casts doubt on the suggestion (see Shackleton Bailey, ICS, 2 (1977) 227; cf. Szemler, op cit., 135 - disregard the date 59 in 135 n.5). The elder Curio died in 53 - probably in the first half of the year (Cic., Ad Fam., II.2. The report of his death precedes Ad Fam., II.6 in which Cicero announces his intention to support the consular candidacy of Milo at the elections of 53 for 52 - which as Shackleton Bailey, Cicero: Epistulae ad Familiares, (1977) I.347 concluded suggests the latter epistle was written not long after the consuls of 53 entered office in July or August 53). Now the younger Curio can have entered the college no later than the elections of 51 since he was already a *pontifex* before the elections of 50 (see Dio, XL.62.1-2, cf. Cic., Ad Fam., VIII.6.5. Dio says Curio was a *pontifex* when as tribune he attempted to force the insertion of an intercalary month in 50. The debate on the issue will have taken place in February 50 since had Curio carried the day the intercalary month would have commenced after the 23rd or 24th of February 50 - see A.K.Michels, The Calendar of the Roman Republic, (1967) 160ff and Shackleton Bailey, Cicero: Epistulae ad Familiares, (1977) I.416. Hence Curio was a *pontifex* by February 50 and so was elected at the latest after the consular *comitia* of 51. Münzer, RE.IIA1.869 erroneously dated his election in December 51). Cicero's testimony seems to indicate the younger Curio's election occurred precisely in 51 since in December 51 he referred to his efforts to forward Curio's nomination as though a recent event (Ad Fam., II.7.3 as Taylor, Ibid., 405 n.65 noted). Yet Caelius, Ad Fam., VIII.4 makes no mention of Curio's election when referring to the results of the priestly and magisterial elections of 51. Given that Curio senior apparently died in 53 the vacancy created by his death should have been filled immediately after the consular *comitia* for 53 i.e. around July/August 53, or failing that after the consular elections for 52 which were held in March 52 (see Linderski, HSCP, 76 (1972) 195-7, Phoenix, 28 (1974) 218), or else after the consular *comitia* for 51 which were conducted between the 10th of July and the 11th of September 52 (see Linderski, Ibid.). If, as it seems, the younger Curio was elected in 51 it is hardly possible that he succeeded his father.

50 - L.Domitius Ahenobarbus (27)
50 - Q.Servilius Caepio Brutus (Iunius 53)

Q.Caecilius Metellus Creticus (87)[73]
M.Aemilius Scaurus (141)[74]

Augures

c.129 - C.Fannius (7)
123 - **M.Aemilius Scaurus (140)**
115 - Q.Caecilius Metellus Numidicus (97)
59 - M.Atius Balbus (11)

Ti.Sempronius Gracchus (54)[75]
M.Aemilius Lepidus Porcina (83)[76]
Q.Caecilius Metellus Macedonicus (94)[77]
Q.Caecilius Metellus Celer (86)[78]

[73] Suggested by Shackleton Bailey, ICS, 2 (1977) 226 but there is no direct testimony. All that is known is that Metellus died sometime between 54 and 50 (Cic., Planc.27; Vell., II.48.6) and that Ahenobarbus was a *pontifex* by 48 (Caes., BC.III.83).

[74] Suggested by Shackleton Bailey, ICS, 2 (1977) 226-7. The suggestion is without supporting evidence. Scaurus will presumably have forfeited his place in the college as a result of his condemnation in 52 but the date at which Brutus entered the pontifical college is unknown. He was not a member as at the 29th of September 57 and so was elected no earlier than the elections of 56 (see MRR.II.205-6). As Cicero, Brutus 211-2 says Brutus was a colleague of Metellus Scipio he must have entered the college before the latter's death in April 46. Since the Republicans held no elections in or after 49 and Brutus will not have been appointed by Caesar in the period 49-6 it is argued Brutus must have entered the college before 49 (so Taylor, AJP, 63 (1942) 405, 412; M.Hoffman Lewis, The Official Priests of Rome under the Julio-Claudians, (1955) 28; Broughton, MRR.II.254; Szemler, op cit., 135. Bardt, op cit., 16 and Drumman and Groebe, GR^2.IV.23-4 settled for 'before 46.' Gelzer, RE.X.983, on the other hand, believed Brutus entered the college after 47). Hence Brutus may have entered the college anytime between 56 and 50 - a period in which there were a significant number of vacancies in the college (see Taylor, AJP, 63 (1942) 404-5). It is impossible to ascertain whom Brutus succeeded.

That Brutus entered the college as a patrician (so Taylor, AJP, 63 (1942) 405; Shackleton Bailey, Ibid., 226-7) is also questionable (see Chapter VI).

[75] Suggested by Broughton, MRR.I.496. Szemler, op cit., 146 denied there was any evidence that Fannius was ever an *augur* but Cicero, De Amic., 7-8 makes clear that Fannius was an *augur* prior to the death of C.Laelius.

[76] Suggested by Sumner, Orators, 99-100. The date of M.Scaurus' co-optation is certified by a fragment of the *fasti sacerdotum* (ILS.9338 no.4 see above). Sumner's conjecture presupposes that Scaurus was an *augur* and not a *pontifex*, which though probably correct is disputed (see above). An Aemilius Lepidus is attested as an *augur* in 125 (Vell., II.10.1). The Lepidus concerned is either M.Lepidus Porcina or M.Lepidus the consul of 126 (see Szemler, op cit., 147). Sumner favoured Porcina and suggested Scaurus was co-opted to succeed him. There is no evidence to confirm or refute the suggestion.

[77] Suggested by Broughton, MRR.I.532. That Metellus Numidicus was an *augur* was inferred by L.R.Taylor, AJA, 48 (1944) 352-6 from the augural symbols displayed on the coins of Metellus Pius and Metellus Scipio both of whom were *pontifices*. Taylor's argument was endorsed by Broughton, Badian, Arethusa, 1 (1968) 27-8 and Crawford, RRC II.738 n.7 but more recently has been repudiated by Linderski, *Imperium Sine Fine*, Stuttgart, (1996) 178f, 181-2. Even if Numidicus is granted an augurate it could not be reliably established when he obtained this honour and hence whom he succeeded.

[78] Suggested by Shackleton Bailey, Philologus, 108 (1964) 110-112 based on Cic., Ad Att., II.12.1: "iurabo Gnaeum nostrum, collegam Balbi Ati, mihi narrasse in auspicio." Cicero's description of Balbus as a colleague of Pompey is usually taken as a reference to their membership of the agrarian commission of 59 (which is independently attested for both men see MRR.II.191-2). However, Shackleton interpreted the reference to mean that Balbus was about to succeed to Celer's place in the augural college. This was considered an "attractive possibility" by Szemler, op cit., 150 but rejected for lack of evidence. But the thesis is unsound. Metellus Celer died in March 59 (see MRR.II.183) and Cicero already refers to Balbus as Pompey's colleague on the 18th of April 59 - long before Celer's successor can have been elected (the vacancy created by Celer's death will have been filled between the consular and praetorian *comitia* for 58 around July 59). Aware of this difficulty Shackleton proposed that in April 59 Cicero already thought of Balbus as 'augur designate.' That is hardly credible. The law prohibited more than two members of the major priestly colleges from nominating the same candidate for a vacancy so at this date the *comitia sacerdotum* will have been presented with a list of several names for any vacancy. In addition, priestly elections in this period were hard fought and the results often unpredictable (witness the defeats of Domitius Ahenobarbus and Lentulus Crus). Consequently, it is difficult to see how any prospective candidate could be considered certain of election months in advance.

55 - P.Licinius Crassus (63) L.Licinius Lucullus (104)[79]
40 - L.Sempronius Atratinus (26) **L.Iulius Caesar (143)**[80]

Unsuccessful candidates for priestly office

- In the late Second Century C.Laelius nominated Q.Mucius Scaevola for a vacancy in the augural college in preference to his other son-in-law C.Fannius.[81] It is not known whom Mucius succeeded but it is noteworthy that both Scaevola and Fannius were plebeians.
- Shortly before 104 Cn.Domitius Ahenobarbus' hopes of succeeding his father were disappointed.[82] Unfortunately, it is not known who was co-opted instead of Ahenobarbus.
- At an uncertain date in the late Second or early First Century Q.Caecilius Metellus Pius when still an *adulescens* became a *pontifex* defeating in the process unnamed consulars.[83] Since the date of Pius' appointment cannot be fixed the identity of his predecessor and his consular competitors cannot be ascertained.[84]
- In 59 P.Vatinius, Metellus Nepos and M.Cicero all took an interest in the vacancy in the augural college created by the death of Q.Metellus Celer.[85] Anxious to depart for his province Metellus Nepos did not contest the vacancy.[86] And Cicero's statements suggest that in the event neither he nor Vatinius actually competed -

[79] Bardt, op cit., 25; Taylor, AJP, 63 (1942) 394; Broughton, MRR.II.220. Crassus' membership of the college is attested at his death at Carrhae in 53 (Plutarch, Cicero 36.1) but the date of his election is unknown. That Crassus succeeded Lucullus is conjecture based on the premise that two Licinii cannot have been members of the college at the same time (Dio, XXXIX.17). That is a fragile basis for the conjecture. Two Sempronii were simultaneously members of the augural college in the years 204-174, as were two Claudii in this very period (Ap.Claudius Pulcher and M.Claudius Marcellus - see above).

[80] Thus Münzer, Hermes, 52 (1917) 152-155. The name of Atratinus' predecessor is not preserved in the surviving fragment of the *fasti* (CIL.I^2.1 p.60 = ILS.9338 no.3). The fragment does, however, make clear that Atratinus' predecessor was a member of the augural college from 88 or 80 until 40. Very few men are known who might fit that profile. After eliminating other possible candidates Münzer was left with L.Caesar. Münzer's argument was accepted by Taylor, AJP, 63 (1942) 408; Lewis, op cit., 40, 82; and Broughton, MRR.II.385. If so, this was another instance of interordinal succession (there is no evidence that L.Sempronius Atratinus was elevated to the patriciate in 45 - though the Sempronii Gracchi were certainly raised to the patriciate by Caesar or Augustus see Heiter, De patriciis gentibus, Diss., Berlin, (1909) 51-2 and Pistor, Prinzeps und Patriziat, Diss., Freiburg im Breisgau, (1965) 24).

[81] Cic., Brutus 101.

[82] Suet., Nero 2; Asc., 21 C. The dispute as to whether Ahenobarbus' father was a *pontifex* or an *augur* is irrelevant.

[83] De vir.ill., LXIII.3 - "Adolescens in petitione [praeturae et] pontificatus consularibus viris praelatus est." As is universally recognized the mention of the praetorship is an error (see Bardt, op cit., 14-15; Taylor, AJP, 63 (1942) 401 n.49; Broughton, MRR.II.39 n.28). Clearly, Pius will not have been competing with consulars for the praetorship nor will he have been especially young when seeking that office (unless it be supposed he obtained some special dispensation from the *Lex Villia Annalis* which is improbable). As to the date of Pius' entry into the pontifical college Taylor argued that the passage signifies Pius "secured election to the pontificate by popular vote" (so also Broughton) - i.e. after the passage of the *Lex Domitia* in 104 (Bardt, op cit., 14-15, Drumann and Groebe, GR^2.II.34, and Münzer, RE.III.1221 did note venture a date). A rough *terminus ante quem* can also be established. We are told that Pius entered the college when still an *adulescens* - that is a notoriously "treacherous term" (see Sumner, Phoenix, 25 (1971) 257, Orators, 92; Syme, Latomus, 39 (1980) 406; cf. Badian, Klio, 66 (1984) 302f). However, it probably means Pius was not more than c.37 years old. That being so, Pius will have entered the college by the late 90's.

[84] If the date of Pius' appointment could be fixed the field of possible competitors might be narrowed by eliminating from the living consulars those who were already members of the priestly colleges.

[85] Cic., Ad Att., II.5.2, 9.2, In Vatinium, 19-21; Schol.Bob., 147 St; Broughton, T.A.Ph.S., 81 (1991) 52-53.

[86] Cic., Ad Att., II.5.2. See MRR.III.40.

but the fact remains that the deceased and all the parties interested in his place were plebeians.[87]

- In 58 C.Claudius Pulcher unsuccessfully competed against another patrician, L.Pinarius Natta, for a place in the pontifical college.[88] The identity and hence the status of Natta's predecessor is unknown.

- Around 57 the patrician P.Cornelius Lentulus Spinther got himself adopted by a patrician Manlius in order to circumvent the rule prohibiting two members of the same *gens* being in the augural college at the one time.[89] The status of his predecessor is not known but it may be significant that Spinther chose to be adopted by another patrician.

- In 53 or 52 M.Cicero defeated C.Lucilius Hirrus for the place made vacant by the death of P.Crassus.[90] Again both the original incumbent and the competitors for his place were all plebeians.

- In 51 the patrician P.Cornelius Dolabella was elected to a vacancy in the college of *quindecimviri* defeating another patrician L.Cornelius Lentulus Crus.[91] The identity and status of Dolabella's predecessor is not known.[92]

- In 50 M.Antonius was elected *augur*, almost certainly as successor to Q.Hortensius, defeating L.Domitius Ahenobarbus.[93] M.Calpurnius Bibulus had also hoped to secure that place for one of his two surviving sons -

[87] The Scholiast says Vatinius actually ran ("petierat") but Cicero's testimony suggests he did not. Cicero, In Vatinium, 19 asks whether Vatinius 'tried, wished, or even thought' of succeeding Metellus Celer. If Vatinius had actually run and suffered a *repulsa* his defeat would be public knowledge and Cicero could hardly have posed the question in this fashion. And Cicero, In Vatinium, 21 represents Vatinius' purported longing for an augurate as nothing more than an idle dream (as opposed to his actual misdeeds).

[88] Cic., De Domo 118, Pro Scauro 34 (see R.G.Nisbet, De Domo, Oxford, (1939) 169; Taylor, AJP, 63 (1942) 397 n.35; and Konrad, *Imperium Sine Fine*, (1996) 111-2). Drumann, GR.II.370 and Mommsen, RF.I.86, 90 n.38 mistakenly thought the defeated party was Appius not C.Claudius Pulcher but Cicero's comments clearly refers to Gaius and as Appius was already an *augur* by this date he was unlikely to have sought a pontificate as well. This is likely to be the pontifical election during which M.Caelius Rufus allegedly assaulted a senator - possibly Q.Fufius Calenus (Cic., Pro Caelio 19; Gruen, LGRR, 308 n.179). At Caelius' trial (3-4th April 56) Cicero could refer to the pontifical *comitia* at which the incident occurred without fear of ambiguity suggesting the allegation pertained to the most recent pontifical election. As L.Pinarius Natta was the most junior member of the pontifical college as at the 29th of September 57 (Cic., De Domo 117-8, 135) and Caelius' trial preceded the elections of 56 Natta's appointment was the most recent pontifical election. This accords with Cicero's comments that the alleged incident was by April 56 sometime in the past.

[89] For the adoption see Dio, XXXIX.17.1. Omitted by Mommsen.

[90] Caelius in Cic., Ad Fam.VIII.3.1, VIII.9.1, II.15.1; Plut., Cicero 36.1; Broughton, T.A.Ph.S., 81 (1991) 52. M.Antonius did not compete against Cicero and Hirrus as is sometimes supposed (see Cic., Phil.II.4 and Broughton, Ibid., 50-51).

[91] Caelius in Cic., Ad Fam.VIII.4.1; Broughton, T.A.Ph.S., 81 (1991) 51. Missed by Mommsen.

[92] It is not likely that Dolabella succeeded Clodius. As Clodius was killed on the 18th of January 52 the vacancy created by his murder will have been filled in the *comitia sacerdotum* convened between the consular and praetorian elections of 52 for 51 which were conducted sometime between the 10th of July and the 11th of September 52 (see Linderski, HSCP, 76 (1972) 192-3, Phoenix, 28 (1974) 218) whereas Dolabella was elected in July of 51 (Ad Fam.VIII.4.1). Consequently, unless for some unknown reason the *comitia sacerdotum* was postponed until the following year Dolabella was elected to fill another vacancy in the college which arose after the elections of 52. The arrow and the laurel branch - symbols of the Xviral/XVviral college - depicted on the denarius issued by Q.Pompeius Rufus (41) tr.pl.52 in 54 are unmistakably associated with the monetal's grandfather Q.Pompeius Rufus (39) cos.88 (see Bardt, op cit., 30; Miltner, RE.XXI.2250; Broughton, MRR.II.44; Szemler, op cit., 164; Crawford, RRC I.436 no.434). Hence it cannot be argued that the tribune was a *XVvir s.f.* and that it was the vacancy created by his prosecution and conviction in late December 52 or early 51 (Dio, XL.55.1; Caelius, Ad Fam., VIII.1.4) that Dolabella was elected to fill.

[93] Caelius in Cic., Ad Fam., VIII.13.2, 14.1; Hirtius, BG.VIII.50; Broughton, T.A.Ph.S., 81 (1991) 51. Not "Cn.Domitius" as in Mommsen, RF.I.87. See also Shackleton Bailey, ICS, 2 (1977) 223-8. The suggestion that M.Caelius Rufus also took an interest in the vacancy is based on an error in the Mss of Ad Fam., VIII.12.1 (read "collegam" for the Ms "collegium") see Wiseman, NMRS, 170; Tyrrell and Purser, The Correspondence of M.Tullius Cicero[2], (1914) III.266; and Shackleton Bailey, Cicero: Epistulae ad Familiares,

L.Bibulus.[94] Bibulus wrote to Cicero on the subject, presumably requesting that Cicero nominate his son, but it is not known whether Cicero complied or whether L.Bibulus actually competed. This is a further instance where the rival candidates and their predecessor all belonged to the same order.

- Disappointed of an augurate in 50 L.Bibulus tried once more in 43 - this time he was after C.Vibius Pansa's place and he was up against Cn.Domitius Ahenobarbus (cos.32) and an Appuleius.[95] Again all belonged to the same order - all were plebeian.[96]

- In April 43 overtures were being made towards Sex.Pompeius Magnus and Cicero held out the hope that Sextus would be elected *augur in paternum locum*.[97] However, it is clear, contra Mommsen, RF.I.87, that Sextus did not actually succeed his father. Cicero stated that he would personally nominate Sextus and that the Roman people would elect Sextus *in paternum locum*. The use of the future tense betrays the fact that Cicero merely hoped this would happen. Further, it may be doubted whether by *in paternum locum* Cicero actually meant Sextus would succeed to the *decuria* formerly occupied by his father, as it is very doubtful that Pompey's place was vacant in early 43 when Cicero spoke. The vacancy created by Pompey's death in 48 will have been rapidly filled by partisans of the Dictator Caesar as were the places of other Pompeian priests killed in the Civil War like Ap.Pulcher, L.Domitius Ahenobarbus and Metellus Scipio.[98] It is most improbable that Pompey's successor died providentially in late 44 or early 43 leaving Pompey's place vacant at this precise juncture.[99] Hence *in paternum locum* probably means 'in his father's stead' not literally 'in his father's *decuria*.' Moreover, Cicero's hope that Sextus would be elected in 43 was not realized. Cicero himself saw to it that the *comitia sacerdotum* which should have been held in 43 were postponed to the following year.[100] And when towards the end of 42 the Triumvirs turned their attention to the vacancies in the priestly colleges they

(1977).

[94] Cic., Ad Fam., II.17.6. See Münzer, RE.III.1367; Tyrrell and Purser, The Correspondence of M.Tullius Cicero[2], (1933) VI.202; Shackleton Bailey, Cicero: Epistulae ad Familiares, (1977) I.460; and Syme, HSCP, 91 (1987) 191.

[95] Cic., Ad Brut., I.7.1. A number of young men were hoping for priesthoods in 43. M.Cicero junior was aiming for a pontificate, as apparently was the son of M.Cato (Cic., Ad Brut., I.5.3). Bibulus' brother (see Syme Ibid., 192) and a Lentulus (presumably not Spinther as often suggested since he was already an *augur* and is unlikely to have been campaigning for a second priesthood) were after unspecified priesthoods (Cic., Ad Brut., I.14.1). Since a number of places in the augural and pontifical colleges were vacant at this time and it is not clear whom these men hoped to succeed we cannot make use of this evidence.

[96] On the Appuleii who were *adfines* of Augustus see the *stemma* of Sumner, Phoenix, 25 (1971) 362. In 43 they were probably still plebeians (note P.Appuleius (15) tr.pl.43 who may be a member of the family). By the Principate of Augustus they were patrician but it is likely that they were adlected *inter patricios* in virtue of their relationship to Augustus in 29 rather than by Caesar in 45 (see Heiter, op cit., 42 and Pistor, op cit., 17).

[97] Cic., Phil., XIII.12.

[98] On Ap.Pulcher, L.Domitius Ahenobarbus and Metellus Scipio see above. Priesthoods were among the most sought after spoils of the War and were quickly reallocated (see Dio, XLI.36.3, XLII.51.3-5). Caesar also filled the vacancies in the priestly colleges just prior to his assassination (Dio, XLIII.51.9).

[99] Of the augurs appointed after Pharsalus who might conceivably have succeeded Pompey almost all were alive in early 43 when Cicero spoke. Vatinius may be ruled out since he succeeded Ap.Pulcher and was still alive in 42. C.Vibius Pansa, A.Hirtius, Q.Cornificius, and possibly P.Servilius Isauricus were appointed in the period but were all still alive at this time. Caesar was an *augur* by 46 and the vacant place offered to Sextus may have been that formerly occupied by Caesar. Presumably in April 43 there were no vacancies in the priestly colleges predating early 44 since Caesar is said to have filled the colleges just prior to his death (Dio, XLIII.51.9). Whereas the vacancy created by Caesar's assassination may not have been filled by early 43. But would Caesar have taken Pompey's place ? One would think he would have wanted to avoid appearing to profit personally from the death of his one time son-in-law.

[100] See Cic., Ad Brut., I.5.4, 14.1; MRR.II 357.

filled them with their own partisans without reference to the people.[101] Sextus was not among those who benefited since he was offered an augurate once more at Misenum in 39.[102] After Misenum Sextus was considered an *augur*.[103] However, as the Triumvirs had filled all the vacancies in the colleges in 42 it is most unlikely Sextus succeeded to his father's place in 39 unless Pompey's successor fortuitously expired between late 42 and 39. Given that not only Sextus but many of his followers were promised priesthoods at Misenum it is more plausible that they were appointed as supernumerary members of the colleges.[104]

ADDENDUM

To the certified instances of succession in the three major colleges may be added the one attested case outside the major colleges.

IIIviri epulones

Successor	Predecessor
180 - Q.Fulvius M.f. (29)	P.Manlius (31).[105]

The status of P.Manlius (31) praetor 195, 182, *IIIvir epulo* 196-180 is disputed. Mommsen argued Manlius was a plebeian.[106] Bardt concurred.[107] Klose and Münzer, on the other hand, argued Manlius was a patrician Vulso.[108] Which was tentatively accepted by Broughton.[109] The arguments were set out in Chapter II but the evidence is such that it is impossible to be dogmatic. If Manlius was a patrician this is the earliest attested instance of interordinal succession and is proof that the college of *epulones* was open to patricians from the outset. Klose accepted that this was so, arguing that the *decuriae* in the college of *epulones* were apportioned in a manner analogous to the disposition of the *decuriae* in the major colleges as argued by Mommsen - i.e. of the three *decuriae* available between 196 and 82 two were reserved for plebeians, while the remaining place was open to both orders.[110] However, given that only four *epulones* are known in the period 196-82, it is impossible to conclusively establish whether the college was open to patricians in that period.[111] Moreover, it

[101] Dio, XLVII.14.4, 15.1.

[102] Contra Broughton, MRR.II.387 the sources all simply refer to the offer of an augurate they do not specifically mention Sextus' father's place (App., BC.V.72; Dio, XLVIII.36.4, 54.6; Zonaras, X.24).

[103] See Dio, XLVIII.54.6; ILS.8891 = ILLRP.426.

[104] Just as M.Valerius Messalla Corvinus was made a supernumerary *augur* in 36 (Dio, XLIX.16.1). One *augur* did die in 40 - the *ignotus* appointed in 88 or 80 (see CIL.I^2.1 p.60 = ILS.9338 no.3) - but he was succeeded by L.Sempronius Atratinus but who died AD 7.

[105] Livy, XL.42.7.

[106] RF.I.91 n.41.

[107] Bardt made no reference to Manlius' status at page 31, but on page 37 he refers to only one patrician *epulo* - Cn.Lentulus Marcellinus - implying he considered Manlius a plebeian.

[108] Klose, Römische Priesterfasten, (1910) 2-3; Münzer, RAA, 49, 202f, RE.XIV.1.1159-61.

[109] MRR.I.338, 340, 382, 390. Szemler, op cit., 173-4 did not specify regarding Manlius' status.

[110] Klose, op cit., 3, 4.

[111] The four are: C.Licinius Lucullus (99) 196-?; P.Porcius Laeca (19) 196-?; P.Manlius (31) 196-180; and Q.Fulvius M.f. (29) 180-? The evidence does suggests that the college was open to patricians at least in the post-Sullan period see Bardt, op cit, 31-2, 37; Klose, op cit, 5; and Chapter VI.

would be curious if interordinal succession was occurring in the college of *epulones* as early as 180. Between 180 and 167 Livy records sixteen cases of succession in the three major colleges - all were strictly ordinal. If interordinal succession was tolerated in the college of *epulones* we might reasonably expect the innovation to have rapidly spread to the major colleges. Membership of the three *amplissima collegia* was even more sought after and the pressure of competition would have proved a strong incentive for the innovation to be adopted in the major colleges.

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