The Belly and the Limbs: Reconsidering the Idea of a Plebeian “State Within the State” in the Early Roman Republic

DISSERTATION

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Abstract

This dissertation offers a reevaluation of a long-standing model for the early history of the Roman Republic. Modern scholars have generally believed that the Roman plebs in the first two centuries of the Republic (roughly the fifth and fourth centuries B.C.) was essentially a revolutionary political organization, dedicated to increasing the rights and opportunities of plebeians and overthrowing the patrician monopoly over political, social, religious, and economic power. According to this model, a series of institutions which were dominated by patrician authority (the consulship, the senate, the centuriate assembly) represented the state, and the plebeian organization created its own institutions to mirror these (the tribunes and aediles of the plebs, and a plebeian tribal assembly). Further, the plebs established for itself an administrative center for its political activities on the Aventine hill. They even created their own cult center in the temple of Ceres, Liber, and Libera, to mirror the “state” cult of Jupiter, Juno, and Minerva on the Capitoline. This plebeian organization is often referred to in modern scholarship as a “state within the state”.

It is shown, however, that the evidence for the plebeian “state within the state” does not stand careful scrutiny. The notion that the plebs was a self-conscious organization opposed to patrician power finds little support in the evidence. Instead, it is seen that during the early Republic it is likely that plebeian leaders had to compete with the patricians to gain the support and favor of the majority of citizens. Further, chapters
on the cult of Ceres and on the Aventine hill show that these were not associated particularly with the *plebs*, but were rather integral to the civic identity and ideology of the community as a whole. Finally, it is shown that the tribunes, aediles, and tribal assembly, far from constituting an extra-constitutional “state within the state”, operated very much like the institutions usually considered to be the state. Instead, the political struggle between plebeian and patrician institutions was a struggle among aristocrats from each group over the extent of the power of the institutions. Far from being a struggle between patricians and plebeians per se, the political contests of this period represented a struggle between patricians and prominent plebeians over the support of the mass of plebeians.
For Plutarch, Julio, Nestor, Penelope, Kalypso, Hadrian, Scipio, and Cornelia—
PARVIS FVRENTIBVS
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The young scholar who often seeks but too rarely heeds the advice of his betters incurs many debts, which he gets few opportunities to repay. Therefore, I take great joy in being able at last to acknowledge some of the people who have helped me along the way. First, I must express my gratitude to my advisor, Nathan Rosenstein, not only for his intellectual guidance, but also for his patient tutelage of a frustrating student. Greg Anderson has helped me immeasurably over the years to improve as a scholar and as a professional. Thanks are due, too, to the final member of my dissertation committee, Kristina Sessa, who took on the duty at very late notice and was still able to offer many helpful comments. I could not have hoped for a better committee to embolden me to challenge long-held theories. I have also benefitted countless times from the wisdom and sound good sense of William Batstone, who has done more than anyone else to turn me from a decipherer of Latin grammar to a reader of texts.

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Chapter 1

Introduction

1.1 The Problem

In many ways, what I am about to propose is a radical revision of early Roman history. In many respects, however, the view which I will propose is a very old one. It is new in that it calls into question a major element of the interpretive model which modern scholars have used to understand the social and political history of the early Republic—the notion that the *plebs Romana* constituted a self-conscious political movement, which created for itself an extra-constitutional and revolutionary “state within the state”, complete with its own religion, territory, and political and civic institutions. My proposal is old, however, insofar as it finds as its firmest support a reconsideration of how ancient authors of later periods understood their own early history.

The primary goal of the following dissertation is to answer the most important question about the domestic history of the early Roman Republic. Modern scholars generally believe that a struggle between patricians and plebeians began in the early years of the Republic (beginning with the death of Tarquinius Superbus in 495 BC) and did not end until the passage of the *lex Hortensia* of 287 BC granted to the assembly of the *plebs* the power to legislate without restriction. But this narrative raises a severe problem. Even at the height of its powers, the patriciate represented only a tiny minority of the Roman population. On the other hand, our ancient sources identify the *plebs* as reflecting the entire Roman citizen body outside of the patriciate. But besides consisting of nearly
the entire population, the *plebs* was also, from its inception, a political movement—one that had all of the trappings and self-conscious identity of a separate state. How can it be that the “struggle of the orders”, reckoned as a sustained and open conflict between patricians and plebeians, the dominant theme of the political social history of the early Roman Republic, lasted for more than two centuries?

My solution to this problem will rest with a reconsideration of what, exactly, the *plebs* was. I shall argue that we ought to follow our ancient sources when they state, universally and unequivocally, that the *plebs* even in the early Republic was, in fact, the entire citizen body outside of the patriciate. As such, the word itself was in essence a way of referring to the Roman population. That is not to say that the word was from the earliest Republic interchangeable with *populus*, as it would become for later generations of Romans, but that it was a particular way of thinking and speaking of the Roman people. In this sense, it was the patriciate which excluded and separated itself from the Roman people—setting itself above the rest of the population—rather than the *plebs* separating itself from the community as a whole. The *plebs*, then, being the great majority of the population, consisted of such diverse elements that it would be very difficult to imagine it ever coalescing as a unified political movement opposed to the patricians as a class. But a powerful edifice has been built over the past two centuries by modern scholarship showing that the *plebs* possessed a series of separate institutions mirroring the institutions of the state of the whole Roman community. If this had been the case, then there would be no denying that the *plebs* viewed itself as a definite element of society, and as a “state within the state”.

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1.2 The *Plebs*

Our sources are unanimous in their understanding of what, exactly, the *plebs* was:¹

plebs autem a populo eo distat, quod populi appellatione universi cives significantur, connumeratis et patriciis; plebis autem appellatione sine patriciis ceteri cives significantur.

The *plebs*, moreover, differs from the *populus* in that all the citizens taken together are indicated by the appellation *populus*, with the patricians also included; but the remaining citizens, without the patricians, are indicated by the appellation *plebs*.

Such is the definition which Gaius mobilizes in the interest of differentiating between *leges* of the *populus* and *scita* of the *plebs*. The *plebs*, then, is the entirety of the citizen body with the exception of the patricians. For all of our sources, the division of all of Roman society goes back to Romulus. The accounts differ slightly. For Livy, Romulus appointed one hundred *senatores*, who were called *patres*, and whose progenies were called *patricii*.² Dionysius of Halicarnassus prefers a version in which the creation of a class of “Fathers” (*πατέρες*) was a matter divorced from the establishment of the senate. Instead, after Romulus had divided the people into tribes and curiae, he divided them into two classes. The more powerful were called “Fathers”, the less powerful were called

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¹ Gaius. *Inst.* 1.3.
² Liv. 1.8.7. *Centum creat senatores, siue quia is numerus satis erat, siue quia soli centum erant qui creari patres possent. Patres certe ab honore patriciique progenies eorum appellati.*
“plebeians”³ The ἐκγόνοι of the “Fathers” were to be called “patricians”.⁴ Finally, he brought it about that 100 men from among the patricians were to be appointed senators to assist him in carrying out the governance of the new community.⁵ In Plutarch’s version, the 100 men who were appointed to serve in the senate were themselves the πατρίκιοι.⁶

So, although these three versions differ in various ways, they are unanimous that Roman society was, from the beginning, divided into two groups (and only two groups), and that that division was established by elevating a group of prominent families above the rest of the society. That is, by creating the senate, or the class of “Fathers”, Romulus had de facto created the plebs.⁷

The term plebs itself is possibly related to the Greek πλῆθος,⁸ and in its most basic sense, then, probably meant “multitude” or “masses”. The term could be used in a derogatory manner, particularly in such phrases as plebs urbana or plebs sordida.

Cornell argues that these two terms (meaning roughly “urban mob” and “the great

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³ DH 2.8.1. It is important to note that the word Dionysius uses to translate “plebeians” into Greek is δημοτικοί. The word means “of the δῆμος (“people”). It is hard to imagine that anyone would argue that, in a Greek context, δῆμος referred to an organization or an element separate and distinct from the community as a whole.
⁴ DH 2.8.3. We should be careful about how we translate ἐκγόνοι here (as well as Livy’s progenies). The word is usually understood to mean “descendants”, but that would hardly fit Dionysius’ subsequent narrative. For, after dividing up the people into these two groups, he established the patron-client relationship, according to which each plebeian was allowed to choose from among the patricians a patron. It can hardly be that Dionysius imagined that this first generation of plebeians was allowed to choose its patrons only from among the children and grandchildren of those designated “Fathers”. This may seem to be a quibble. After all, Dionysius could have been generalizing about future conditions. But he then asserts that Romulus chose the first senators from among the patricians (not the “Fathers”). A fuller study of this question is warranted, but I suspect that what Livy and Dionysius were referring to was not “descendants for all time”, but a much more limited family relationship. That would go a long way toward explaining the difficult problem of finding men of the same nomina referred to as patricians and plebeians by the same authors.
⁵ DH 2.12.1.
⁷ An excellent survey of ancient views, and modern interpretations, on the early division of the Roman population can be found in Mitchell (1990): 2-5.
⁸ Botsford (1909): 1, n. 2 for earlier bibliography suggesting an etymological link between populus, plenus, plebes, πλῆθος, and πίμπλημι.
unwashed” respectively) suggest that the term was originally necessarily derogatory, and that the use of the term in official language for plebeian magistrates and institutions (tribunus plebis or concilium plebis) “is an example of the way in which such terms can be taken up and used with pride by those against whom they were originally directed.” He cites the English “tory”, a word whose original meaning was “bandit”. I do not see the need to assume that the derogatory connotations were primary. Instead, it seems most likely that plebs “denoted the multitude as distinguished from the leaders”. It is no surprise that an aristocrat would refer disdainfully to the plebs, in the same way that the phrase “the people” could be used derogatorily in English to refer to the masses—but no one would suggest that “the people” is primarily used in this way in English.

1.3 The “struggle of the orders”: Modern Theories

Modern scholars have, until relatively recently, followed their ancient counterparts in believing that the division of the entire Roman population into these two groups was a very old one. For Niebuhr, the political community of earliest Rome consisted only of patricians, with plebeians being excluded. Mommsen believed that the plebeians constituted an oppressed class, acting as clients in a kind of indentured servitude to the patricians, but entirely lacking legal and political rights. Other scholars during the nineteenth and early twentieth centuries saw a racial division, with plebeians as pastoralists being overwhelmed by the agriculturalist patricians, or agriculturalist

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10 Botsford (1909): 1, n. 3.
plebeians being conquered by the invading Aryan ancestors of the patricians according to
the fancy of a particular scholar.\textsuperscript{13} Needless to say, the racial theories find no support in
recent scholarship, and have been thoroughly rejected by Cornell.\textsuperscript{14} But the belief in the
primal dualism between \textit{patricii} and \textit{plebs}, whatever its nature, was universally accepted
until the second half of the twentieth century.

The “struggle of the orders”, then, was an extended conflict between these two
groups, set up in opposition to each other from the earliest times, and was exacerbated
finally with the ouster of the kings, who had to that point served to keep the peace
between the classes. The kings expelled, the patricians, using the religious authority and
the control of the senate which they had accrued during the monarchy, established a new
state. The state was anchored by the consulship, whose power was based on \textit{imperium}—
effectively a continuation of the kingship, mitigated only by its collegiality and by annual
election. The patricians as a class, however, exercised a kind of \textit{de facto} governance,
because of the influence the senate was able to wield over the consuls, who were also
members of that class. The \textit{comitia centuriata} served as the assembly of the state. It was
the seat of popular sovereignty, electing the consuls, and ratifying laws proposed to them
by the consuls, in accordance with the will of the senate. These institutions, then,
constituted the “state”.

But the patrician state quickly faced the first challenge to its authority. In 494, the
plebeians under arms seceded to the \textit{Mons Sacer} to protest the patricians’ unwillingness
to deal with the city’s severe debt problem. The first \textit{secessio} resulted in the

\textsuperscript{13} Sergi (1895); Ridgeway (1907-8): 3-60.
\textsuperscript{14} Cornell (1997).
establishment of the tribunate of the *plebs*, whose powers were entirely extra-constitutional and revolutionary. They were based only on the *lex sacrata*, which was nothing more than an oath sworn by the *plebs* to punish anyone who would harm a tribune. Though later tradition would assert that the settlement following the secession involved an agreement and an oath by the entire Roman community, and in spite of the religious language of the oath (i.e., that anyone who would harm a tribune would be *sacer* to Jupiter), the resolution of the secession was nothing more than an oath on the part of the *plebs* alone to do violence to their political enemies. Essentially, the tribunate was set up to protect the plebeians by means of “lynch law disguised as divine justice.”¹⁵

Soon afterward, the *plebs* would create its own assembly, the *concilium plebis*, to elect its own officials and pass its own decrees, called *plebiscita*. Officials thus elected were extra-constitutional, and *plebiscita* were not binding on the whole Roman community. In this way, the *plebs* created for itself a “state within the state”—mirroring the actual, constitutional state, which was dominated by the patricians. The tribunes, being unofficial magistrates, were set up in opposition to the consuls. The *concilium plebis*, organized by tribes, was set up in opposition to the *comitia centuriata*. The *plebs* even created their own games, the *ludi Plebeii*, to mirror the official games of the state. This whole plebeian “state within the state” was headquartered at the temple of Ceres, Liber, and Libera, a triad of plebeian divinities, who were intended to mirror the great Capitoline Triad, the central “state” cult, of Jupiter, Juno, and Minerva. The cult of Ceres

was even set up on the Aventine, a hill which represented, in effect, the “plebeian quarter” of Rome, and served as a focal point for the activity of the plebeian community.

The “struggle of the orders”, then, was a conflict between the official Roman “state”, and the plebeian “state within the state”; the former attempting to maintain its monopoly over state power, the latter to gain full citizenship status for its members, and equality of power for its institutions. The struggle begins in earnest when the plebs seceded from the state in 494, and would continue as plebeians struggle for full representation in the community, and as plebeian institutions are created and are slowly incorporated into the state machinery. Accordingly, the plebs was a political movement. It set out to create its own magistracy, the tribunate, and succeeded after a great struggle. It set out to create its own assembly, and succeeded after struggle. It wanted to have the laws set down in writing, and succeeded, after a struggle, in having the Decemvirate created, and the law of the Twelve Tables written. The plebs wanted access to the highest magistracy, and this was accomplished by created the consular tribunate. In 367 the Licinio-Sextian rogations would be passed, and the plebs would finally have access to the consulship. Gradually, priesthoods would be opened to the plebs, but only after intense conflict with the patricians. Finally, in 287, with the passage of the lex Hortensia, which granted full legislative power to the plebeian assembly, the “struggle of the orders”

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16 For an excellent survey of this “state within the state” theory, see Cornell (1995) 258-264, though, as I will describe below, he does not follow the definition of the plebs which I have just described. This characterization goes back to Mommsen (1887-88) 3.145. I cannot agree that the idea of “two states” rests on ancient authority. Duae ciuitates ex una factae (Livy 2.44.9) refers to a specific moment of stasis in which Rome’s enemies salivated over the prospect of attacking a fractious enemy. The ubiquity of the theory of a dichotomy between “state” and “state within the state” prevents easy citation. See, e.g., Ogilvie (1965) 381: “The tribunes were officers of the plebs, not the populus: they had secured such recognition as they had by force, not negotiation.” And, later, “The tribunes must have been chosen at some unofficial assembly of the plebs—a concilium plebis, probably based on a tribal organization. The first step to secure official recognition was to form the tribal assembly into a legitimate comitia.”
was over, because the *plebs* had everything it had set out to achieve in 494. But it had taken them 207 years.\(^\text{17}\)

This theory has a glaring hole, however, which is difficult to fill. It asserts that the *plebs* is to be understood as the entire body of citizens with the exception of the patriciate, and that they had formed such a “state within the state” which was well-organized, unified, and self-conscious, and that the goal of this organization was to overthrow the patrician monopoly of power over the state. But if we should presume all of those things, it is difficult to see what would have—indeed, what *could* have—prevented the *plebs* from achieving its goals immediately. This interpretation of early Roman history is based on the assumption that it was the legal and constitutional hurdles to plebeian power that prolonged the struggle. Still, it is difficult to imagine that the vast majority of the population would have allowed itself to be oppressed and refused its goals for so long over such constitutional quibbles as whether the *comitia tributa* had the authority to legislate without the ratification of the *patrum auctoritas*.

1.4 Momigliano

This view, which I will, for the sake of convenience, call the “constitutionalist” theory of the “struggle of the orders”, has rightly found many detractors. A corrective is necessary, and several have been offered, though none has inspired consensus. A brilliant alternative has been offered by Momigliano, and developed interestingly by

\(^{17}\) Among all the criticisms commonly leveled against this theory, it strikes me that it is rarely pointed out that the “struggle of the orders” would seem to have ended just a few years after Livy’s narrative of early Rome ends, and internal conflict at Rome picks up again when Livy’s narrative resumes.
Richard, Cornell, and Smith. The problem, argues Momigliano, is that both the ancient writers and their modern counterparts begin with the fatal assumption that the plebs amounted to the entirety of the Roman citizen body outside of the patriciate. After all, in the words of Cornell, if the plebs was the vast majority of citizens, “the Conflict of the Orders would not have lasted two days, let alone two centuries.”

The solution, Momigliano has argued, lay in a series of antithetical pairs, which go back to the early Republic. The Twelve Tables, for instance, are aware of such dichotomies as patricians and plebeians, patrons and clients, and assidui and proletarii. There are, in addition, other binary oppositions, which can confidently be attributed to the fifth century. We hear of patres et conscripti, we also find populus opposed to plebs, and also to equites, and classici and infra classem.

We begin with the problematic distinction between populus and plebs. Those passages in which the phrase appears are mostly sacral in nature. They seem to be a genuine bit of archaic terminology, but their original meaning is essentially lost. But

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19Patricians and plebeians: e.g., Cic. Rep. 2.63, qui duabus tabulis iniquarum legume additis…,etiam quae diiunctis populis tribui solent conubia, haec illi ut ne plebei cum patribus essent, inhumanissima lege sanxerunt; patrons and clients, Serv. ad Aen. 6.609: patronus si client fraudem faxit, sacer esto; assidui and proletarii: Gell. NA 16.10.5, adsiduo uindex adsiduus esto. proletario quis uolet uindex esto.
20Liv. 2.1.11; Festus P 304.
21In the opposition between magister equitum and the dictator, whose original title was magister populi: The opposition between populus and plebs seems to be reliably archaic, showing up often in prayer language and other solemn statements. It seems to be a common thing for a leader to pray that his actions turn out well populo plebique Romanae: Cic. Mur. I: Quae precatus a dis immortalibus sum, iudices, more institutoque maiorum illo die quo auspicato comitis centuriatis L. Murenam consulem renuntiavi, ut ea res mihi fidei magnificis maxima cum cura et caerimoniam Cereri, Libero, Liberaeque faciundos, mihi Floram matrem populo plebique Romanae ludorum celebritate placandam….; Liv.29.27, uos precor quasque uti quae in meo imperio gesta sunt geruntur postque gerentur, ea mihi populo plebique Romanae; but also Liv. 25.12, [from the carmina Marciana], cum populus derider ex publico partem, priuati uti conferant pro se atque suis; iis ludis faciendis praest praetor is quis iis populo plebique dabit summum. It seems likely that religious formality has preserved an archaic formula.
there is hope in the fact that we know what the *populus* was in archaic Rome—it was the infantry. That must be the implication of the fact that the original title of the dictator was *magister populi*.\(^{23}\) Since the *magister equitum* is the cavalry commander, the *magister populi* must be the infantry commander. Further evidence is provided by the military connotations of the verb *populari*, “to lay waste, devastate”. The archaic *Carmen Saliare* also refers to the *populus* as *pilumnus*, or “*pilum*-bearing”. The *populus*, then, is the infantry, and the *plebs*, being distinguished in this phrase, must be those excluded from the infantry.

With the understanding that the *populus* was the infantry, and that the *plebs* was juxtaposed with it in the archaic formulae, Momigliano argues that the *plebs* was outside of the *populus*—that is, outside of the infantry. Clearly, the ancients thought that the *plebs* made up the majority of the *populus*. But Momigliano believes that the nature of plebeian institutions shows otherwise:\(^{24}\)

When the plebeians set up their own organization in the first decades of the Republic, they took the institutions of the *populus* as their model; but they did so in a manner characteristic of people who seek to imitate institutions from which they are themselves excluded. The ten plebeian tribunes corresponded to the six legionary tribunes; the *concilia* or *comitia* of the *plebs* were modeled on the *comitia centuriata* that constituted the assembly of the army. But the plebeian tribunes were not the same as the legionary tribunes; and the *concilia plebis* were not the same as the

\(^{23}\) Festus LL 5.82.
Yet nothing would have been simpler for the plebeians than to use the *comitia centuriata*, or to transform the legionary tribunes into revolutionary leaders, if it were true, as the conventional view maintains, that the patricians constituted the cavalry and the plebeians formed the infantry.

For Momigliano, then, there had to have been a separate group of citizens, neither patricians, nor plebeian, to man the armies. The reason the *plebs* did not just elect radical leaders and dominate the *comitia centuriata* with their votes is the fact that they could not. They simply did not possess the numbers or the power to do so—the *plebs* was only a small minority of citizens.

The reader would likely benefit if I should stop for a moment to take stock of the dramatic revision which Momigliano has proposed for early Roman social structure. Whereas the ancients all believed that the *plebs* represented the vast majority of the Roman citizen community—the entirety, in fact, with the exception of the patricians, Momigliano sees a problem with this theory. If all non-patricians were plebeians, then there is no reason why the *plebs* should not have achieved all of its goals immediately. But if the *plebs* was originally only a small minority of the citizen body, then we might begin to understand just how the “struggle of the orders” could have lasted as long as it did. Who, then, were the plebeians? The answer is clear, if we follow Momigliano and argue that the formula *populus plebesque* implies that the *plebs* was excluded from the *populus*: the *populus* was the *classis* and the *plebs* was the *infra classem*. 
The theory to this point is not without its problems. I would stress, for instance, that it is in no way necessary to regard the formula *populus plebesque Romana* to mean that the *plebs* was excluded from the *populus*. That is certainly a possible reading. To be sure, the *infra classem* is by definition excluded from the *classis*. But this reading would require that we read all terms regularly juxtaposed to each other as being mutually exclusive. In the end, one would have to accept, from the formula *senatus populusque Romanus*, that the senate was excluded from the *populus*. That is to say that it is no more acceptable to believe that the phrase *populus plebesque Romana* requires that we exclude all plebeians from the *populus* than it would be to insist that the phrase *senatus populusque Romanus* requires that we exclude all senators from the *populus*. The juxtaposition of the two terms does not necessarily denote opposition. Just as *senatus* overlaps with *populus*, so *populus* could overlap with *plebs*. Mitchell has proposed an alternative reading of the formula, which holds that *populus*, with its military connotations, originally reflected the citizen body under arms, whereas *plebs*, whose officials, including the plebeian tribunes and aediles, had a decidedly domestic sphere of activity, referred to the citizen body in its domestic context.\(^{25}\) I find this view to be more satisfactory, but not entirely convincing, since it cannot account for the unanimity of the sources that the *populus* and *plebs* are to be differentiated by the exclusion or inclusion of the patrician class. However, if a situation developed in the early Republic in which the institutions of the *populus* (i.e., consuls and *comitia centuriata*) carved out for themselves a rough jurisdiction over military affairs, whereas the plebeian institutions (i.e., tribunes,

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aediles, and *comitia tributa*) developed a similar dominion over domestic affairs, it may have begun to be necessary already in the early Republic to include both *populus* and *plebs* in the conceptualization of the Roman state. Likewise, the influence of the senate in later centuries would require that that institution be regarded as a fundamental element of the conceptualization of the Roman state.\(^{26}\)

Likewise, one could ask why, if the *plebs*, “took the institutions of the *populus* as their model”, they should have chosen to copy them so poorly. If the ten (and, apparently, five in the earliest years) tribunes were designed to correspond to the six military tribunes, why were there not six plebeian tribunes? What role did the aediles play in this effort of duplication? The answer, I would argue, is that the establishment of a “plebeian organization” was not an attempt to create an alternative state, but to create a kind of “domestic authority”, which was responsible for managing affairs which the consuls and centuriate assembly were not able, or not interested, in managing. After all, we never hear of tribunes or plebeian aediles attempting to commandeer the command of armies from the consuls. Instead, they were created in a circumstance in which the *plebs* was suffering from a debt crisis and was looking for protection from the cruelty of their creditors. The aediles, on the other hand, took responsibility for the management of clearly domestic affairs—the oversight of temples and the games.

I believe that my objections have shown that there is no direct evidence for this definition of *plebs*. However, they fail to solve the problem which has led Momigliano

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\(^{26}\) The question may arise at this point why the *senatus* would not have made its way into the earliest formulation of the Roman community, although the sources all believe that the senate exercised a powerful influence over the Roman state. I will argued below in Chapter 4 that the senate during the fifth and fourth centuries BC was still fighting to carve out its place in the power structure of the Roman state, and did not merit so strong a place in the verbal formulation of Roman power.
to propose his solution. If the *plebs* constituted the entire citizen body with the exception of the patricians, how did the “struggle of the orders” last as long as it did? It would seem that we must, of necessity, believe that the *plebs* was but a small minority of the Roman citizen body during the fifth century. Who, then, constituted the rest of the citizenry?

1.5 *Patres et conscripti*

Let us now consider the phrase *patres et conscripti*. Though the common way to refer to the body of senators was *patres conscripti*, the latter word was apparently not originally an adjective modifying *patres*. Livy and Festus both record a tradition that one of the consuls of the first year of the Republic (for Livy it is Brutus, Publicola for Festus) added new members to the senate in order to bring it back up to a total membership of 300, since Tarquin had murdered so many patricians. According to Festus, *inopia patriciorum* required that the new senators be chosen *ex plebe*. For Livy, Brutus accomplished this *primoribus equestris gradus lectis*. As a result,

Traditumque inde fertur ut in senatum uocarentur qui patres quique conscripti essent; conscriptos uidelicet appellabant lectos.

It is passed down in tradition that, for this reason, the senators were called into the session as “those who are *patres* and those who are *conscripti*”; evidently they called the additions “*conscripti*”.

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27 Cic. *Phil.* 13.28 uses *pater conscriptus*, but this was clearly a joke. See Mommsen St.R. 3.863 n.
28 Festus, P 304.
29 Liv. 2.1.10.
Festus offers the same explanation. The tradition, then, held that the senators were not “conscript Fathers”, but rather “Fathers” and “conscripts”. It would be natural to assume, with Livy and Festus, that these “conscripts” were plebeians. Indeed, most modern scholars have assumed precisely that. But Momigliano objects to this assumption—if some of the senators were plebeian, then why does the tradition preserve no trace of conflict within the senate between patrician and plebeian senators?

But if they were not, in fact, plebeian and they were not patrician, then who were they? The problem rests with how we characterize the *plebs*. That is, if we should assume, following the ancients, that the *plebs* was the entirety of the citizen body with the exception of the patricians, then the *conscripti*, who were certainly not patrician, must of necessity be plebeian. Momigliano suggests that the solution to this problem can be found in the understanding that the *plebs* was originally only a small minority of citizens. The *conscripti*, then, were an intermediary class, somewhere between patrician and plebeian, but decidedly closer to patricians.

This argument has been developed interestingly by Cornell. In particular, he offers this as a solution to the long debate over the supposedly plebeian names on the early consular *fasti*. During the fifth century there are sixteen consuls whose names would seem to modern students to be plebeian. Many theories have been offered to explain the presence of these names. Some have argued that this problem can be solved by simply striking their names from the list—they must have been interpolations,

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30 The reference at DH 2.12.3 to *pateres engraphoi* was, then, a misunderstanding of this arcane formula, which would seem out of character for this master explicator of arcana.
32 Drummond (1989): 175. Such names as Menenius, Cassius, and Genucius are all possessed by plebeian gentes in the late Republic.
concocted by plebeian families, which became powerful in later centuries, to provide great antiquity to their status. This solution is problematic, however, in that it fails to account for several consular names which reflect families which are unknown or insignificant at the time in which their names are supposed to have been interpolated. Other scholars would suggest that these consuls were actually patrician, but that their families had died out by the better attested period of the beginning of the historical tradition at Rome, and that they bore no relation to the plebeian families of the same name. Still others would argue that these men, many of whose names are of well-known plebeians of later periods, such as the Casii, Tulii, or Minucii, were patricians in the fifth century, but that at some point their families had undergone a *transitio ad plebem*. De Sanctis has famously argued that the patriciate during the fifth century had not yet become a hardened and closed aristocracy. “The closing of the patriciate”, then, would have taken place during the middle of the century, when the apparently plebeian names begin to disappear from the *fasti*.

Cornell, however, argues that these consuls were not patrician at all, nor were they plebeian. These men were members of the class of the *conscripti*. This view would be supported by the fact that none of the supposedly plebeian consuls are ever attested as having held the tribunate. Needless to say, that is not a very firm foundation, given the rarity with which our sources provide us with the names of individual tribunes during the early Republic, but it would help to solve the problem which Momigliano has proposed.

We can now, then, speak of three non-plebeian classes in the early Republic—patricians, *conscripti*, and plebeians. As Cornell has developed the theory, the *conscripti*
were excluded from participating in the institutions of the *plebs*, but if they chose to do so, they would become plebeian, and would be excluded from holding the consulship or participating in the senate. Over time, however, as the *fasti* begin to reveal an increased domination by those families which we recognize from later times as “patrician”, the non-patrician families that make up the *conscripti* became disgruntled because of their exclusion from power. As a result, they naturally gravitated toward the well-organized and unified plebeian movement, which had created for itself a full range of institutions. From there, they worked to regain access to high office, and began to form a kind of plebeian elite.

Still, however, this solution is based on little direct evidence. It is a solution of necessity, designed to solve two problems: 1) the prolonged nature of the “struggle of the orders”, and 2) the presence of apparently non-patrician names on the *fasti*. It is not my immediate concern to solve the second problem, though I suggest that De Sanctis’ theory of “la serrata” is compelling, and that we should seek a solution in a greater fluidity to the membership of Rome’s early aristocracy. We are left, then, with the problem with which we started. There must be more than two social classes at Rome, because a *plebs* which made up the vast majority of the population would not have allowed the “struggle of the orders” to go on so long. Further, the *conscripti* must not have been plebeian, because the *plebs* of the early Republic was essentially a political movement, and we would find evidence in our sources of partisan conflict in the senate between its patrician and its plebeian members.
1.6 Clientes and Plebs

Another important part of the argument that the plebs consisted of only a small part of the Roman community at the beginning of the Republic is the view that clientes were not plebeians. Evidence for this state of affairs is found in Dionysius’ account of the first secession:33

Καὶ τοὺς πελάτας ἀπανταὶ ἔπαγώμεθα καὶ τοῦ δημοτικοῦ τὸ περιόν.

And let us lead out all of the clients and what remains of the plebs (τοῦ δημοτικοῦ).

These words are put into the mouth of Ap. Claudius in a speech delivered to the senate during the debate about how to respond to the secession. Claudius argues that there is no need for great concern, since the patricians could still muster an army. This passage is interpreted by Cornell as support for his view that “the sources do not assume that the army consisted entirely or even predominantly of plebeians.” Claudius’ words, Cornell argues, suggest that the plebs made up only a small minority of Rome’s martial strength, and that the rest was made up of clients and patricians. Since he believes that the plebs were mostly infra cladem, this picture would make sense. He notes that “[t]hese references are to fictional speeches, but they indicated that Dionysius, or his source, envisaged the army as consisting largely of clients of the patricians who were separate from the plebs.”34 I suggest, however, that we need to take a step back from the speech and look at the context in which Dionysius has incorporated this statement.

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33 DH 6.63.3.
34 Cornell (1995): 257-8, with 448 n. 61. He cites also 5.67.5 and 5.68.5, both of which are subject to the same objections which I raise here, since they are both spoken by Ap. Claudius in the context of the run up to the first secession.
In this speech, Ap. Claudius is taking a hard line position against those who would negotiate with the seceding *plebs*. He argues that Romans could muster a sufficient force to defend themselves from among their slaves. In addition, they could call to arms their clients and the remainder of the *plebs*. We must be careful to remember that these are the words which Dionysius imagined would have been appropriate for Ap. Claudius in these circumstances. They are not a direct statement of historical fact on the part of the historian himself. So, in this context, it is easy to imagine why a hard-liner would want to play down the threat posed by the secession. Accordingly, this quote does not prove that Dionysius imagined that the early Roman army was made up largely of clients, who were themselves not plebeians. Far from it—this passage does not even suggest that Dionysius would impute such a belief to Ap. Claudius. Clearly, Dionysius believed that those Romans who were seceding in 494 made up the army as it was composed then. The proposed army of slaves, clients, and other plebeians would have served as an emergency replacement for the seceding army.

But what can be said about the language which Dionysius puts into the mouth of Ap. Claudius? Do the words τούς πελάτας ἃπαντας...καὶ τοῦ δημοτικοῦ τὸ περιόν imply that the clients (*pelatai*) were conceived of as being outside of the *plebs* (*to demotikon*)? Such a reading is possible. But is this the likeliest reading? One can certainly interpret the passage as I have above from the Greek—that is, in such a way as does not commit to the notion that the *plebs* and the *clientes* were two separate groups. But what does the reading have to recommend it? The simple fact is that Dionysius has already explicitly asserted that Romulus had divided the community into two groups—patricians and
plebeians, and it was the plebeians who were to become clients for the patricians.\(^{35}\) Such is the universal interpretation of our sources.\(^{36}\) Absent any other direct statement as to the nature of the *clientes* in Dionysius, we must continue to imagine that Dionysius, where he refers here to *pelatai*, he is thinking of members of the *plebs*. Therefore, τοὺς πελάτας ἀπαντας...καὶ τοῦ δημοτικοῦ τὸ περιόν should be interpreted as “all of our clients and the rest of the *plebs*”—that is, all clients are plebeian, but not all plebeians are clients.

### 1.7 A New Direction

As with the *conscripti*, we are left with no direct evidence for the hypothesis that the *plebs* represented originally only a small minority of citizens. This hypothesis rests on the need for an explanation of the duration of the “struggle of the orders”. But, as I have proposed, we must reconsider the nature of the *plebs* and of its participation in the social struggles of the early Roman Republic. Ultimately, if I am right, and we must abandon the notion of a “plebeian community” and of a “plebeian movement”, then there is no need to wonder how the “struggle” lasted so long. There was never a single “struggle” between patricians and plebeians *per se* at all, because the *plebs* was never an organized movement.

In many ways, this argument attempts to build on and modify recent developments in the interpretation of the early Republic. Raaflaub has suggested that the “struggle of the orders” was able to last as long as it did because the goals of the *plebs*

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\(^{35}\) DH 2.10-11.  
changed with time. In this view, the plebeians originally set about to ensure “protection and defense” for themselves, but as their position in the community became more secure, they turned their attention to “offense and participation”. For Raaflaub, the goals of the plebs change as they begin to carve out a place for themselves in Roman society. The emergence of a plebeian aristocracy results in a new set of goals and a new set of strategies designed to attain those goals. I differ from this position only insofar as I do not believe that the plebs per se ever constituted an actor in the political and social conflict of the early Republic. It was not the plebs that sought access to the consulship in the fifth and fourth centuries, but rather wealthy plebeians. Likewise, it was not the plebs who sought debt relief or land reform, but rather those plebeians for whom such economic reforms would have been reliable or necessary. But what Raaflaub has shown is that the political struggles of the early Republic did not make a single “struggle of the orders”, between a patrician class attempting to maintain its monopoly of power and a plebeian class seeking to break it.

The “struggle of the orders” narrative has been called into question by Mitchell, who argued that the plebs was never a political movement or “state within the state” during the early Republic, but rather a conception of the Roman community as the collectivity of citizens in their domestic, non-military capacity. The populus, on the other hand, was the Roman people under arms. Mitchell has argued that the entire narrative of the “struggle of the orders” was the product of retrojection by later Roman

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38 Cf. the Appendix.
authors who interpreted what little evidence they had for the early Republic in light of post-Gracchan political realities. Even more at fault, he would argue, are modern scholars, who have distorted the picture presented by themselves of ubiquitous social and political struggle throughout the history of the Republic, into a single centuries-long even, beginning in 495, with the death of Tarquin, and ending in 287, with the passage of the *lex Hortensia*.

Mitchell’s thesis has failed to gain wide acceptance for two reasons. First, he has taken such a skeptical attitude to the sources that even the ubiquitous social struggles that they describe are mostly rejected as later additions. Second, he has abandoned the edifice of the plebeian “state within the state” without offering a sustained critique of this well-established theory. While I find fault with the first, as I shall describe below, the primary goal of this dissertation is to provide that sustained critique of the notion of the “state within the state”.

Finally, the most important recent contribution to the interpretation of the early Roman Republic has been provided by Smith. In his sophisticated analysis of early Roman society, Smith argues that the rise of the patriciate came as the result of a long debate about the shape the community would take during the fifth and fourth centuries. In particular, he stresses that “patrician privilege” was nothing more than a series of claims to exclusive access to office, priesthoods, or religious ritual. The great success of the patriciate during the early Republic, then, rests on the success of the patricians in making this argument. I suggest, however, that Smith runs in to trouble when he accepts

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the outlines of Momigliano’s theory of the plebs. In his formulation, just as the patriciate is enjoying its tremendous success at gaining and holding a near monopoly of power in the early Republic, the plebeian “state within the state”, originally representing only a small minority of the population, is also making its own argument, and growing ever more powerful until it ultimately came in the fourth century to consist of the entirety of the population outside of the patriciate. This seems to me to be a difficult position to sustain. If the patriciate was winning its argument, it was convincing the majority of the population that its privileges ought to be acknowledged. However, at precisely the same time, the organized and self-conscious plebeian “state within the state”, itself opposed to the monopoly of patrician power, was growing to incorporate almost the entire citizen body.

This dissertation builds on Smith’s brilliant observations about the nature of patrician power. I believe that it also solves an important problem in his theory, in that it removes the need for a parallel rise of the plebeian “state”. Instead, I argue, since the plebs was never in itself an actor in the social and political conflicts of the early Republic, we can better understand the ascendency of the patriciate during these centuries. Once we have done away with the notion of the plebeian “state within the state”, there is no contradiction in asserting that the patriciate maintained its authority by means of convincing the majority of the populace that the patricians were peculiarly capable of governing.

41 Ibid. 275-278.
The main argument of this dissertation will show that this “state within the state” did not exist. The plebs did not have its own religion or its own region of the city. There were no plebeian games in the early Republic. Even the political institutions specifically designated as plebeian (tribuni, aediles, and concilium plebis), were not an extra-constitutional and revolutionary organization dedicated to overthrowing or taking over the state of the “whole community”, but were rather institutions established in particular historical circumstances to solve problems particular to those circumstances. In the end it will become clear that these institutions came in time to reflect a kind of “domestic authority” at Rome, not set up in opposition to the other institutions of the state (consuls, senate, and comitia centuriata), but rather complementing them, and fulfilling a purpose which they were unable, or ill-disposed to serve. None of this is to say, however, that the early Republic was characterized by domestic concord and social cohesion. Far from it. I argue that we ought to take very seriously the ubiquitous reports in our sources of political and social conflict during the 5th and 4th centuries.

However, we must be careful in how we understand this conflict. Since the plebs was not a political movement or a “state within the state”, we need not imagine a battle between patricians and plebs per se each time a source reports unhappiness amongst plebeians. Rather, the economic complaints likely originate with the poorest plebeians, but demands for reform were quite unlikely to have found much support among well-to-do members of the plebs. On the other hand, demands for political reform to extend access to the highest office of state would likely have inspired little fervor in the poorest plebeians, who would have lacked the means to acquire these offices. That is to say,
economic demands were not demands of the plebs, and neither were demands for political reform, even though they were made by plebeians. Such a statement is only paradoxical if we should first assume that the plebs was a unified political movement. But, as I hope to prove, it was not.

The next three chapters will attempt to prove this point. In the body of this dissertation, I shall discuss the evidence for the nature of the plebs and modern interpretations of it. It will become clear that the ancients believed that the plebs constituted the entirety of the Roman population outside of the patriciate. Many modern scholars, however, have attempted to solve the problem of the length of the “struggle of the orders” by arguing that the plebs was originally only a small minority of the population—the lowest rung on a complex ladder of social differentiation. I will argue that this view is based only on necessity. That is, if we assume that the plebs was a unified political movement, and if we reckon the “struggle of the orders” as a two-centuries-long conflict between patricians and plebeians, then the plebs could not possibly have amounted to the great majority of the population. It will be seen that there is no independent evidence for this view. In the following two chapters, I will attempt to dismantle the two most powerful props in arguing for a common plebeian identity. In chapter 2, I shall attempt to show that Ceres and the cult which she shared with Liber and Libera was never a particularly plebeian cult during the Roman Republic. That is not to say that there was no association between the plebs and the cult of Ceres, but rather that those associations stretch to other divinities and other cults, so that it becomes impossible to distinguish what makes a cult “plebeian” and what would allow it to be a cult of the
“whole community”. In chapter 3, I shall argue that the particular association between the *plebs* and the Aventine hill is also the product of modern mythmaking. Here again, it will be seen that there is certainly evidence of plebeian political activity on the Aventine, but no evidence that this hill served in any sustained fashion as a focal point for that activity during the early Republic, or as a flashpoint for plebeian communal identity. Yet again, the evidence that makes the Aventine particularly “plebeian” would make much of the city of Rome “plebeian”, rendering the term essentially meaningless.

It has long been recognized by modern scholars that there is no independent evidence for the existence of *ludi Plebeii* prior to the last decades of the third century. Yet again, only the assumption that the *plebs* amounted to a “state within the state” in the early Republic allows us to retroject these games into that period. Therefore, the three major pieces of evidence deployed to prove a plebeian identity separate from the rest of the community in the early Republic are insufficient to make the case. If the *plebs* was not a unified and self-identifying movement, then there ceases to be a reason for believing that the term ever referred to anything but the entirety of the Roman population outside of the patriciate.

But there certainly were plebeian institutions in the early Republic. The tribunes and aediles, as well as the *comitia tributa* were all institutions designated as *plebis*. The final chapter will be concerned with the problem of accounting for their origins and development. It will attempt to answer the question: if the *plebs was not a unified political movement, or a “state within the state”, then why did it have its own institutions?* Chapter 4 will argue that the tribunate was created in its own particular
historical circumstances—the economic distress which led to the first secession of 494-3.

I will argue that it was not created in order to oppose the consulship at its inception, and that it was not created as an extra-constitutional office, but rather seems to have been created with the sanction of the Roman community in order to serve the interests of Roman citizens at Rome. The domestic sphere of influence of these plebeian institutions is supported, also, by the clearly domestic priorities of the aediles, who tended to temples, festivals, and public buildings in the city. To be sure, their domestic obligations would have caused the tribunes at times to come into conflict with the consuls, who were Rome’s primary military officials. However, this conflict was not one between a state and a “state within the state”, but rather within the confines of the development of the Roman state. Indeed, it was this conflict which shaped the institutions themselves.

If it is possible to speak of a single sustained struggle during the first two centuries of the Republic, it is not a conflict between patricians and plebeians per se, but rather amongst the various institutions which developed during this time. Conflict would often break out between the tribunes, an office open only to plebeians, and consuls, an office apparently only open to patricians. However, it will become apparent that these institutional struggles were not limited to conflicts between patricians and plebeians. Chapter 4 will include a detailed discussion of another institutional conflict which helped to shape the Republic in important ways—the development of the role of the senate through interaction and conflict with the powers of the consuls, tribunes, and assemblies. In the end, it will emerge that the “struggle of the orders” was not a conflict between patricians and plebeians per se, but rather a long process of state formation, in which the
developing institutions of the early Republic struggled to assert, ultimately emerging in the third century as the Roman state which we recognize from the middle Republic.

1.8 The Sources

As can be seen from this overview of the problem, the problems with our sources for the early Republic are countless. The first Roman historian was Fabius Pictor, who lived during the time of the Second Punic War. That is to say, the very first Roman who sat down to write the history of his people lived more than five centuries after the legendary origins of the city. To compound the problem, the first historians whose works survive except in tiny and scattered fragments are Livy and Dionysius of Halicarnassus, both of whom began writing their histories in the second half of the first century BC. As a result, not only is the Roman literary tradition about the early Republic separated from the events it describes by a century or two, our sources are themselves equally distant from the beginnings of the Roman historiographical tradition. We, therefore, know very little about the development of the tradition on which Livy and Dionysius based their accounts.

There has been no shortage of scholars who have accordingly taken an extremely skeptical view of the tradition. At least since de Beaufort published his *Dissertation sur l'incertitude des cinq premiers siècles de l'histoire romaine* in 1738, it has been generally accepted among scholars that the historical tradition about the early Republic is riddled
with difficulty. Grounds for skepticism go beyond the distance of our sources from the events they describe. Scholars commonly impute patent dishonesty into the accounts of ancient authors! But an outstanding defense of the tradition has been offered by Cornell:

My contention is that the annalists had only limited scope for tampering with the received facts, and that they did not, in fact, greatly alter the basic outline of events that had been handed down to them. They were not free to invent anything they pleased; if anything, they may have been responsible for the insertion of trivial and anecdotal matter. By way of analogy we may observe that though it was possible for Mason L. Weems to invent the story of the cherry tree, he was hardly in a position to alter the known facts about George Washington’s public career. We may reasonably assume that the Roman tradition has its fair share of cherry trees. But even so we must not supposed that all such anecdotes are invariably of literary origin; if anything, the literary ones are probably exception.

Cornell’s view has much to recommend it, and I largely follow this view. After all, as Cornell shows, it was expected of historians in antiquity to embellish particular episodes with dramatic detail and to compose speeches to put into the mouths of historical actors, but it was unacceptable for the historian to invent the facts. Such mendacity would invite harsh criticism by one’s contemporaries. Cornell concludes that the tradition is reliable in the broadest outlines, including its accounts of the rise of Roman power in Italy and of

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42 Mitchell (1990) takes a very skeptical view, and proposes a fascinating and radical reinterpretation of early Roman society; Forsythe (2005), likewise, criticizes scholars who are “trusting and overly optimistic” about the tradition.
43 Wiseman (1993) identifies “seven types of mendacity” perpetrated by Rome’s “lying historians”.
social struggle at Rome. As a result, he suggests, a scholar who would choose to
disregard an element of the tradition ought to offer a reasonable justification for doing so.
I would agree with this methodology. Each account that we study must be evaluated for
its reliability, so that the modern scholar has a justification not only for utilizing a
particular piece evidence, but also for rejecting it. The most consistent grounds on which
one can disregard a piece of evidence about the early Republic is that it contradicts what
we otherwise know about the period.

I attempt to follow this method throughout this dissertation. But I also propose an
important contribution to the analysis of sources for the early Republic. One of the most
common methods for discerning genuine historical tradition from the accretions of later
periods is to find points at which the accounts of Livy and Dionysius fail to adhere to our
understanding of the “struggle of the orders” or to our conception of the rise of the
plebeian “state within the state”. A good example of this is modern interpretations of
Livy’s account of the struggle over the so-called “Licinio-Sextian rogations” of 367 BC.
It has long been believed that Livy’s account is flawed in a fundamental way, both
because it is hopelessly internally inconsistent but also because Livy fails to represent the
constitutional intricacies of the conflict between the “state” and the “state within the
state”.

As I argue, Livy’s account is wholly consistent internally, and, in fact, helps to
make sense of Livy’s overall understanding of the social and political history of early

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45 Von Fritz (1950) is the standard, though not the first to offer these criticisms; Cornell (1995): 333-340
argues for basic acceptance of the story, but re-interprets it to incorporate a more unified and organized
plebeian movement, in line with Momigliano’s theory; Oakley (1997b) criticizes Cornell’s interpretation on
the grounds that it fails to incorporate the theory of the unified plebeian movement enough.
If I am successful in making my argument about the nature of the plebs, it will become apparent that Livy’s account cannot even be dismissed on the grounds that it misunderstands the constitutional realities of the fourth century. Livy is unaware of the constitutional disabilities of the “state within the state”, because they simply do not exist.

Throughout this dissertation, my attitude will be one of basic credulity to the broad outline of early Roman history as it is laid out for us by the historical tradition. That is not to say that I will accept the accounts of the historians as they are given to us uncritically. Far from it. Instead, I will evaluate each account on its own merits, attempting to build a coherent account of the social history of the early Republic as well as the development of the Republican institutions as we know them from later, better attested periods. It will be seen that at times we must radically reinterpret the development of early Roman institutions. However, these interpretations can find their basis in a reliable core of historical tradition to be found in the accounts of the Roman annalistic tradition, as well as those of the antiquarians and jurists.

\footnote{See appendix.}
Chapter 2

Ceres and the Religion of the Plebs

2.1 Introduction

Suppose for the moment that the plebs was a self-identifying, “class-conscious” community within the wider community of the Roman Republic. As a community of its own, the plebs would need its own religion. Now, suppose that the plebs chose as its patron deity Ceres, worshipping as well a few minor deities, but focusing most of its religious fervor on the grain goddess at the temple in which she was associated with a triad consisting also of the little-known divinities, Liber and Libera. Once we have assumed this much, there are several pieces of evidence throughout the history of the Republic which will seem to confirm this assumption and which will seem to provide us with terrific insight into the nature of the relationship between this peculiar community and its tutelary goddess.

The temple of this triad, which we are assuming to have been particularly “plebeian”, having been vowed in 496 by the dictator A. Postumius before the battle of Lake Regillus, was dedicated in 493 by the popular leader Sp. Cassius. This dedication came in the very year during which the plebeians had seceded from the community and had established their own magistracies to protect them. In order to protect the sacrosanctity of those new magistracies, the seceding plebeians swore an oath that anyone who should violate this protection would be sacer and would have his goods...
consecrated to the temple of the triad. The temple itself may have been located on the slopes of the famously “plebeian” hill, the Aventine. As such, it was outside of the pomerium, and therefore outside of the sacred boundary of the whole Roman community. If not on the Aventine itself, it was probably in the Forum Boarium, which would also place the temple outside of the pomerium. The temple was also the site where one of the Valerio-Horatian laws of 449 declared that senatus consulta were to be stored to prevent falsification of their prescriptions by overbearing consuls. This task was assigned particularly to one of the plebeian magistrates, the plebeian aediles, who are associated in still other ways with the “plebeian” goddess and the temple of the “plebeian” triad by our sources. For instance, they administered the ludi Ceriales, the games celebrated in honor of the goddess. They also levied fines against those who violated certain laws, and can be seen often using the money acquired through those fines to benefit the temple. Further, the flamen Cerialis was one of the flamines minores and, therefore, probably came always from a plebeian family. We are told by one source that at the Cerialia plebeian families would extend mutual invitations (mutitationes) to dinner parties as part of the celebration, whereas the principes ciuitatis would extend such invitations to each other during the celebration of the Megalesia, the festival celebrated in the same month as the Cerialia, in honor of the Magna Mater, who may well have had elite associations.

When we assume the plebeian associations of Ceres and the triad to which she belonged, all of these facts seem to illuminate that relationship. The goddess, then, and the temple of the triad, would become the focal point of the political identity of the community. In this context, we can interpret the use of the goddess in the propaganda of
the late republic. In the decade of the 40s, she appears on nine different coin types, issued by Caesar or his allies, by the tyrannicides or their allies, and finally by the triumvirs. Further, Augustus himself would begin the reconstruction of the temple of the triad. The warlords of the Late Republic used the image of the goddess, and the plebeian associations of the temple of the triad to appeal for good will to the plebs as a class.

All of this looks very impressive if we assume the plebeian associations of the goddess and of the temple of the triad. But their significance becomes more questionable when it is acknowledged that the facts listed above are not, in fact, interesting examples of these plebeian associations, but instead are the very evidence for their existence. Le Bonniec, whose work is usually cited for the plebeian associations of the cult, assumed that the temple of Ceres, Liber, and Libera was the “centre religieux de la communauté plébéienne”, and on this foundation analyzed the information which I have detailed above.¹

Spaeth, who has more recently offered an examination of Ceres’ role in Roman religion, but who usually follows Le Bonniec, also assumes that “Ceres is closely associated with the social class of the plebeians, or plebs.”² In her chapter on the plebeian associations of Ceres in the Republic and early Empire, Spaeth, like Le Bonniec, does not argue for the existence of these associations, but rather purports to “examine the evidence for the association of Ceres with the plebs”, but does so with the same assumptions as Le Bonniec.³ Both scholars who have attempted systematic studies of the

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¹ Le Bonniec (1958) 343 n.7 on the temple’s plebeian associations : “Tous les historiens modernes le soulignent; on nous permettra de ne pas trop nous étendre sur ce point.”
³ Ibid. 82.
cult of Ceres in ancient Rome began with this assumption. Other scholars, often citing Le
Bonniec as the authoritative work on the plebeian associations of the goddess and her
cult, have followed the same methodology, with the result that every piece of evidence is
considered in light of this association. Evidence seen as contradicting this theory can,
therefore, be dismissed as anachronistic or otherwise misleading. Other deities,
associated in some way or other with Ceres become by association “plebeian”.

In this chapter, I shall analyze the evidence adduced by previous scholarship for
the plebeian associations of Ceres and of the temple of Ceres, Liber, and Libera. I shall
argue that, when these plebeian associations are not assumed, all of the evidence can, and
in fact should, be otherwise interpreted. Further, there are many important pieces of
evidence which have been ignored or rejected by scholars because they do not support, or
even contradict, the theory of Ceres as plebeian goddess *par excellence*. When all of the
evidence is considered together, I suggest, we must reconsider Ceres’ plebeian
associations. Further, the conclusion casts doubt on the “plebeian” nature of other
divinities who have been so labeled by various scholars. The notion of “plebeian
religion” separate and distinct from the religion of the “whole community” must,
therefore, be rejected. This conclusion removes one of the most important pieces of
evidence supporting claims for the existence of a class-conscious “plebeian community”.
Finally, I shall offer a reinterpretation of the wide use of Ceres in Republican
propaganda. If Ceres can no longer be seen as the plebeian goddess *par excellence*, then
what role does she play in the political life of the Roman community? In this context, I
shall attempt to show the Ceres was not understood under the Republic and early Empire
as the plebeian goddess, but represented, for mass and elite alike, the patron deity of the

libertas of the Roman people as a whole.

2.2 The Foundation of the Temple

One of the most commonly cited pieces of evidence for the connection between
Ceres and the “plebeian community” is the synchronism in the tradition between the
foundation of the temple of Ceres, Liber, and Libera and the first secession of the plebs.¹

Our source for the foundation is Dionysius of Halicarnassus, who tells us that the
dictator, Aulus Postumius, vowed a temple to Demeter, Dionysos, and Kore in 496, prior
to the Battle of Lake Regillus. He tells us that the army’s supplies were low due to the
failure of the crops and a lack of imported food caused by the war. There was fear among
the Romans that the famine would cause the army’s efforts to fail entirely, so the dictator
ordered the Sibylline books to be consulted. The books, according to Dionysius, required
that these gods, almost certainly the Greek translation of Ceres, Liber, and Libera, be
propitiated. Postumius thereupon vowed to these gods that, if the crops should improve,
he would build temples to them and establish annual sacrifices in their honor. When the
gods caused the land to produce magnificently and imports to be even richer than before,
Postumius held a vote on the matter of the temples. When the tyrant had been repulsed,
the Romans held sacrifices and feasts in honor of the gods.² Then, in 493, after the
seceding plebs had returned from the Sacred Mount, the consul Sp. Cassius dedicated the

¹ Le Bonniec (1958) 343; Spaeth (1996) 91; Cornell (1995) 263; Sordi (1983) 135; Ridley (1968) 545-546;
Hoffman (1934) 100.
² DH 6.17.2-4.
temple. Dionysius reminds us that the temple had been vowed to the gods by the dictator Postumius, right before the battle with the Latins, “on behalf of the polis”. We are finally informed that the senate had voted after the battle that the whole temple should be paid for by spoils from the victory.³

Le Bonniec considered the foundation of the temple a “concession intelligente du patriciat à la plèbe”.⁴ According to this argument, the patricians offered a temple to the plebeians which would be dedicated to the tutelary plebeian deity, in order to garner necessary plebeian support in the war against the Latins. The cult of Ceres, he insists, did not develop its plebeian associations only upon the founding of the Republic. Instead, these associations must have existed well back into the regal period, when the plebeians were introduced into the city by the Etruscan kings.⁵ The strategy of the patricians here is borne out, he argues, by the fact that the cult of Ceres was of Latin origin, and had been brought to Rome during the regal period by those Latin populations which had migrated to the Aventine and to the valley where the Circus Maximus would be built. The temple was meant to appease the plebeian descendants of those Latin migrants living in that part of town in anticipation of the war with the Latins for which plebeian support would be necessary. The fact that the actual dedication of the temple and the recognition by the patres of the tribunes and aediles of the plebs happened in the same year reflects the actual historical circumstances of 493. From its foundation, Le Bonniec argues, the

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³ Ibid. 6.94.3.
⁴ Le Bonniec (1958) 343
⁵ Ibid. 342.
temple of Ceres, Liber, and Libera, was the religious center of the “plebeian community”. The dedication of the plebeian cult and the recognition of the plebeian magistracies was a double victory for the plebs, precipitated by the dire circumstances threatening the nascent Republic.\(^6\)

First, ethnic explanations for the origins of the plebs have long since been rejected,\(^7\) so that the apparent Latin origins of Ceres can have no bearing on the political significance of the vow before the battle. Beyond that, the problem for the scholar searching for evidence for the plebeian associations of the cult is that Le Bonniec here assumes these associations rather than proving them.\(^8\) He makes an argument from reason: no one would assume that the cult of Ceres took on its plebeian associations at the beginning of the Republic, therefore these associations must go back to the regal period. This must be true, if the original vow is to be interpreted as a concession to the plebs. But this is precisely the assumption that we must disallow if we are to evaluate the arguments for Ceres’ plebeian associations. To interpret the vow and the dedication of the temple as concessions to the plebs, one must argue first that Ceres is a plebeian goddess.

If we do not assume those associations, the fact that the temple was vowed before the battle of Lake Regillus implies no concession to the plebeians, and its dedication in 493, after the return of the seceding plebeians, has nothing to do with the secession, or, at least, has nothing to do with the triad’s plebeianness. The vow had already been made, whether or not the first secession should ever have taken place, and the temple would

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\(^6\) Ibid. 343.
\(^7\) Cornell (1997).
\(^8\) See n. 1 above.
eventually be dedicated. If, in order to imply that the patricians vowed the temple as an attempt to motivate the plebs to fight against the Latins, we should assume that Dionysius’ notice that the vow was made by A. Postumius in 496 is accurate, then we would be denied the right to make a political interpretation for the dedication of the temple in 493, that the temple was dedicated as part of the recognition by the patrician state of the new plebeian organization.

Another argument has been advanced by several scholars, namely that the first secession did not actually take place in 494/3, as most of our sources tell us, and so the plebeian organization did not come into existence at that point. Instead, it is suggested that there is an older, and therefore more reliable, tradition according to which tribunes were elected for the first time only in 471. According to this view, the tradition found in most of our sources that the tribunate had been created in 493 is an annalistic fiction, invented to push the plebeian institutions as far back into the history of the Republic as possible, to rival the institutions of the patricians. The fabricators chose as the best date for the first secession the year when the temple of Ceres had been dedicated, because it was the plebeian cult par excellence. Evidence for this older tradition is adduced from two texts. First (Liv 2.58.1-2; Piso 30 Forsythe, 23 Peter, 25 Beck and Walter):

Tum primum tributis comitiis creati tribuni sunt. Numero etiam additos tres, perinde ac duo antea fuerint, Piso auctor est. nominat quoque tribunos, Cn.


9 Asconius Corn. 68; Liv 2.33.1; DH 6.89; Pompon. Dig. 1.2.2.20; Zonaras 7.15.
10 For the existence of this tradition, see Ed. Meyer (1895) 1ff. This argument has been made fully and forcefully by Sordi (1983) 132-136.
Then, for the first time, tribunes were elected in an assembly organized by tribes. According to Piso, three were added to the number, just as if there had been two before that. He also names the tribunes as Cn. Siccius, L. Numitor, M. Duilius, Sp. Icilius, and L. Maecilius.

And second (DS 11.68):

Ἅμα δὲ τούτοις πραττομένοις ἐν τῇ Ῥώμῃ τότε πρώτως κατεστάθησαν δήμαρχοι τέτταρες, Γαίος Σικίνιος καὶ Λεύκιος Νεμετώριος, πρὸς δὲ τούτοις Μάρκος Δουύλλιος καὶ Σπόριος Ἀκύλλιος.

While these things were going on, for the first time at Rome four tribunes of the plebs (δήμαρχοι) were elected. Gaius Sicinius and Lucius Nemetorius. In addition to these were Marcus Duillius and Spurius Acilius.

Meyer suggested that the first passage reveals that Calpurnius Piso, a consular of the second half the second century, who wrote a history of Rome which is attested only in fragments such as the quote from Livy quoted above, held that in 471 tribunes of the plebs were elected for the first time and that they were five in number. Meyer also held to the view that Diodoros used Fabius Pictor as his source for Roman affairs. The passage of Diodoros, then, supports this view, with the exception that in this version four tribunes were elected. Accordingly, we would appear to have two passages reflecting an early version of the tradition concerning the foundation of the tribunate. The version which Livy follows, according to which the tribunate was established in 494, would then be a later accretion into the Roman annalistic tradition.

11 Forsythe (1994) is an exhaustive survey and commentary on the life, fragments, and context of Piso.
Meyer argued that the *primum* in Livy, reflecting Piso’s account, and the πρώτως of Diodoros refer to the election of tribunes. Accordingly, the fragment of Piso should be read as “for the first time tribunes were elected (and it was done in the tribal assembly)”, and Diodoros, reflecting Fabius Pictor, should be translated “then for the first time there were elected tribunes, four in number”. The objection was raised by Richard that the πρώτως of Diodoros refers to the increase in the size of the tribunate in 471, without any implication that this year saw the first ever election of tribunes. In his view, the text from Livy proves that the innovation referred to in Diodoros was the increase in number, not the first establishment, of the tribunes, since Livy is clear that the innovation of which Piso wrote was the extension of the office from two members to five.\(^\text{12}\)

Sordi objects that the fragment of Piso does not allow us to posit a span of twenty years between the two events described (i.e., between first creation of the tribunate and the establishment of the five-man tribunate). Therefore, the fragment of Piso must be describing the two things happening at the same time: tribunes are created for the first time and three are added to the original two to make five. If anything, she argues, the *primum* in Livy refers not to the increase in number, but rather to the fact that tribunes were elected, as she puts it, “*primum comitiis tributis*”.\(^\text{13}\) Satisfied that the concurrence of these two passages proves the existence of an earlier tradition placing the establishment of the tribunate in 471, Sordi then sets out to explain the invention of the tradition that comes down to us of the first secession of the *plebs* and the subsequent establishment of the tribunate in the 490s. In her view, this older tradition must be considered the more

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\(^{13}\) Sordi (1983) 132 n. 15.
accurate and we must, therefore, believe that the tribunate was not established until 471. The explanation for this lies in the general tendency of the plebeians to attempt to push back their institutions as far back into the past as possible to rival the antiquity of the patricians. In this case, the plebeians found a perfect date for the establishment of the tribunate—the year in which the temple of their tutelary goddess was dedicated, 493.14

For Sordi, this argument constitutes evidence for the plebeian associations of the goddess and her cult. The invention of the new tradition can best be explained by the synchronizing in the annalistic tradition of two great events in the development of the plebeian community—the dedication of the temple of Ceres, Liber, and Libera, and the establishment of the tribunate. The obvious objection must be raised that our two annalistic sources for these events, Dionysius and Livy, assert no connection between the events. Dionysius, the more detailed of the two accounts, mentions no intended persuasion of plebeians when the temple is vowed by Postumius in 496. Nor does he connect the end of the secession with the dedication of the temple in any way except that the two events took place in the same year. He is quite explicit in his account that the temple was vowed originally to help solve Rome’s food crisis, and its dedication a few years later is given no more attention than would make one think that it was dedicated by the consul upon its completion. Further, if the fictitious re-placing of the establishment of the tribunate in 494/3 had been done in order to synch it with the dedication of the cult of Ceres, Liber, and Libera, one would expect the connection between the events to play

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14 Ibid. 132-139.
some role in Livy’s account. Far from it—Livy fails to mention the vow or the establishment of the temple altogether.

But there is a more fundamental problem with this argument. The two passages on which Meyer based his analysis do not support any such view. We can set aside the passage from Diodoros for the moment with the understanding even if it did reflect the account of Fabius Pictor, the reading of the passage is ambiguous. If anything, the positioning of the adjective τέτταρες, following the noun which it modifies, suggests a different reading, which would lead us to the conclusion that Diodoros meant to assert that the innovation was the election of four tribunes for the first time, rather than the first establishment of the tribunate.¹⁵

As Richard realized, the passage from Livy is the crux of the entire problem. Meyer’s argument relies on reading the entire passage as a fragment from Piso, as if the whole thing were taken directly from Piso’s page and transferred by Livy into his own account. But the Latin makes that impossible. The first sentence of the passage, tum primum tributis comitiis creati tribuni sunt, is composed in oratio recta. It is a direct assertion of historical fact by Livy. What follows (numero etiam additos tres, perinde ac duo antea fuerint, Piso auctor est) is given in oratio obliqua. The reference to Piso begins with numero: “According to Piso, three were added to their number, just as if there had been two before.” If there is a direct quote from Piso, it is only numero additos tres. Livy cites Piso—incredulously, it should be added—for an alternate tradition that in

¹⁵ Ogilvie (1965): 382.
471 the number of tribunes was increased. It would be a violent distortion of Livy’s language to assert the first part of the passage to be part of the fragment.

However, if we were to assume that it were so, following some of the more perverse theories of Livy’s composition proposed in the last century, which held that Livy used only one source for the entirety of any one episode, and we were to assume accordingly that the whole episode derives from Piso, still more problems are raised by Livy’s language. Whereas Richard has argued that Livy was recording Piso for one innovation—the increase in the number of tribunes—Sordi has pointed out that this entails a misreading of Livy’s text. She urged that Livy was emphasizing with primum not the election of five tribunes, but the election itself. Livy, she asserts, “batta semmai sul fatto che per Pisone i tribuni furono eletti “primum comitiis tributis”, piuttosto che sul numero.”

This is precisely the problem with Sordi’s own analysis. Livy does emphasize that tribunes were elected primum tributis comitiis. That is, even if he derives this entire account from the history of Piso, and he is only incredulous of the tradition that the number of tribunes was increased from two to five, and he found primum tributis comitiis tribuni creati sunt in Piso, we are misreading if we believe that Livy, or Piso, was asserting that tribunes were being elected for the first time.

Livy has just finished the dramatic narrative of the struggle of the tribune Volero Publilius to establish comitia tributa, in which tribunes might be elected without the influence of the patricians per clientium suffragia. Accordingly, the only reasonable reading of the first part of the passage is that “then for the first time tribunes were elected

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16 Sordi (1986) 132 n. 15.
17 2.55-56.
in the tribal assembly (i.e., having been elected elsewhere previously).” Whatever his source (and there is no evidence as to whether or not it was Piso), Livy is here asserting that the innovation of the year was the use of the tribal assembly for tribunician elections. When Sordi argues that Livy’s emphasis was not on the increase in number, she actually misquotes Livy. She asserts that he was emphasizing “primum comitiis tributis”.

However, Livy’s text has primum tributis comitiis. Since the name for the assembly is usually rendered comitia tributa, this word order, with the adjective preceding the noun, should be read predicatively, showing that Livy was emphasizing the assembly in which the tribunes were elected. He is not referring to any tradition that the year 471 saw the first elections of tribunes, nor does primum refer to the increase in number of the tribunes. He is asserting that, in the year 471, tribunes were elected primum in comitia that were tributa. He then takes the opportunity to cite Piso’s assertion that this year also saw the expansion of the tribunate from two to five, but he does not accept this version. Livy, in examining his sources, found no tradition that the tribunate was established in 471. No such tradition ever existed. Instead he found that the manner of their election had changed in that year to prevent patrician influence. Livy’s sources were unanimous about the establishment of the tribunate in 493. Accordingly, there can have been no re-placing of the establishment of the tribunate to that earlier date in order to have it coincide with the dedication of the plebeian temple.

18 Whether he is insisting that this was the first establishment of the tribal assembly in any circumstances, or just for the election of tribunes, is unclear from this context.
Le Bonniesc asserted that the temple of Ceres, Liber, and Libera was really vowed in 496 by the patrician dictator Aulus Postumius. He also asserted that the temple was actually dedicated in 493. Both of these events actually happened on the dates assigned to them by Dionysius of Halicarnassus. Both of these events, he argued, were deeply important to the plebs, for whom Ceres was their tutelary goddess. However, this is no argument for the plebeian associations of the goddess, because such associations must be assumed before one can apply plebeian significance to the vow and the dedication when our only source for these events, Dionysius, has done no such thing. A better argument can be made for Ceres’ plebeian associations if one can prove that the date provided by Livy and Dionysius for the establishment of the tribunate was an annalistic retrojection of later events fabricated precisely to synch this establishment up with the dedication of the temple. Unfortunately, this position relies on the arguments of Ed. Meyer, which do not stand the scrutiny of the sources. The foundation date of the temple, which should not be doubted, can provide no evidence for Ceres’ plebeian associations.

2.3 The Location of the Temple

Much has been made of the potential significance of the location of the temple, which cannot be determined with any certainty. Our sources are in agreement that the temple was located somewhere in the vicinity of the Circus Maximus, which lay between the Palatine and the Aventine. But we can be more specific, because one source also puts the temple near the western end of the Circus, which is adjacent to the Forum.

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19 Pliny HN 35.154; Tacitus Ann. 2.49; Vitruvius 3.3.5.
Consequently, arguments have been made that the temple should be located in the Forum Boarium itself, or on the slopes of the Aventine. Unfortunately, no definitive archaeological evidence has been found to support either view.

The Forum Boarium location was advocated by most scholars over the course of the 19th century. Arguments focused largely on the fact that in the Church of Santa Maria in Cosmedin, which is located in the Forum Boarium, there can be found the ruins of an ancient podium, which could have belonged to the temple. The objection has been raised, however, that a particular passage from Livy makes this identification impossible (Livy 40.2.1-2).

Ver procellosum eo anno fuit. pridie Parilia, medio ferme die, atrox cum uento tempestas coorta multis sacris profanisque locis stragem fecit, signa aenea in Capitolio deiecit, forem ex aede Lunae, quae in Auentino est, raptam tulit et in posticis parietibus Ceres templi adfixit...

That year the spring was tempestuous. On the day before the Parilia, at about midday, a severe wind storm made ruins of many places, sacred and profane, it struck down the bronze statues on the Capitol, and it ripped off the door from the temple of Luna, which is on the Aventine, and fixed it against the back wall of the temple of Ceres...

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20 DH 6.94.3.  
21 Simon (1990) 45; Nash (1968) 1:227; Le Bonnec (1958) 266-276; Van Berchem (1935) 91-95; Giovenale (1927) 353-371. For earlier bibliography, see Merlin (1906) 93 n. 5.  
22 Spaeth (1996) 82-83; Richardson (1992) 80; Coarelli (1988) 66-70; Platner-Ashby (1929) 110; Merlin (1906) 93-95. For earlier bibliography, see Merlin (1906) 94-95 with notes.  
23 Richter (1901) 180 n.1.
Richter argued that the door to the temple of Luna, which Livy places on the Aventine, could not possibly have been blown so hard by a storm as to be fixed to the rear of the temple of Ceres, if it had been located in the Forum Boarium. But, Le Bonniec points out that this objection is easily refuted by reference to Livy’s language. The phrase *quae in Auentino est* is used by Livy to emphasize the remarkable nature of the fact. Livy is describing a series of prodigies brought about by the severity of the storm, which were so severe that the haruspices demanded that the gods be propitiated. The fact which Livy describes is so dramatic precisely because the temple of Luna is on the Aventine and the temple of Ceres is not. The temple must, therefore, not be on the Aventine.

In favor of the Aventine location, the language of Dionysius of Halicarnassus in particular has been exploited (DH 6.94.3):

> Κάσσιος δ’ ὁ ἑτερος τῶν ὑπάτων ὁ καταλειφθείς ἐν τῇ ἹΡώμη τῶν νεῶν τῆς τε Δήμητρος καὶ Διονύσου καὶ Κόρης ἐν τῷ μεταξὺ χρόνω καθέρωσεν, ὡς ἐστὶν ἐπὶ τοῖς τερμασί τοῦ μεγίστου τῶν ἒποδρόμων ὑπὲρ αὐτᾶς ἴδρυμένος τὰς ἀφέσεις...

Cassius, one of the consuls, happening to have stayed behind in Rome, dedicated the temple of Demeter, Dionysus, and Kore during the course of this time, which is near the *termata* of the *circus maximus* and situated beyond the starting points (ἀφέσεις)...

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24 Le Bonniec (1958) 268-269.
This quote was adduced by Merlin to show that the temple must have been located on the Aventine, because Dionysius says that it was ὑπὲρ αὐτάς ἱδρυμένος τὰς ἀφέσεις.\textsuperscript{25} Merlin interprets ὑπὲρ to mean that the temple was located at a higher elevation than the starting-posts (ἀφέσεις) of the Circus Maximus. A Forum Boarium location would be inconsistent with this reading, and therefore an Aventine position would be necessary. However, this reading is by no means decisive. The preposition ὑπὲρ here, with the accusative, is not likely to mean “over” in the sense of “at a higher elevation”. For such a reading we would expect to find the genitive. The best reading for this text, then, would be “over” in the sense of “beyond”.

Spaeth has attempted a more thoroughgoing analysis of the passage, suggesting that proper interpretation of the passage can allow us to place the temple exactly:\textsuperscript{26}

The termata (τέρμασι) are the goals around which horses and chariots had to turn at races, located in Roman circuses at the ends of the spina, or the central divider on the long axis of the track. In the Circus Maximus the spina ran east-west. In this passage, then, the term termata, plural here being used for the singular, should apply to one end of the spina, probably the westernmost one, as this was the final turn before the end of the race, and terma also means “end, culmination.” The phrase ἐπὶ τοῖς τέρμασι defines the location of the temple in relation to the spina; it is located after or behind its western end. This sets its location along an east-west axis. The ἀφέσεις are the starting points for a race, in Latin the carceres, located at the western end of the Circus

\textsuperscript{25} Merlin (1909) 94-95.
\textsuperscript{26} Spaeth (1996) 83.
Maximus. The phrase ὑπὲρ ἀντάς…τάς ἀφέσεις defines the location of the temple as “over (or beyond) the carceres.” This defines its location on a north-south axis. The Temple of Ceres may therefore be placed exactly: west of the western end of the spina and south of the carceres, that is, in line with the western end of the Cricus Maximus on the northern slope of the Aventine Hill.27

27 Figure 1.
Figure 1. Suggested locations of the Temple of Ceres. Five-pointed star indicated the Aventine location. The four-pointed star indicates the Forum Boarium location.

Spaeth’s observation that Dionysius gives two points in order to locate the temple on both a north-south and an east-west axis is a keen insight. But it seems to me arbitrary that we should choose to interpret ἐπὶ τοῖς τέρμασι as placing the temple on the east-west axis, or ὑπὲρ αὐτὰς ἱδρυμένος τὰς ἀφέσεις for north-south. He could as easily have intended it the other way around. His language is simply too imprecise for satisfactory interpretation. However, if we should interpret the two descriptions in the opposite manner (i.e., with ἐπὶ
τοῖς τέρμασι giving the north-south axis, and ύπερ αὐτὰς…τὰς ἀφέσεις for north and south), we would be left with a location consistent with a Forum Boarrium location—indeed, consistent with the location of the Church of Santa Maria in Cosmedin. The temple would be south of the termata and west of the carceres, rather than to the west of the termata and south of the carceres. No decisive evidence can be adduced. In my opinion, the passage from Livy makes it likely that the temple was not on the Aventine Hill. That fact, combined with the statement of Dionysius, suggests a location in the Forum Boarium, but barring further archaeological discovery, this debate will remain up in the air.

Remarkably, both locations have been used to support the “plebeian” associations of Ceres and her cult. Van Berchem, followed by Le Bonniec, believed that the cult was introduced to Rome by foreign grain traders, who met at the Forum Boarrium, because it was the place where traders from Etruria and Campania would converge on the city. Demeter, the Greek grain goddess, was brought to Rome from Magna Graecia by these grain traders. Demeter would quickly be assimilated to the Latin Ceres. The grain was imported to Rome to feed the plebs, and the temple of the goddess became the first public granary. Ceres’ temple “constituia pour la plèbe le gage de cette securitas que plus tard les empereurs se vantaient d’assurer à la capital. Du jour où elle emit le pied sur la rive du Tibre, Cérès fut la providence du quartier de l’Aventin. Ce qui permet à Lucilius de dire à l’occasion d’une disette: deficit alma Ceres, nec plebes pane potitur.”

The significance of a location in the Forum Boarium is so interpreted by van Berchem, but his conclusions are highly conjectural. He imagines that foreign traders brought the worship of Demeter to Rome, and that the Roman *plebs*, eating the grain brought to Rome by these traders and associating the new goddess with their Latin goddess Ceres, began to worship her as their savior “the moment she set foot on the bank of the Tiber.” He is able to offer as evidence for the connection between Ceres’ jurisdiction over grain and the *plebs* the one passage from Lucilius according to which the *plebs* receives no bread when Ceres fails.\(^{29}\) To be sure, a famine affects plebeians negatively. The poorer elements of society are always the first to feel the effects of a food shortage. But this one-line fragment is no evidence that the *plebs* received the goddess as their protectress with such fervor. It is not unlikely, however, if the temple was in fact located there, that the Romans had chosen the Forum Boarium for the temple of Ceres, Liber, and Libera because of the association of Ceres (and, certainly, Liber, who was a god of the vine\(^{30}\)) with grain and, therefore, the grain trade. In fact, this is quite likely. One may recall that Dionysius attributes the vow of Aulus Postumius particularly to a failure of the crops and of the grain trade. After the vow, crops grew plentifully, and trade was more abundant than before.\(^{31}\) We can accept, then, that Ceres, along with the other divinities of the triad, was perceived as a guardian of the grain trade. The Romans understood that the poor would suffer first if there should be a shortage, either in the

\(^{29}\) Lucilius frag. 200 Marx.

\(^{30}\) Cic. ND 2.60, fruges Cererem appellamus, unium autem Liberum; Aug. CD 4.11, [i]pse in aethere sit Iuppiter…Liber in uineis, Ceres in frumentis; Festus, s.v. sacrima, 319 Müller, suggests a relation to the vine for Liber similar to that of Ceres to grain by comparing the offering of the sacrima, the first wine, to Liber, with the praemetium, the offering of the first harvested ears of grain, to Ceres.

\(^{31}\) 6.17.2-4. 21.
growth of the crops, or in grain imports, but this implies nothing of a special relationship between the *plebs* *qua* *plebs* with the cult. Do patricians not also need to eat? Should they, who derive so much of their wealth from the success of their crops, not also make a particular effort to appease the goddess? Van Berchem’s conjecture is ultimately based on an assumption of this special relationship. If such a relationship existed, then his would be an admirable (though ultimately unproveable) attempt at explanation. But we would be unjustified in inferring from a location in the Forum Boarium a particular relationship between the *plebs* and the cult of Ceres, Liber, and Libera.

We are perhaps on more fruitful ground if the temple is to be located on the Aventine Hill. This hill is widely perceived among modern scholars as being the “plebeian hill” *par excellence.*\(^32\) According to the tradition, the Aventine was the site of the second secession, and, in one source, also of the first.\(^33\) We are told that a *lex Icilia de Auentino publicando* of 456 confiscated land possessed by large holders for redistribution,\(^34\) a fact which has led most scholars to assume a strong association going forward between the Aventine and the *plebs*.\(^35\) Such are the arguments for particularly “plebeian” associations for the Aventine. As I shall argue in a later chapter, this evidence is insufficient for making the Aventine a significant part of the theory of the “plebeian community”. Besides the second secession and the *lex Icilia*, Merlin actually uses Ceres’ “plebeian” associations, and his argument that the temple was to be found on the

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\(^32\) The standard account continues to be Merlin (1906) 69-288.

\(^33\) The first secession is usually said to have been to the Mons Sacer. See, Cic. Brut. 54; Ascon., 67 C; Liv 2.32.2; 3.54.12; Florus 1.17; Val. Max. 8.9.1; Orosius 2.5..5; Eutropius 1.13; DH 6.45.2; Plut. Cor. 6; Festus, 422 L; Dig. 1.2.2.20. But, through Livy we learn that Piso placed the first secession on the Aventine: 2.32.3. Cic. Rep. 2.58 and Sall. Hist. 1.11M are aware of both traditions.

\(^34\) Liv. 3.31.1, 32.7; DH. 10.32.2-4.

\(^35\) Alföldi (1965) 90-93; Merlin (1906) 69-91. 22.
Aventine, as part of his broader argument for the “plebeian” associations of the hill. In order to make his argument, he has otherwise to prove the “plebeian” associations of the goddess. But he simply assumes them and attempts to explain their origins. He explains their development in terms of the same foreign grain traders whom we encountered in the works of van Berchem and Le Bonniec. According to Merlin, these traders did not have access to the “patrician city”, and so made common cause with the plebs. Their worship of Demeter immediately began to rub off on the Roman plebs, who were impressed by the traders for “leur position, leur fortune, leur intelligence, les elements les plus marquants.” As in the other cases, the “plebeian” associations of the cult of Ceres are assumed and then explained. In this case, these associations are assumed as part of Merlin’s broader argument about the “plebeian” associations of the Aventine Hill. However, modern scholars will often cite the possible Aventine location of the temple as evidence for the “plebeian” associations of the cult of Ceres, Liber, and Libera. If we could successfully place the temple on the Aventine, we would still be on uncertain ground in attempting to apply “plebeian” associations thereby to Ceres’ cult. But we are not even able successfully to place it there. The location of the temple offers no evidence for Ceres as “plebeian” goddess.

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36 Merlin (1906) 155-156.
2.4 The Asylum Cereris

Varro presents an interesting possibility (Non. 63, Lindsay):

…qui ope indigerent et ad asylum Cereris confugissent panis daretur.

…those who were poor in resources and had fled to the asylum of Ceres would receive bread.

To what is Varro referring here? It has often been conjectured that this passage is evidence for a plebeian sanctuary within the temple of Ceres, Liber, and Libera, to which plebeians afflicted with poverty, or debt, or an over-bearing patrician magistrate might flee. Clearly Varro is here describing a granting of food to the hungry, perhaps a reference to the statio annonae with which the temple of Ceres may have been associated.38 But it has also been suggested that the asylum must also extend to the political sphere. Hoffman has suggested that the asylum Cereris was open to plebeians who were being pursued by patrician magistrates and could seek refuge and request the protection of the tribunes.39 Clearly the evidence is insufficient to make such a claim, considering Varro says nothing of such a political use for the asylum. But Spaeth has attempted a more thorough analysis in order to prove the existence of such a practice.40

The significance, she argues, lay in the meaning of the term asylum. If the term means “a place of relaxation or recuperation, a retreat” (as is the second definition of the word given in the OLD), then we can interpret from the passage nothing more than that the poor could expect to receive food if they went to the temple. But there is another meaning

38 Le Bonniec (1958) 274-275; van Berchem (1935) 93-95.
40 Spaeth (1996) 84.
for the term, “a place affording sanctuary for criminals, etc., a refuge, asylum” (the first definition of the word given in the OLD). Spaeth conjectures that, if this is the proper interpretation, the temple of Ceres offered a place of refuge for plebeians from the harassment of patrician magistrates. She suggests, further, that this would be a suitable place for plebeians to seek the auxilium of the tribunes. She focuses on Varro’s use of the word confugere, which often means “to flee for refuge or safety (to), to flee (to a person or god) for protection”, used often in connection to the altars of gods.\(^{41}\) Since ancient temples were often thought to offer protection from compulsion, she argues, we might reasonably suspect that the temple of Ceres might provide asylum for plebeians seeking sanctuary from overbearing magistrates.\(^{42}\)

This interpretation is tempting. If we assume that Ceres is particularly associated with the “plebeian community” and, therefore, with the “state within the state”, then there is solid ground for making such a leap. If the temple is the central office of the plebeian organization, then it would make the perfect place for a plebeian to flee in search of help from the tribunes. However, if these associations are not assumed, then this interpretation becomes fraught with complications. The home of the tribune seems to be the usual place for the seeking of auxilium,\(^{43}\) so that there is no need to place such a practice in the temple. Also, seeking sanctuary in the temple of a god was a widespread practice in antiquity, and certain temples, though we do not know which, seem to have had this

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\(^{41}\) This meaning is the first offered by the OLD. She also cites several instances of this usage.  
\(^{43}\) Ridley (1968) 547 n. 4.
power in Rome (certainly not all of them did).\footnote{Serv. Verg. Aen. 2.761, hoc autem (asylum) non est in omnibus templis nisi quibus consecrationis lege concessum.} If there was an asylum Cereris to which plebeians could flee with the expectation that they not be compelled to leave to face punishment, there were other such places in Rome. That is to say, if Varro here is describing a sanctuary in the sense of a place of protection from coercion, what makes this particular asylum particularly plebeian, as opposed to one of the other sanctuaries?

Finally, without good evidence we ought not to read into this passage too great a significance. Varro describes specifically a place where starving people might flee in order to receive bread. It may well refer to the statio annonae, or to a custom whereby the poor could expect daily handouts. We cannot be certain from this one passage. But what is certain is that Varro says nothing of particularly “plebeian” associations of the asylum Cereris. He does not tell us that it is the plebs who flee to the temple. If these associations are assumed, we might expect that the asylum Cereris is a place of refuge where a plebeian could expect to receive auxilium from a waiting tribune. However, barring such an assumption, we can infer no such thing. One will, of course, find it difficult to imagine a patrician fleeing to the temple in search of food. Probably, anyone who would find himself in the position to require such services would be a member of the plebs, but that does not mean that the practice is to be identified with the plebs per se, but with the indigent. I argued in the introductory chapter that the plebs was a concept broadly conceived in the early Republic and that, while the poor were recognized as plebeian, they did not characterize the whole class. Accordingly, although the indigent individual who fled to the temple was almost certainly a plebeian, this passage does not constitute
evidence that the temple represented for the plebs as a whole a place of refuge. We may only assert that the *asylum Cereris*, whatever it was, was a place where starving Romans might expect to receive some bread.

2.5 The Plebeian Archive

It has been suggested by many scholars that the temple of Ceres was the site of a “plebeian archive”. The evidence for this assertion derives from several ancient sources. First, we can introduce the following, from Pomponius (Dig. 1.2.2.21):

…ut essent qui aedibus praessent, in quibus omnia scita sua plebs deferebat, duos ex plebe constituerunt, qui etiam aediles appelati sunt.

…so that there be officials to preside over the temples (*aedes*) in which the *plebs* placed all of their decrees (*scita*), they established two men from the *plebs*, who were accordingly called aediles.

To be sure, the temple of Ceres is not mentioned in this text, and this has been noticed by scholars. Le Bonniec calls the use of the plural “intéressant”, and wonders whether there were, perhaps, other temples in which the *plebs* kept their *scita*. More recent scholarship has not been so cautious. Spaeth translates the first part of the passage as follows: “They established that there be two of the plebs who were in charge of the temple (*aedibus*) in which the plebs placed all their decisions.” She calls the use of the plural *aedibus* “curious”, suggesting that it applies to the temple by synecdoche, or that

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46 Le Bonniec (1958) 344 n. 2.
Pomponius refers to specific rooms within the temple.\textsuperscript{48} Cornell translates the passage similarly, but offers no explanation.\textsuperscript{49} A tradition similar to that found in Pomponius can be found in Zonaras, according to whom the aediles were created specifically in order to assist the tribunes in the handling of documents. He lists documents \textit{πάντα γάρ τά τέ παρά τοῖ πλήθει καὶ τά παρά τοῖ δήμωι καὶ τῇ βουλῇ γραφόμενα} as falling under the purview of the aediles originally.\textsuperscript{50} Here, still, we find no reference to the temple of Ceres.

But a connection might be drawn between the so-called “plebeian archive” reflected in the texts of Pomponius and Zonaras and the temple of Ceres by reference to a passage from Livy (3.55.13):

\begin{quote}
Institutum etiam ab iisdem consulibus ut senatus consulta in aedium Cere ad aediles plebis deferrentur, quae antea arbitrio consulum suprimebantur uitiabanturque.
\end{quote}

It was established also by these same consuls that \textit{senatus consulta} be handed over to the plebeian aediles to be stored in the temple of Ceres, since before that they used to be suppressed and corrupted at the whim of the consuls.

Here Livy describes one of the Valerio-Horatian laws of 449, following the expulsion of the decemvirs. Perhaps the law was a concession to the \textit{plebs} as a class allowing them to keep a watchful eye over \textit{senatus consulta}, which consuls had been in the habit of suppressing or altering as it pleased them. Since Pomponius tells us that the plebeian

\begin{footnotes}
\textsuperscript{48} Ibid. 85 n. 16.
\textsuperscript{49} Cornell (1995) 264 n. 89.
\textsuperscript{50} Zon. 7.15. 27.
\end{footnotes}
aediles had been in the habit of storing documents from the beginning of their existence, indeed that that was the purpose of their establishment, then we might make the leap that this passage from Livy suggests that the *aedibus* referred to in Pomponius was the temple of Ceres itself.\(^{51}\) The notice has often been rejected by scholars, who suspect that this law is an impossible anachronism.\(^{52}\) In the view of these scholars, it is impossible to believe that the state would designate to plebeian magistrates the care of official documents at so early a point in history. According to Alföldi, it was “an obvious forgery”. Some have suggested that the notice is simply anachronistic, pushing back into history a later innovation, which took place after the two orders had been reconciled, perhaps after the *lex Hortensia*.\(^{53}\) Cornell has defended the historicity of the reform, citing the general tendency of the *plebs* to desire the codification of law.\(^{54}\) This was not a simple act of administration; this was part of the concessions to the plebeians to facilitate reconciliation after the second secession.

Cornell is certainly right that the objections of scholars who would call this innovation a fiction or an anachronism are hypercritical. It is the overarching theme of this dissertation to avoid assumptions about what is “possible” at different times in Roman history based on preconceived notions about the relationship between the “plebeian state within a state” and the government of the “whole community”. So we must reject these criticisms along with Cornell. However, I suggest that Cornell’s interpretation should be modified. Nowhere does Livy say that the innovation was


\(^{52}\) Drummond (1989) 225; Alföldi (1965) 94.

\(^{53}\) Spaeth (1996) 85; Beloch (1926) 328.

undertaken as a concession to the *plebs* specifically, but instead that the consuls instituted the innovation to prevent consular abuses. We ought to reconsider the implications of this passage. As I shall discuss in the next section, the cult of Ceres is tied up with the *sacrosanctitas* of the tribunes. The tribunes are the protectors of the *libertas* of the *plebs*. The very foundation of the temple, from the vow of the dictator Aulus Postumius, has been connected with the *libertas* of the Roman people. In the Battle of Lake Regillus, the Romans fought for their nascent liberty, and the triad, through the growth of the crops and the facilitation of abundant importation, assured that liberty. I shall argue later in this chapter that the associations between Ceres, the triad, and the concept of *libertas* will remain vital throughout the history of the Republic. With this understanding, we should be inclined to begin viewing Ceres, Liber, and Libera as the guarantors of *libertas*, rather than the protectors of the *plebs qua plebs*. By this reasoning, Cornell is absolutely correct not to reject this notice as impossible. In fact, it makes perfect sense. The triad protected *libertas*, and one of its means of doing so was to ensure that consuls would not be able to obscure the terms of *senatus consultae*. This innovation protects the senate as much as, if not more than, the *plebs*. There is no evidence that the plebeians in the fifth century would have felt their interests reflected in the *senatus consultae*. To the contrary, our sources universally portray the senate as opposing the interests of the plebeians at every turn. This innovation was a protection against potential tyrants, like that Appius Claudius who had just used the decemvirate as a springboard for monarchy, and fits perfectly with the Valerio-Horation prescription against the election of a magistrate not subject to *prouocatio*. If this law is to be accepted as historical, it must be interpreted as a
concession, not to the plebs, but to the senate, whose members wanted to protect their position within the community.\textsuperscript{55}

The senatus consulta are to be stored in the temple of Ceres, Liber, and Libera, not because that temple is the site of the “plebeian archives”, but because it is the guarantor of Roman libertas. Perhaps guardianship of these decrees was handed to the aediles of the plebs because they had long served as administrators of the “plebeian archive”. Or, perhaps more likely, the aediles served the function attributed to them by Zonaras, who, as we have seen, believed that they had responsibility over all written documents submitted “to the plethos, and to the demos and senate”. If we accept this interpretation, then it would make no sense to view the handing over of senatus consulta to the temple of Ceres as placing them in the plebeian archive. There can be no grounds, then, for assuming that the aedibus to which Pomponius refers was the temple of Ceres, nor for giving a plural noun in a legal text a singular referent.\textsuperscript{56} There can be found no evidence for asserting the existence of a single temple in which a “plebeian archive” was kept. Therefore, the argument that the temple of Ceres was the “plebeian archive” has no basis in the evidence.

2.6 Ceres: Guardian of the Plebeian “state within the state”

\textsuperscript{55} Consider also (contra Cornell) the hypothesis of Eder (2005) 239-267, according to which codification of law in the archaic period in Greece and Rome reflected an assertion on the part of the aristocracy which “served the purpose of securing aristocratic predominance.” This view is consistent with the sometimes surprisingly non-popular measures of the twelve tables. I suggest that this particular Valerio-Horatian law should be viewed in the same way. How does the preservation of the advice of the senate, which is consistently viewed as opposing the interests of the common man in Livy’s account, serve the interests of the plebs?

\textsuperscript{56} A significant question, therefore, would be to what temples Pomponius was referring.
The Tribunes of the *plebs*. There can be no doubt that tribunes of the *plebs* benefited from the protection of Ceres. According to Dionysius, this relationship existed from the foundation of the tribunate, when the plebeians during the first secession swore the following oath with regard to the tribunes (6.89.3):

δήμαρχον ἄκοντα, ὦσπερ ἑνα τῶν πολλῶν, μηδεὶς μηδὲν ἀναγκαζέτω
drān mēdē m当地กυώτω μηδ’ ἐπιταττέτω μαστιγούν ἐτέρῳ μηδ’
ἀποκτηνύτω μηδ’ ἀποκτείνειν κελεύετο. ἔαν δέ τις τῶν ἀπηγορευμένων τι
ποιήσῃ, ἐξάγιστος ἔστω, καὶ τὰ χρήματα αὐτοῦ Δήμητρος ἱερά...

Let no one compel a tribune to do anything he is unwilling to do, as if he were just one of the many, nor whim him, nor command another to whip him, now kill him, nor bid another to kill him. If anyone should do any of the aforesaid, let him be accursed (ἐξάγιστος), and his property be given to the temple of Demeter.

According to Dionysius, then, the plebeians during the first secession swore that anyone who violated the terms of the oath, which in our Latin sources is called a *lex sacrata*, either by forcing the tribune to do something against his will, by killing him, or by whipping him, should be declared *exagistos* (Lat. *sacer*) and his goods should be consecrated to Ceres. Livy, on the other hand, seems not to have believed that the *lex* that was passed during the first secession was *sacra*, but only the one passed in 449. For, after describing the election of the first two tribunes and the cooption of the other three, he says (2.33.3):
Sunt qui duos tantum in Sacro monte creatos tribunos esse dicant ibique sacratam legem latam.

There are those who say that only two tribunes were elected on the mons Sacer and that the lex sacrata was passed there.

The implication here is that he disagrees with this version as much as he disagrees with the version that holds that only two tribunes were elected during the first secession. Livy, instead, places the lex sacrata after the second secession (3.55-6-7):

Et, cum plebem hinc prouocatione hinc tribunicio auxilio satis firmassent, ipsis quoque tribunis ut sacrosancti uiderentur—cuius rei prope iam memoria aboleuerat—relatis quibusdam ex magno interuallo caerimoniis, renouarunt, et cum religione inuiolatos eos tum lege etiam fecerunt, sanciendo ut qui tribunis plebis, aedilibus, iudicibus decemuiris nocuisset, eius caput Ioui sacrum esset, familia ad aedem Ceres Liberi Liberaeque uenum iret.

And, when they had strengthened the position of the plebs now with prouocatio, now with tribunician auxilium, they renewed for the tribunes themselves the principle that they seem to be sacrosanct—the memory of which memory had now nearly abolished—by means of certain long disused ceremonies, and they made them inviolate both in religion and in law by by bringing it about that, whoever had harmed a tribune of the plebs, an aedile, or one of the the iudices decemuir, his head would be sacer to Jupiter, and his property by sold to benefit the temple of Ceres, Liber, and Libera.
The two versions of the *lex sacrata* bear other differences, besides the fact that they are attributed to different secessions. Livy includes the aediles in the sacrosanctity, as well as mysterious officers, the *iudices decemuiiri*, about whom nothing else is known. Most notably, however, is the inclusion in the terms of the *lex sacrata* the provision that the violator, in addition to having his goods sold at the temple of Ceres, Liber, and Libera, should have his person become *sacer* to Jupiter.

It has been urged that Dionysius’ version reflects an earlier tradition. His version declares the violator *exagistos*, but does not specify to which god, if any, such a status refers. According to Le Bonniec, this reflects an earlier state of the tradition, prior to the conciliation of the orders.\(^57\) Only after the “struggle of the orders” is over and the plebeian organization has been officially recognized by the state can the plebeians have accepted Jupiter, supposedly the patrician god *par excellence*, as part of the oath. Further, asserts Le Bonniec, the version of the vow in Livy binds the whole people, and not just the *plebs*. Consequently, we can read Dionysius’ version as the older and more authentic version, whereas Livy’s reflects the realities of a time after the “struggle of the orders” was over, and the two orders had been united into one community.

Le Bonniec, however, badly misreads the version as it is given by Dionysius. To be sure, Jupiter is nowhere mentioned in the oath, but he does play a major role in Dionysius’ version of the first secession. For, after the oath had been sworn, the seceding plebeians built an altar on the Sacred Mount in honor of “Jupiter Territor”, so named, he

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\(^{57}\) Le Bonniec (1958) 345-346.
says, for the fear which the plebeians had experienced during the secession. This fact did not escape the notice of Bayet, who asserted that we should not forget that the plebs consecrated this altar to Jupiter, though he still cites the difference between the two oaths as evidence of “unevéritable convention entre les deux parties de la population romaine, Jupiter étant le dieu des patriciens comme Cérès est la divinité de la plebe.” Such reasoning reflects the distorting effect of the notion of “plebeian” religion as opposed to “patrician” religion. In both accounts, both Ceres and Jupiter play a fundamental role, but an “earlier” version is sought which can support the view of Ceres as patroness of the “plebeian community”. But such an “earlier” version is not to be found in Dionysius’ account. Similar objections are to be leveled against Le Bonniec’s insistence that the lex sacrata in Livy bound “le people romain tout entier”, whereas that in Dionysius bound “seulement la plebe”. Certainly Livy’s version, which is described as being part of the package of consular laws passed following the second secession by Valerius and Horatius, must bind all Romans. But Le Bonniec is precisely wrong to assert that the whole Roman people was not bound by the oath in Dionysius’ version, for after the oath is sworn, Dionysius describes that the seceding plebeians ensured the permanence of the lex sacrata in the following way (DH 6.89.4):

καὶ ἵνα μηδὲ τὸ λοιπὸν τῷ δήμῳ ἐξουσία γένηται καταπαύσαι τόνδε τὸν νόμον,
ἀλλ’ εἰς ἅπαντα τὸν χρόνον ἀκίνητος διαμείνῃ, πάντας ἐκτῆσθαι Ῥωμαίοις ὀμόσαι
καθ’ ἱερὸν ἢ μήν χρήσεσθαι τῷ νόμῳ καὶ αὐτούς καὶ ἐγγόνους τὸν ἅει χρόνον...

58 DH 6.90.1. See also Festus s.v. Sacer mons, 424 L: discedentes Ioui consecraturunt.
59 Bayet (1926) 153.
And, so that it would not be possible at some point in the future for the demos to vitiate this law, but that it remain intact for all time, it was required that all Romans swear an oath…that they and their descendants in all future time would obey the law…

Dionysius states directly that “all Romans” were bound to swear to follow the terms of the oath. It would require a violent distortion of this account to argue that only the plebeians were bound by this oath.

I have no desire to deny that Ceres was viewed as a guarantor of the lex sacrata, which protected the tribunes (and perhaps the aediles and iudices decemui, as well) from violence or coercion. Indeed, this fact supports the theory I have proposed for understanding the goddess’ role in Roman public life. She is one of the protectors of the libertas of the Roman people against anyone who would violate the person of the tribune. However, it is not useful to deny Jupiter a role in the protection of the tribunes. There is extant no tradition according to which the plebs ignored Jupiter in securing their libertas.

Even if Dionysius’ account reflects some earlier version of the tradition, Jupiter still plays a major role in the religion of the seceding plebeians—whether or not he is the god to whom a violator is sacer. The lex sacrata, which guaranteed the inviolability of the tribunes, certainly involved Ceres, so that there can be no denying a relationship between the powers of the tribunes and the protection of the goddess. However, there are similarly no grounds for rejecting Jupiter’s role. If the seceding plebeians declared that the property of the violator should be consecrated to Ceres means that Ceres was herself a particularly plebeian goddess, then what does that say about Jupiter’s role in plebeian
religion? Is he, too, a plebeian god? Nothing can be deduced from Ceres’ role in the *lex sacrata*, or the first and second secessions, regarding plebeian religion. Her protection of the tribunes of the *plebs* no more makes Ceres a “plebeian” divinity, than the consecration of the altar of Jupiter Territor or Jupiter’s role in the *lex sacrata* makes him one.

2.7 The Aediles of the *Plebs*

Modern scholars have made much of apparent connections between Ceres and the aediles of the *plebs* in their formulation of theories of Ceres as plebeian goddess. 60 According to Le Bonniec, “on ne peut citer aucun autre magistrate romain qui soit place comme eux sous le patronage direct et presque exclusive d’une divinité.” 61 Many scholars have sought the very origin of the aedileship in a priesthood of the temple. However, under close scrutiny, the connections between the aediles and the temple of Ceres are far less impressive than they initially seem, and offer no greater support for a plebeian character for Ceres.

It is often suggested that the name of the magistracy is itself derived from a relationship with the temple. There should be no doubt that the title *aedilis* derives from *aedes*. It has long been argued that the word *aedes* must here be understood in its religious sense, since the *aedes* referred to here cannot originally have been civic buildings. The aediles, as plebeian magistrates, could have had no such responsibilities.

61 Le Bonniec (1958) 348.
Therefore, the *aedes* must have been plebeian religious sanctuaries.\(^{62}\) As far back as Niebhur, the majority of scholars have assumed that the name is derived from one *aedes* in particular, the *aedes Cereris*.\(^{63}\) The argument for this connection, it seems, is limited to probability. If the name necessarily derives from plebeian religious *aedes*, rather than from civic *aedes* belonging to the community, then we should look to the plebeian *aedes par excellance*. Spaeth looks for more evidence.\(^{64}\) She argues that the aedile’s particular relationship with the “plebeian archive”, which she believes to be have been located in the temple of Ceres, provides evidence for this theory. I have already rejected the argument that such an archive in the temple of Ceres existed at all. She cites Pomponius for further evidence. But, as we have seen, that passage attributes to the aediles care over *aedibus*, and we have no reason to assume that Pomponius is being artful with his use of the plural. In fact, there are positive reasons for believing that the aediles did not, in fact, derive their name from the *aedes Cereris* at all. Let us consider, first, Varro’s definition of the aedile.\(^{65}\) *Aedilis qui aedes sacras et priuatas procurat.* To Varro, the word derives from *aedes*, as all presume, but he attaches the term to various buildings, both religious and private. He appears to believe that the aediles have the responsibility of caring for a wide variety of buildings.

But the decisive objection was made over a century ago by Mommsen.\(^{66}\) There is no sense in which the temple of Ceres was ever “The Temple” (i.e., the most famous or important temple at Rome), so that the title “Man of the Temple”, which the generally

\(^{62}\) See Le Bonniec (1958) 353 n. 4 for extensive earlier bibliography.

\(^{63}\) Niebhr (1837-1842) 1.690.

\(^{64}\) Spaeth (1996) 86-87.

\(^{65}\) LL 5.81.

\(^{66}\) Mommsen (1887-8).
accepted understanding of the term would be, could have had no such origin. Mommsen’s objection has not been generally followed. Le Bonniec, however, recognized its power, and attempted to argue that the aediles acquired their title only after long association with the temple of Ceres.67 He references Dionysius (6.90.2-3), who says that the aediles only gradually acquired their title. Unfortunately, Dionysius’s account does not support Le Bonniec’s theory further, because he says that the aediles acquired their title, in spite of their many other obligations, in relation to just one of their tasks—maintenance of the “sacred places” (hieroi topoi), with no mention of the temple of Ceres specifically. Any assertion that the name of the aedile derives from a special relationship with the temple of Ceres must rest on assumptions about the plebeian nature of the cult of the goddess; that is, a plebeian magistrate called aedilis must be related to the plebeian aedes. Since the premise of this chapter is to shed assumptions about the plebeian nature of Ceres’ cult, such reasoning is unacceptable. It will be necessary, then, to look further for associations between the aediles and the temple of Ceres.

Reference has been made to the establishment by Caesar of a new office, called aedilis Ceralis.68 For Sordi, the establishment of the institution reflects the antiquity of the connection between the aediles of the plebs and the temple of Ceres.69 According to Spaeth, Caesar’s invention of this office “has an archaising ring and may reflect either the original title of the aedileship or else its original historical associations.”70 It is unclear to me what about the creation of this institution has an “archaising ring”. It seems

67 Le Bonniec (1958) 354.
68 Dio 43.51.3.
69 Sordi (1983) 127; seealso De Sanctis (1907) 2.35.
70 Spaeth (1996) 86. See also Rickman (1980) 59 for the creation of the aedilis Cerialis.
that these “aediles of Ceres” were responsible solely for grain distribution and acquired their name from that function. It is possible that Caesar wished to associate himself with Ceres by means of this institution, but not in order to ingratiate himself with the plebs per se, but as part of his general campaign of propaganda to advertise himself as the guarantor of Roman libertas. But even this much is unnecessary. We can understand the creation of the new office as an administrative innovation designed to facilitate grain distributions. There is no reason to infer from this title the original purview of the aediles of the plebs. In fact, we would probably be deceiving ourselves if we should attempt such a thing. If the aedileship had already had strong associations with the temple of Ceres, and aedilis meant “Man of the Temple of Ceres” there would be no need to invent such an office. “Ceres” Man of the Temple of Ceres” would be overkill.

I have argued above that the connection between a “plebeian archive” and the temple of Ceres cannot be proven. De Sanctis has argued that the fact of the aedile’s presidency over the conjectured archive meant that the temple of Ceres was the seat of their activity. If this is the case, he argues, it would be a complete aberration in Republican practice. Neither consuls, nor praetors, nor tribunes, nor quaestors had such a place that was peculiarly theirs. De Sanctis has been followed in interpreting this abnormality as further evidence of a special relationship between aediles and the temple of Ceres by subsequent scholarship. But De Sanctis’ argument is making the opposite point. The rather weak evidence for such an institution as a “plebeian archive”, and

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71 On this, more below.
72 De Sanctis (1932) 442.
particularly one situated in the temple of Ceres, is not bolstered by the assertion that a special relationship between aediles and a particular temple would be abnormal in the history of the Republic. It is, in fact, vitiated. De Sanctis is correct to assert that the peculiar relationship suggested by modern scholars between aediles and a particular temple would be completely unusual. Because of that fact, we should be less inclined to interpret the meager evidence for such a relationship in this way. To be sure, the aediles were responsible for keeping the *senatus consulta* in the temple of Ceres, but, if we read Pomponius’ statement literally, there were many other *aedes* in which public documents were kept by the aediles of the *plebs.*

Scholars have also often asserted a special relationship between aediles and the goddess because of their responsibility for certain religious practices in her honor. It has been suggested that the aediles at times behaved as priests to Ceres. The aediles seem to have presided over a lectisternium in honor of Tellus and Ceres on the *dies natalis* of the temple of Tellus. They also presided over the ludi Ceriales. The significance of the ludi Ceriales in the term of an aedile of the *plebs* is confirmed by Cicero (Verr. 2.5.36):

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74 One thinks of the publication of a bronze tablet of the lex Icilia de Auentino publicando attached to the shrine of Diana on the Aventine, attested by DH 10.32.
75 Spaeth (1996) 87-88; Le Bonniec (1958) 348. Spaeth (1996) 87 n. 31 calls the flamen Cerialis a “functionary of the temple”. The implication is clear. The aediles are the real priests of Ceres, the flamines just do the grunt work. Plebeian associations for Ceres have been asserted also by Mommsen on the grounds that the flamines Cerialis seem de iure to have been recruited solely from plebeian gentes. According to Festus Paulus 137 L, Maiores flamines appellabantur patricii generis, miniors plebei. Mommsen, RF 1.78 with n. 13, has concluded from this that patricians were excluded from the minor flaminates. There is no reason to argue this point, except to ask whether all the minor flaminates were dedicated to particularly “plebeian” deities? Must we, accordingly, assume that Vulcan, Volturnus, and others have particularly plebeian associations?
Nunc sum designates aedilis; habeo rationem quid a populo Romano acceperim; mihi ludos sanctissimos maxima cum cura et caerimonia Cereri, Libero, Liberaeque faciundos, mihi Floram matrem populo plebique Romanae ludorum celebritate placandam, mihi ludos antiquissimos, qui prii Romani appellati sunt, cum dignitate maxima et religion Iovi, Iunoni, Minervaeque esse faciundos, mihi sacrarum aedium procurationem, mihi totam urbem tuendam esse comissam; ob earum rerum laborem et sollicitudinem fructus illos datos, antiquiorem in senatu sententiae dicendae locum, togam praetextam, sellam curulem, iu imaginis ad memoriam posteritatemque prodendae.

Now I am aedile-elect. I take account of what I have received from the Roman populus. It is by me that the most sacred games must be put on in honor of Ceres, Liber, and Libera with the greatest care and sanctity; it is by me that mother Flora must be rendered propitious to the populus and the Roman plebs through the celebration of her games; it is by me that those most ancient games, which were the first to be called “Roman” must be put on with the greatest dignity and reverence in honor of Jupiter, Juno, and Minerva; and to me has been committed the administration of sacred aedes, as well as the oversight of the whole city.

Taylor argued convincingly that Cicero was aedile of the plebs in this year and not curule aedile.\(^78\) In the passage, Cicero expresses the care and solemnity with which he had to carry out the games in honor of the triad. There can be no question that the ludi Ceriales

\(^{78}\) Taylor (1939) 194-202.
were a fundamental element of an aedile’s term in office. However, one ought not to overstate the significance of this fact. According to Spaeth, “[r]esponsibility for the games of Ceres comes first in Cicero’s list, and its position indicates its importance among the aedile’s duties.” It does no such thing. Cicero lists the games in the order in which they are to be celebrated during the year. The ludi Ceriales take place April 12-19; the ludi Florales, April 28-May 3; and the “games to Jupiter, Juno, and Minerva”, although not certainly, probably refer to the ludi Plebeii, which take place November 4-17. He may instead be referring to the ludi Romani, which took place in early September. Cicero is emphasizing the great significance of all of the festivals for which he will be responsible in the coming year. He calls the ludi Ceriales sanctissimi, insisting that they must be celebrated maxima cum cura et caerimonia. The ludi Florales are necessary so that Flora populo plebique Romanae...placandam. The ludi Plebeii (or the ludi Romani?) are antiquissimi and must be celebrated cum dignitate maxima et religione. A special relationship between aediles and the cult of Ceres and the triad cannot be inferred from this text, unless we are also to assert that the aediles also had a special relationship with the cult of the Capitoline triad, supposedly the most patrician of patrician cults. If we should choose to infer such a special connection between aediles at the cult of Ceres, and declare, accordingly, that this is evidence of particularly plebeian associations for Ceres, then we must do the same for the Capitoline triad of Jupiter, Juno, and Minerva.

Further associations between the temple of Ceres and the aediles of the plebs have been asserted by reference to the practice exercised by the aediles of using money

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79 Spaeth (1996) 89.
confiscated for particularly “plebeian” purposes. We know of seven such instances. In 296, the aediles L. Aeius Paetus and C. Fulvius Curvus, using funds extracted from violators of pasturage laws, held games to Ceres and offered golden bowls at her temple. Again, in 210, Q. Catius and L. Procius Licinus, aediles of the plebs, using funds similarly derived, held magnificent games and offered bronze statues to the goddess. Yet again, in 208, we are told that aediles of the plebs, C. Mamilius and M. Caecilius Metellus, offered three statues to the temple, though we are not informed of the source of the funds. Finally, a fourth example of such activity, in 197 M.’ Acilius Glabrio and C. Laelius used money from fines to offer three statues to the triad. Left alone, this evidence is striking and suggests a strong tie between aediles and the temple of Ceres—particularly in light of the relative rarity of such notices of aedilician activity. However, these are not the only examples of such a practice.

In 240, the aediles of the plebs, brothers by the name of Publicius, erected from fine money a temple to Flora. Immediately, this casts doubt on the “plebeian” significance of the aediles’ activity in regard to the temple of Ceres. However, we are assured by modern scholars that Flora is also a plebeian goddess, so that there is no reason to doubt that the aediles of the plebs only make offerings to the cults of plebeian deities. How do we know that Ceres is a quintessentially “plebeian” goddess like Ceres?

80 Spaeth (1996) 89-90; Le Bonniec 348-349.
81 Liv. 10.23.3.
82 Liv. 27.6.19.
83 Liv. 27.36.9.
84 Liv. 33.25.3.
85 Ov. Fast. 5.279-294.
86 Spaeth (1996) 90; Le Bonniec 349 n. 2, a note to which he has relegated any mention of the offerings to other deities by the aediles.
The argument is offered by Merlin. The plebeian character of Flora can be inferred from the following passage of Ovid (Fasti 5.352):

Volt sua plebeio sacra patere choro.

She wishes her rights lay open to a plebeian chorus. Accordingly, argues Merlin, we are justified in describing Flora as a plebeian goddess. However, a quick glance at the context of this line creates problems for this interpretation. Ovid is in these lines asking Flora why her festival is celebrated in such a lewd fashion. In the words of Merlin himself, “Ovide oppose Flora, déesse des courtisanes, dont les fidèles portent des vêtements bariolés, à la chaste Cérès, qui veut que les femmes pour l”honoré soient vêtues de blanc (ibid. 355 et IV, 619 sq.).” In short, we can assert the specifically “plebeian” character of Flora, because her games are celebrated in lewd and bawdy fashion, unlike the games of Ceres, which are celebrated with the utmost solemnity and chastity. Accordingly, Merlin argues, Flora is a plebeian goddess— unlike that stuffy Ceres, whose festival is apparently too uptight for plebeians. Therefore, Flora is a plebeian goddess, just like Ceres! This argument is unacceptable. If Flora’s festival was so celebrated because it was a “plebeian” festival and she a plebeian goddess, then the opposite nature of Ceres’ festival would deny Ceres such associations. But we are no more entitled to attribute particularly plebeian associations to Flora, just because her name is once mentioned in conjunction with the word *plebs* or *plebeius* than we were when the name of Ceres was mentioned alongside the word *plebes* in a fragment of Lucilius.

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87 Merlin (1906) 192.
In 196, the aediles of the *plebs*, Cn. Domitius Ahenobarbus and C. Scribonius Curio, built a temple to Faunus from the money taken from three *pecuarii*. Le Bonniec notes the problem with this instance. It seems to be the only instance in which the aediles of the *plebs* can be found using fine money to dedicate outside of the context of “plebeian religion”. However, Le Bonniec feels he can explain this away with little trouble: Faunus, he says, is the god of herds. I do not understand how this solves the problem. If we cannot assert positively that Faunus is a plebeian god, then the argument that aediles of the *plebs* always use fine money in the service of particularly “plebeian” religion is fundamentally demolished. Faunus’ nature as “god of herds” perhaps explains why the aediles used money derived from pasturage fines, but it does not explain away the very serious problem posed to Le Bonniec’s theory. Spaeth dispatches this problem with great ease: she declares Faunus to be a plebeian god without explanation.

Equally problematic is the consecration by the aediles of the *plebs* in 202, P. Aelius Tubero and L. Laetorius, of three statues paid for by fine money at the temple on the Capitol. “[C]ette fois encore,” asserts Le Bonniec, “les édiles sont fidèles à la religion de leur classe” because the consecration was made during the time of the ludi Plebeii. However, this type of argument is patently absurd. Repeatedly, the cult and temple of Ceres and the triad is placed by modern scholarship at odds with the Capitoline triad, supposedly the patrician cult *par excellence*. If the plebeian associations of Ceres are

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88 Liv. 33.42.10.
89 Le Bonniec (1958) 349 n. 2.
90 Spaeth (1996) 90.
inferred from her highly conjectural relationship with the aediles of the plebs, then we must also call the Capitoline triad “plebeian”.

We have seven dedications by aediles of the plebs, from fine money or otherwise, whose dedicatee we can assert positively. Of those seven, four times the dedications were made in honor of Ceres. Explanations which attempt to give the other three a particularly “plebeian” character strain credulity, and at times even logic. The objection might be raised that, since the majority of the seven offerings were made to Ceres, some special relationship can be inferred. Unfortunately, the sample size is too small. The likeliest scenario is that the aediles of the plebs regularly used money collected from fines for religious offerings, and the cult to which they were dedicated would have been decided based on criteria that cannot be known to us. We know also of seven instances in which the curule aediles made use of fine money. An offering was made to Jupiter Capitolinus in 296;\textsuperscript{92} in 295 a temple of Venus was constructed;\textsuperscript{93} in 293 fine money was used to pave the road from the temple of Mars to Bovillae;\textsuperscript{94} in 200 an offering to the aerarium;\textsuperscript{95} in 193 an offering at the temple of Jupiter;\textsuperscript{96} in 189 an offering possibly to the Salii;\textsuperscript{97} and finally, in 294, L. Postumius as consul dedicated a temple to victory which he had planned to construct when he was curule aedile.\textsuperscript{98} No patterns can be discerned from the similar activity of the curule aediles. We simply have no way of knowing why particular offerings were made to particular ends at particular times.

\textsuperscript{92} Liv. 10.47.4
\textsuperscript{93} 10.31.9
\textsuperscript{94} 10.33.9
\textsuperscript{95} 31.50.2
\textsuperscript{96} 35.10.12
\textsuperscript{97} 38.35.5
\textsuperscript{98} 38.35.5
Scholars have sought to discern a particular relationship between Ceres and the plebeian “state within the state” by reference to apparent connections between the goddess and the two main officers of the “plebeian organization”. It cannot be denied that the tribunes and aediles of the *plebs* were related in certain ways to the cult of Ceres. She protected the tribunes’ sacrosanctity (if not also that of the aediles), the aediles celebrated the ludi Cerialis, and also often made offerings at her temple. But that is as close a relationship as can be made from the evidence available to us. Arguments about a plebeian archive situated in the temple of Ceres, the significance of the very late *aedilis Cerialis*, or the preoccupation of the aediles with the cult of Ceres all fall short in our sources. The aediles were in no way bound exclusively to Ceres, and it cannot be demonstrated that her worship was presided over primarily by these magistrates. Any attempt to infer a “plebeian” significance to Ceres from her relationship with tribunes and aediles results inevitably in the rejecting of large portions of the annalistic tradition. For instance, to say that Ceres was a plebeian goddess because she protected the tribunes, requires that we reject the tradition that Jupiter also protected the tribunes. To say that Ceres was a plebeian goddess because the aediles kept a “plebeian archive” there, requires that we stretch the tradition still further.

Consequently, one must conclude that no plebeian associations can be attributed to Ceres based on her relationship with the tribunes and aediles of the *plebs*.

2.8 Ceres in Roman Political Culture
The remarkable thing about the “plebeian community”, as it is understood by most modern scholars, is its class-consciousness. The fact that it was a kind of “community within the community” forced the *plebs* to be constantly aware of their class and its standing within the broader community. This class-consciousness resulted in the revolutionary nature of the plebeian “state within the state”, a phenomenon otherwise unknown in the history of the ancient world. 99 Modern scholars have argued that the cult of Ceres played a fundamental role in the development of that plebeian consciousness of itself as a class opposed to the patricians. 100 Long after the “struggle of the orders” was over, the theory goes, Ceres and her cult continued to play a major role in the social conflict of later times. 101 However, in accordance with the premise of this chapter, we cannot assume Ceres’ plebeian associations. Those scholars who have offered the arguments have attempted to describe in detail the relationship between the goddess and plebeian consciousness throughout the history of the Republic. However, the arguments for Ceres’ plebeian nature have been presented in detail in this chapter and rejected. I have attempted to show that the arguments for Ceres’ plebeian associations are deeply flawed, and therefore an analysis of Ceres’ role in plebeian social consciousness will inevitably be fruitless. What remains to be done in this chapter, therefore, is to discuss briefly some of the interpretations offered by previous scholarship of Ceres’ involvement in the political life of the Republic, and then to attempt a new analysis of Ceres’ role in the political struggles of the last two centuries of the Republic which is not based on

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faulty assumptions about her special relationship with the *plebs* as a self-conscious social class within the broader community.

I have already discussed at great length the theory offered by several scholars that the timing of the vow and dedication of the temple of Ceres, Liber, and Libera reflects the nature of the triad as the cult *par excellence* of the “plebeian community”. The argument of Le Bonniec, that the annalistic tradition about the vow and dedication of the temple as it comes down to us is accurate and therefore reflects a relationship between Ceres and the *plebs* has been rejected. So, too, I have shown why the argument, pursued by Spaeth, Sordi, and originated by Ed. Meyer, that the tradition has been altered to bring the establishment of the “plebeian organization” into line with the establishment of the temple of Ceres, is not supported by the evidence. I see no reason to doubt the historicity of the tradition as regards the date of the vow and the dedication of the temple. But there can be no reason to accept, with Le Bonniec, that the timing of the vow and the dedication has the political significance that he believes, unless the plebeian associations of Ceres are either assumed or otherwise proven. I hope that I have shown that those associations cannot be proven by any evidence. However, the circumstances of the vow of Aulus Postumius should provide us with another interpretation of the significance of Ceres in Roman politics.

As I have noted above, Dionysius relates that the vow of the temple by the dictator Postumius was made in response to a crisis.\(^\text{102}\) The Romans feared that they would ultimately be destroyed by their failing crops and lack of imported food, and

\(^{102}\) DH 6.17.2-4; 6.94.3.
would therefore be unable to resist the invading Latins, who were attempting to impose Tarquin upon the Romans once again. We are told that following the vow, the crops improved and trade picked up, allowing the Romans to brave the onslaught and defeat their enemies at Lake Regillus, thus preserving their nascent *libertas*. The vow was made, Dionysius tells us, “on behalf of the *polis*”, which can only mean that Postumius, at least according to the tradition, had vowed the temple for the entire community. I suggest that the legend of the temple’s origins lent a significance to the cult for the Romans that it might not have developed otherwise. For the Romans, Ceres became the guarantor of their *libertas*. Her association with the lesser-known deities, Liber and Libera, cannot but have encouraged this association in the Roman mind.\(^\text{103}\)

The association in the Roman tradition between Ceres and the foundations of the tribunate reinforces, and perhaps derives from, the attribution to Ceres of the protection of Roman *libertas*. When the Valerio-Horatian laws decreed that *senatus consultum* should be stored in the temple of Ceres, the object was preservation of *libertas*, but, as I have shown, there is no sense in which the *libertas* that was being protected was that of the average plebeian. In this case, Ceres was the guarantor of the *libertas* of the senate, or of all citizens. Nor was the cult of Ceres somehow set in opposition to the “patrician” cult of the Capitoline triad.\(^\text{104}\) The very concept of the “patrician” associations of the Capitoline triad has been called into question throughout the course of this chapter. The problem lies in the fact that the kinds of evidence adduced to attribute to Ceres, Liber, and Libera

\(^{103}\) Although Liber was originally a god of the vine, and this is probably the reason why he and Libera were associated with Ceres in the first place, the fact that the temple on the Aventine or in the Forum Boarium was “the Temple of Ceres, Free, and Free” must have carried some non-agricultural associations for the Romans.

\(^{104}\) So, Spaeth (1996) 91-92; Le Bonniec (1958) 293.
particularly “plebeian” associations could yield similar results for Jupiter, Juno, and Minerva. If Ceres is plebeian, because she protects the plebeian magistrates, then the same can be said of Jupiter. If Ceres is plebeian, because the aediles of the plebs celebrate the games in her honor, then the same can be said of the Capitoline triad. If Ceres is plebeian, because the aediles of the plebs make offerings at her temple, then the same can be said of the Capitoline triad, as well. Certainly nothing is to be gained by such assertions as that of Le Bonniec, who argued for a rivalry between the two cults on the basis of the fact that both triads had two female and one male deity, whereas one had a male at its head and the other a female, making the triad of Ceres, Liber, and Libera “le calque et l’antithèse” of the Capitoline triad.

Perhaps more can be gained from the proper interpretation of the political significance of the cult of the Magna Mater, which was introduced to Rome near the end of the second Punic War. The political significance of the Magna Mater as a cult center for the nobilitas was recognized to some extent by Graillot; however, in his mind the cult was set up particularly to rival the plebeian cult of Ceres. The two cults, therefore, “représentent les deux elements de la Cité.” This view has been followed in subsequent scholarship on Ceres, and has been elaborated quite impressively by Spaeth. However, the preoccupation with the concept of Ceres as “goddess of the plebs” has led scholars to perceive a rivalry where none existed. If Ceres is the plebeian goddess par excellence, then the cult of the Magna Mater must become the focus of patrician

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105 Graillot (1912) 57.
106 Le Bonniec (1958) 365-367.
devotion. Such assumptions have lead Spaeth to confuse a relationship between the new cult and the nobilitas, with one between the cult and the by now politically insignificant patrician class.\footnote{86} The significance of cult in Roman politics can be better understood, if we do not interpret the cult in terms of a rivalry with the cult of Ceres. I shall discuss this problem more thoroughly in my chapter on the Ludi, but I suggest that we ought to consider the exploitation of the cult of the Magna Mater, not in terms of a conflict between patricians and plebeians, and their respective tutelary goddesses, but one between an ever more disaffected populace and a nobilitas desperately trying to reassert itself after a long and devastating war.

If Ceres is a quintessentially plebeian goddess, then her appearance in the political propaganda of the late Republic can be interpreted as an attempt on the part of the Roman aristocracy to curry favor with the plebs by seeming to honor the goddess of that class.\footnote{109} And her image was, in fact, used widely by supporters of Caesar, the tyrannicides, and the triumvirs in the last years of the Republic. By this interpretation, these men were seeking to win over the hearts and minds of the plebs as a self-identifying social class. However, as I have shown, no such associations can be proven. Therefore, a new interpretation must be offered. We may, of course, attempt the simplest possible explanation by reference to Ceres’ role as grain goddess. When late Republican

\footnote{86} She makes such assertions as that “games were established to honor the goddess at which the patrician senators received special privileges” based on Val. Max 2.4.3 (Per quingentos autem et quinquaginta et octo annos senatus populo mixtus spectaculo ludorum interfuit. sed hunc morem Atilius Serranus et L. Scribonius aediles ludos Matri deum facientes, posterioris Africani sententiam secuti discretis senatus et populi locis soluerunt, eaque res avertit uulgi animum et fauorem Scipionis magnopere quassuit.) and 4.5.1 (a condita urbe usque ad Africanum et Ti. Longum consules promiscuus senatui et populo spectandorum ludorum locus erat. numquam tamen quisquam ex plebe ante patres conscriptos in theatro spectare sus tinuit), which clearly state that it is the senators, not the patricians in particular, who are given special privileges.

\footnote{109} The implications of this theory are explored exhaustively by Spaeth (1996) 97-101.
aristocrats utilized the image of Ceres on their coinage, they were perhaps promising abundance to the Roman people. But this view does not take into account the complex of political ideas at play in the late Republic. Ceres represents not a plebeian religion, but neither does she represent only abundance. A vital element of her character is as guarantor of Roman *libertas*, for both aristocracy and common people.

A recent study by Morstein-Marx has shown that *libertas*, when it appears in the writings of Caesar, was no simple reference to the freedom of Caesar’s men (i.e., reflecting the fear of losing their citizenship in the event of a Pompeian victory), nor a simple focus-group-tested slogan of Caesar the propagandist. Instead, the word reflected a sophisticated political idea, present in the minds of Romans, common men and aristocrats alike, that the civil wars—in this case, particularly the conflict between Pompey and Caesar, which resulted in Caesar’s being denied the ability to stand for consul *in absentia*—were threatening the people’s right (*libertas*) to choose its leaders.\(^{110}\)

Conceived in light of this interpretation, and my argument that Ceres was not recognized as a specifically “plebeian” deity, I argue that we must reconsider the use of Ceres in the propaganda of the late Republic. Caesar, the tyrannicides, and the triumvirs did not exploit the image as a cheap play for the affections of the class-conscious plebs. Instead they appealed to the concern that was very real to their contemporaries, nobles and commons alike, that the balance of things—the right (*libertas*) of the common man to offer the reward of office to those members of the *nobilitas* who had earned it through their service to the state (*dignitas*)—was threatened by the civil wars. The very existence

\(^{110}\) Morstein-Marx (2009).
of the Republic, they argued, was being directly threatened by their political enemies.

The natural order of the state had to be protected by those who respected the protectress of Roman libertas—Ceres.
Chapter 3
The Aventine and the Plebs

3.1 Introduction: The Plebeian Suburb

If Ceres was not the special goddess of the *plebs*, one is left to discover what evidence can be found for the existence of a self-identifying plebeian movement or a plebeian community separate and distinct from the *Gesamtgemeinde*. What one will find in works of modern scholarship is the ubiquitous notion that the Aventine hill was distinctly plebeian. The *Aventinus mons* has been variously described by scholars as the “plebeian district”, “the plebeian suburb”, a “traditionally plebeian hill”, “the political and administrative centre” of the plebs, or “the seat of the peculiar religious and political organization of the plebs.”¹ Others have more vaguely maintained that the hill had “plebeian associations”.² But, the sentiment is the same throughout modern studies of the social history of early Rome. In the words of one scholar, “[t]he most prominent feature of the Aventine hill to a Roman would have been…its connection with the plebeian class.”³

In studying the cult of Ceres, Liber, and Libera in the Roman Republic, I encountered the great difficulty that no Roman author ever explicitly asserted a

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² Cornell (1995): 256. For Mitchell (1990): 59, “[t]he Aventine was closely identified with plebeians…”.
relationship between Ceres, or any other divinity, and the *plebs per se*. No source used the words *dea plebeia* or *di plebis*. The absence of such phrases from ancient literature raises the fundamental problem of discerning just what it was that could make a god or a cult particularly “plebeian”. The problem is the same in unpacking the plebeian associations of the Aventine hill. Since no ancient author ever directly asserted these associations, the modern student is forced to piece them together from indirect evidence. Unfortunately, the impression that the Aventine is the “plebeian suburb” is and has for so long been understood and assumed by modern scholars that no one has felt it necessary to make the argument or to analyze the evidence in detail. That is the work of this chapter.

I shall proceed by pulling together the various arguments put forward by modern scholars to support the idea of the Aventine as “plebeian quarter”. Here I shall argue that there is no sense in which the Romans of the Republican period would have identified the Aventine particularly with the *plebs*. That is not to say that the Aventine did not have “plebeian associations”. Of course it did—it was traditionally the site of the second secession of 449, and the seceders were plebeian. Likewise, at least after the *lex Icilia de Auentino publicando* of 456, if our sources give us any sense of what this law did, many plebeians would have lived there. But, just as we have seen with Ceres, the kinds of evidence adduced by scholars to show that the Aventine was a particularly plebeian hill either fail to stand up to scrutiny, or can likewise be used to assert the plebeianness of many regions, both within the city and without, with the result that “plebeian associations” lose their significance in any discussion of the social history of early Rome.
3.2 The Origins of the “Plebeian Quarter”

More than a century after its publication, the standard discussion of the Aventine in antiquity remains Merlin. For the reasons discussed, Merlin never directly argues for the Aventine’s plebeian associations. Instead, he attempts to explain the process that brought them into being:

Pour faire de l’Aventin le quartier plébéien de Rome par excellence, des causes multiples ont agi dont nous avons déjà examiné quelques-unes: la situation géographique de la colline, sa rivalité avec le Palatin, l’établissement des Latins vaincus, l’exclusion du pomerium. Mais le tableau serait incomplete, si nous ne réservions une place spéciale à la lex Icilia de Aventino publicando.

This chapter will begin with an analysis of each of these ideas separately. I will show briefly that none of these arguments constitutes evidence for plebeian associations. Further, many of these ideas rest on assumptions about the nature of the plebs that are no longer tenable, with the result that, even if the Aventine could be shown to have had particularly plebeian associations, these arguments of Merlin would fail to explain them.

Establishment of the defeated Latins. According to both Livy and Dionysius of Halicarnassus, Rome’s fourth king, Ancus Marcius, conquered the Latin town of Politorium.\(^4\) The king then transferred the population of Politorium to the Aventine, not only to enlarge the population of Rome, but also to fortify a part of the city potentially

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\(^4\) Liv. 1.33; DH 3.37, 43. Ogilvie (1965) 136-137.
vulnerable to foreign occupation. Afterward, he also moved the defeated peoples of Tellenae and Ficana to the Aventine, and included it for the first time within the city’s defensive walls. For Merlin, this legend serves to explain the plebeian nature of the Aventine.\(^5\) The basis of this reasoning is the assumption that a direct identification can be made between the defeated Latins and the \textit{plebs}. If the \textit{plebs} in archaic Rome was a separate ethnic group of Latins, then this legend might reflect a connection between them and the Aventine.

Le Bonniec incorporated a similar identification of the archaic \textit{plebs} with a separate Latin ethnicity at Rome when he argued that the vowing of the temple of Ceres, Liber, and Libera by the dictator Aulus Postumius before the battle of Lake Regillus was a concession to the \textit{plebs} in order to ensure their loyalty against their fellow Latins.\(^6\) As I have already suggested, the identity of the \textit{plebs} with a particular ethnic group is an invention of modern writers and is no longer widely accepted by scholars.\(^7\) Merlin’s argument, therefore, must be rejected on the grounds that it fails to demonstrate any plebeian associations for the Aventine. It would, further, fail to explain those associations if they existed, unless one could find solid ground for the identification between \textit{plebs} and Latins.

Exclusion from the \textit{pomerium}. The exclusion of the Aventine from the \textit{pomerium} has played a significant role in many scholars’ understanding of why the \textit{plebs} chose the hill as the center of their political movement. The argument is that the extra-

\(^5\) Merlin (1906): 36-41, 69.  
\(^6\) Le Bonniec (1958): 343; Ch. 2.  
constitutional “state within the state”, with its own institutions, including its own cults, could not have established its center within the sacred boundary of the whole community. It is not apparent to me, however, why the plebs, which is supposed to have been a revolutionary organization, whose goal it was to overthrow patrician power in the state, should have chosen to respect the authority of the Gesamtgemeinde to exclude them from the pomerium. Consequently, the extrapomerial status of the Aventine neither constitutes evidence from plebeian associations, nor serves to explain how they came to be.

How, then, are we to explain the exclusion of the hill from the pomerium? The key text comes from Seneca, who criticizes the frivolity of contemporary Roman scholars who had fallen into Graecorum iste morbus of inquiring into useless things.\(^8\)

\begin{quote}
Sed, ut illo reuertar unde decessi et in eadem materia ostendam superuacuam quorundam diligentiam, idem narrabat Metellum, uictis in Sicilia Poenis triumphantem, unum omnium Romanorum ante currum centum et uiginti captiuos elephantos duxisse; Sullam ultimum Romanorum protulisse pomerium, quod numquam prouinciali sed Italico agro adquisito proferre moris apud antiquos fuit. Hoc scire magis prodest quam Auentinum montem extra pomerium esse, ut ille affirmabat, propter alteram ex duabus causis, aut quod plebs eo secessisset aut quod Remo auspicante illo loco aues non addixissent…?
\end{quote}

But to return to the subject from which I have digressed and to demonstrate the vain diligence of some on the same things, this same man explained that Metellus,

\(^8\) De breu. 13.8. cf. Gell. Na 13.14, who also informs us that the pomerium was extended to include the Aventine by the emperor Claudius.
when he was triumphing after defeating the Carthaginians in Sicily, was the only Roman to lead 120 captured elephants in front of his chariot; that Sulla was the last of the Romans to extend the *pomerium*, which among the ancients it was never customary to extend upon the acquisition of provincial land, but only Italian. Is it more useful to know this than that the Aventine Mount was outside the *pomerium*, as he affirmed, on account of one of two reasons, either because the *plebs* had seceded there, or because when Remus was taking the auspices on that spot the birds had not been favorable…?

At the risk of being diagnosed with the Greek disease, it is necessary to explore the suggestions of Seneca’s unnamed contemporary. He offers two possibilities. The first has obvious relevance to us. Perhaps the *imperatores* of the Republic who had the opportunity to extend the *pomerium* chose not to include the Aventine in the extended borders because the *plebs* had once gone there during a secession. This suggestion would fail to explain why the hill was excluded from the *pomerium* to begin with, but it represents a possible explanation for the repeated failure of Republican generals to include it. The details of such a conjecture are lost to us. We do not know just why the second secession would have excluded the Aventine in the minds of Romans during the Republic, nor why Claudius should have chosen to include it during his reign.

The second explanation, the failure of Remus’ auspices, is perhaps the more compelling of the two. Since in its origins the Remus myth was quite possibly, at least in part, an aetiology to explain the exclusion of the hill from the *pomerium*, this account
fails to explain the origins of this peculiarity. However, it is very possible that it would explain the fact that the Romans would chose not to include this hill alone from the sacred boundary, even as it was expanded in other directions. This explanation has the added benefit of being affirmed by Messala, who wrote:

Idcirco omnes qui pomerium protulerunt montem istum excluserunt, quasi auibus obscenis ominosum.

Accordingly, all those who extended the *pomerium* excluded this hill, since it was ominous because of the birds of ill omen.

Gellius further informs us that this is just one of *huius rei aliquot causae* reported as possibilities by Messala. The conclusion must be drawn that the relationship between the secession and the exclusion from the *pomerium* was just one of many speculations about the continued exclusion of the Aventine. We cannot know what Sulla, for instance, had in mind when he failed to extend the sacred boundary around the Aventine, or what considerations led Claudius to do so. However, we can say with certainty that the exclusion from the *pomerium* cannot be shown to have been an initial cause for the plebeianess of the hill. Such an argument first assumes that the Aventine was seen by Romans as particularly plebeian.

The *lex Icilia de Auentino publicando*. Livy twice makes oblique reference to a law which turned the Aventine into *ager publicus*. In his account of the affairs of 456 BC, he tells us that *de Auentino publicando lata lex est*. Later, he tells us that this law

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11 3.31.1
was a *lex Icilia* and that it was among the *leges sacratae* which were not to be abrogated by the incoming *decemui*ri.\(^{12}\) Dionysius provides more detail. According to his account, a man named Icilius, an energetic and, as Romans go, an eloquent leader of the college of tribunes, introduced a measure to divide up the Aventine among the plebeians (οἱ δημόται) for the building of houses.\(^{13}\) This account usually provides the strongest evidence for those scholars who wish to find the origins of association between the *plebs* and the Aventine hill during the Republic.

Any discussion of the plebeianness of the Aventine must begin with Merlin. His arguments for *le quartier plébéien* begin with the settlement on the Aventine of displaced Latins by Ancus Marcius. As I have noted, the association between Latins and *plebs* has not been demonstrated. However, even if we should assume that association, the argument is problematic, because the *lex Icilia* first removed some of the holders of land on the Aventine, before dividing it up among the citizens. That is, if the occupation of the hill by plebeians goes back into the monarchy, then the confiscation of the land on the Aventine must have been executed at the expense of plebeians. Accordingly, the Aventine would have been made plebeian by the removal of plebeians from the hill. Of course, this makes little sense.

More recent scholarship, however, has down-dated the plebeianness of the hill to 456, arguing that it was with the *lex Icilia* itself that the Aventine came to be occupied by and associated with the *plebs per se*. Prior to that, Ogilvie argues, the hill was associated with the Latins and other foreigners, as is suggested by the establishment of the cult of

\(^{12}\) 3.32.7
\(^{13}\) The whole account is DH 10.31-32.
Diana there by Servius Tullius as the center for the Latin League. This interpretation would also explain both the story of the settlement of the Latins by Ancus Marcius and the fact that, while the first secession is placed on the Mons Sacer by Livy and Dionysius, the second went to the Aventine.\textsuperscript{14} Heurgon, too, sees the law as the catalyst for a change from Latin to plebeian associations, though he would go so far as to assert that the law turned the hill into “the seat of plebeian administration”.\textsuperscript{15}

It is important for us to consider carefully just what our sources tell us that this law did, and then ask whether the law would have made the Aventine particularly plebeian. Livy’s account does not give us much to work with. We are told only that the law was de Auentino publicando— that is, the law turned the hill into ager publicus. According to Dionysius, the bill included the following terms:

1) Legally-held land on the Aventine should remain in the possession of its owners;

2) Such land as was held either by force or by fraud should be handed over to the demos;

3) Those occupants who were removed from their land should be compensated in an amount to be decided by arbitrators (diaitetai);

4) The rest of the land, being public (demosia, i.e. ager publicus), should be divided up amongst the demos free of charge.

While the terms of this law certainly would have resulted in the migration of many plebeians to the Aventine, it seems unlikely that this change would have resulted in

\textsuperscript{14} Ogilvie (1965): 446-447.
\textsuperscript{15} Heurgon (1973): 177. Of course, see also Merlin (1909): 69-79, for whom une place spéciale must be reserved for the lex Icilia.
causing the hill to be associated specifically with the *plebs*. Consider, first, that the terms of the law, as it is described to us by Dionysius, provide that all those who resided on the hill legally were to maintain possession of their property. If these terms reflect an actual law of the year 456, they hardly reflect a revolutionary takeover of the Aventine by the *plebs*, as some scholars have argued.\textsuperscript{16} As with the *lex agraria* of 133, the current possessors of the land were even to be compensated for what they held illegally. Finally, we simply do not know how many would have been removed from land in their possession as a result of this law, and, therefore, how many plebeians would have ended up moving there.

The terms of this law alone, as they come down to us, do not serve as evidence for the plebeianness of the Aventine. What we can assert with some confidence is that the law seems to have turned the Aventine into *ager publicus* and then divided that public land up amongst the Roman people. There is no positive reason to argue that these provisions would have caused the Aventine to have been associated particularly with the *plebs*. But we must consider the possibility that the terms of the law have been distorted. This is the position of De Sanctis.\textsuperscript{17} The argument is based on the narrative of Livy. During the debate over the composition of the decemvirate, whether it would include plebeians or be an exclusively patrician body, the plebeians finally conceded the matter

\begin{verbatim}
modo ne lex Icilia de Auentino aliaeque sacratae leges abrogarentur
\end{verbatim}

De Sanctis rightly interprets this text as suggesting that the *lex Icilia de Auentino publicando* was a *lex sacrata*, and accordingly associates it with the other *leges sacratae* of which we are

\textsuperscript{17} ibid.
aware, most famously that guaranteeing the sacrosanctity of the plebeian tribunes. Since De Sanctis, like most modern scholars, believes that the *lex sacrata* of 493 was nothing more than an extra-constitutional oath sworn by the plebeians to protect the persons of the tribunes, he extrapolates that the law of 456 must also have been an oath. That is, he argues that the *lex Icilia* was founded on nothing more than a “unilateral decision by the plebs to occupy public land on the Aventine, and to protect individual settlers against eviction, if necessary by force.”\(^{18}\)

This argument forms the basis for Cornell’s interpretation of the validity of plebiscita in the Roman Republic prior to 287—namely that they were all *leges sacratae* of this type—and has much to commend it. In another chapter, I shall adopt a very similar position on early Roman legislation. If De Sanctis and Cornell are correct, then it would be reasonable to assume that the Aventine, having been commandeered in this way by the plebeian “state within the state”, would have come to be associated particularly with the plebs. The historical tradition would, then, have come to misunderstand the significance of the law, taking it out of its revolutionary context and succumbing to the persistent urge of Roman historians to make early Roman institutions behave like those of the historians’ own day. The account of Dionysius, for instance, which provides great detail about the procedure followed by the tribune Icilius, including proposing the bill first to the senate, and allowing a consul to propose the law to the centuriate assembly, “has sacrificed all historical plausibility on the altar of constitutional propriety.”\(^{19}\)

\(^{18}\) Thus solving the objection of Binder (1909): 473 ff., that a plebiscite had no binding force—the plebeians simply decided to take the Aventine, and did so by force.

If we should accept this argument, we would then have to reconsider the significance of the law entirely. Since the historical tradition has turned a unilateral decision by a revolutionary organization into a proper law enacted through constitutional procedure, we must assume that the terms of the bill have been distorted by the tradition as well. But I suggest that we would not be on solid ground if we should choose to disregard the account of Dionysius. The ease with which Dionysius’ account is dismissed arises from the fact that most modern scholars assume that any political action in the early Republic must pertain to the protracted struggle between patricians and plebeians. Therefore, a law proposed by a tribune, and bearing his name, must have been a revolutionary act. Therefore, Dionysius’ account, which includes the details of an elaborate procedure involving a kind of cooperation among tribunes, senate, consuls, and centuriate assembly must be nonsense.

Throughout this dissertation, I call into question such assumptions. We can only dismiss Dionysius’ account on these grounds if we first assume the revolutionary nature of the tribunate. That is to say, we can conclude that the *lex Icilia* commandeered the Aventine for the *plebs*, if we can assume that the law was revolutionary because any proposal by a plebeian tribune must be revolutionary. If the *plebs* is by its nature revolutionary, a tribunician proposal must be revolutionary. But part of the argument for the revolutionary nature of the *plebs* is the belief that they had their own region of the city, the Aventine, which served as the center of their identity and their separatist administration. The argument is circular. We must, then, find other grounds for abandoning Dionysius’ account in favor of Livy’s—and for assuming that Livy’s version
reflects the kind of unilateral revolutionary act that De Sanctis proposes. As I see it, there are three conceivable reasons for abandoning Dionysius’ version of events. First, one might argue that the details which he describes are of necessity fiction, since an authentic account of the terms of the law could not have survived down to the 1st century. Second, one might argue that the similarity of the bill to the lex Sempronia agraria of 133, mentioned above, smacks of retrojection of later realities onto a hard core of historical fact. Finally, one might suggest that Dionysius’ version is simply too concerned with procedural niceties to reflect a mid-5th-century reality.

Let us consider first the objection that the details of the law could not have survived. We must first acknowledge the fact that Dionysius states explicitly that the text of the law was inscribed on a stele in the temple of Diana on the Aventine in his own time. This is not without its problems, since archaic Latin was difficult to decipher even for educated Romans, and it is certainly likely, therefore, that Dionysius would have been unable to make sense of it himself, if he had ever even seen the inscription. However, it is unlikely that the inscription in the temple could have been so badly misinterpreted by the historiographical tradition that it could have turned a law backed up only by the “lynch justice” of the plebeian movement into the kind of orderly affair described by Dionysius. Likewise, the objection that the law bears similarities to the mid-2nd-century law of Tiberius Gracchus must deal with the fact that the text of the law was extant in Dionysius’ own time. It is not unlikely that the text of the law could have

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20 As, for instance, Forsythe (2005): 207, who suggests that the law’s “central purpose may have been to demarcate the sacred land of these [i.e., the temples of Diana and of Ceres, which Forsythe believes was situated on the Aventine] and other less famous shrines from the remaining public and private ground of the hill.”

21 DH 10.32.4.
been interpreted in light of the latter law, and difficult passages explicated through reference to it, but it is also likely that the law would have made provisions for allowing certain individuals to retain their land on the Aventine.

Finally, according to Cornell, Dionysius was aware of the difficulty that was created by the fact that the *lex Icilia*, which was in reality a *plebiscitum*, and therefore had no binding authority whatsoever, seems to have been put into effect as if it were a legitimate *lex*. Therefore, he argues, the historian circumvented this difficulty by inventing a story about the tribune Icilius going through an elaborate constitutional procedure to get his law passed. But, I suggest, this is not what Dionysius is doing. Let us consider his account in more detail. In the year 456, according to Dionysius, there was civil strife “out of which the tribunes wrested away some of the consular power.” Specifically, until this point, the tribunes were unable to call the senate to order or to speak there. When Icilius initially proposed his bill, he attempted to get the senate to pass a *probouleuma* and then propose it to the *demos*. When the consuls delayed the matter, Icilius sent his attendant to demand that they convene the senate, but the consuls sent one of their lictors to force back the attendant. Claiming that this was a violation of tribunician sacrosanctity, the tribunes threatened to execute the lictor, and were only prevented from doing so by the entreaties of the leading patricians. As a result of this crisis, a meeting of the senate was called at which the consuls hurled charges against the tribunes, and the tribunes against the lictor. During the session, Icilius then proposed his bill to the senate. The matter was discussed, with only one senator offering a dissenting
opinion (a Claudius, of course), and passed. The bill was then duly brought before the centuriate assembly and passed.

That is to say, in the account of Dionysius, the law was passed without controversy—in fact, it was even quite popular with the senators! The trouble arose over the tribunes’ desire to propose the bill directly to the senate. For Dionysius, what was remarkable about this episode was not the passage of the law, but the manner of its passage. By coercing the consuls into calling a meeting of the senate, the tribunes were able to set a precedent whereby they might propose legislation to the senate and ask for a probouleuma. This precedent was achieved through violent coercion—really a quintessential episode from the “struggle of the orders” as our ancient sources imagined it. That is hardly a matter of sacrificing historical reality for constitutional propriety.22

That is, of course, not to say that Dionysius’ account reflects the historical reality of the year 456.23 There are good reasons to doubt it. It is doubtful, for instance, that the senate played the role described by Dionysius in legislation at this early period.24 However, we cannot read this account and assume that it is fundamentally different from Livy’s version. In both accounts, this year is characterized by the passage of a law that

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22 This will be a separate paper someday. The argument is that most modern interpretations of the historiographical tradition argue that ancient authors believed that the republic arose fully formed after the expulsion of Tarquin, and that every institution either already existed at that point, or was invented “by a landmark piece of legislation of the early Republic.” Instead, I suggest, Livy, Dionysius, and Plutarch all paint a picture of a protracted struggle between institutions, negotiating the limits of their respective powers over the course of the first two centuries of the Republic, more through the establishment of precedent and open debate than through the passage of specific laws.

23 Serrao, F. (1981b): 129ff., however, accepts the account as fully historical.

24 Cornell (2000) argues convincingly that the senate was little more than an advisory council to the consuls until the passage of the lex Ouinia at some point in the second half of the 4th century. The probouleuma, which often appears in Dionysius’ history as an integral part of the legislative process, is also generally regarded in modern scholarship as a misinterpretation of the patrum auctoritas, which was probably not given before voting in the centuriate and curiate assemblies until after the lex Publilia of 338.
was originally introduced by a tribune by the name of Icilius. The law seems to turn the Aventine into *ager publicus*. Livy implies that the law is a *lex sacrata*, whereas Dionysius says that the law was proposed initially to the senate and ultimately passed in the *comitia centuriata* under the presidency of the consuls. I shall deal in more detail with *leges sacratae* in each of the following chapter. However, I will assert here that, while there is good reason to believe that the *lex sacrata* was probably a fundamental tool in early Roman legislation, it was almost certainly not utilized exclusively by the *plebs*. There is no reason to assume that Livy and Dionysius are following separate traditions when one asserts that the law was *sacrata* and the other that it was passed in the centuriate assembly. The first describes the manner of punishment of the offender, the second the manner of its passage. What we are left with is an account of the passage of a law, which is nowhere asserted to have been controversial in itself. We cannot argue that the law was a revolutionary action on the part of the *plebs* unless we should first assume that any law benefiting plebeians, or proposed by a tribune was by its nature a revolutionary act in the 5th century. The argument, therefore, must rest on the terms of the *lex Icilia*, which seem to do nothing but provide for space for some housing for the Roman people. Although the beneficiaries of the law would certainly have been plebeians, that does not mean that after this law the population of the hill was exclusively

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25 The objection has been raised that a law passed in the centuriate assembly under the presidency of the consuls would have taken the name of the consul who had officially proposed it, rather than the tribune who had originally come up with the bill. This may be true, provided that the strictures of the legislative nomenclature of later periods were present in the 5th century. However, this objection does not affect my argument unless we can assert that Livy’s use of the phrase *lex Icilia* was necessarily intended by him to refer specifically to the official title of the law. This was just a simple way for Livy to refer to a law that originated with Icilius. If we should insist that Livy persistently adhered to strictures in these matters, we would also have to ask why Livy would have called it a *lex*, when modern consensus holds that a law proposed by a tribune and passed in the tribal assembly was called a *plebiscitum*. 104
plebeian, nor that the hill would have come to be associated with the plebeian class per se, unless we should also assert that every part of the city occupied by plebeians was, by its nature, “plebeian”. Such an argument would have most of the city being plebeian.

3.3 The Political and Administrative Center of the “state within the state”

If we follow some of the most elaborate statements of the plebeian associations of the Aventine, the hill was actually the headquarters of the plebeian “state within the state”. This view is often asserted as part of the evidence for other arguments pertaining to the plebeian organization or the Aventine hill. However, as far as I am aware, there has never been a systematic attempt to prove it, which makes my efforts here difficult. There are three arguments which I believe could be used to make the Aventine the headquarters of plebeian institutions. The first would be the belief that the concilium plebis might have held its meetings there. I am, however, aware of only one certain instance a concilium plebis being held on the Aventine, namely the election in 449 of tribunes of the plebs after the ouster of the decemvirs. To be sure, this election shows a connection between the tribunes and the Aventine, but it is notable for the fact that Livy declares that the election was held on that spot because the second secession had moved to that hill first. There is no other evidence of meetings of a concilium plebis on the Aventine. Nor should we infer from this episode that the plebeian assemblies were held there at other times. The story of the election of tribunes on the Aventine no more

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26 Heurgon (1973): 167: “Beside the patrician state a plebeian state arose, with its own magistrates, the tribunes and aediles of the plebs, its own gods, Ceres, Liber and Libera, its own political and administrative centre, the Aventine, its own assembly, the concilium plebis.” Alföldi (1965): 90: “The hill was…the seat of the peculiar religious and political organization of the plebs.”
27 Liv. 3.54.
compels us to assume that that hill was the regular site of the *concilium plebis* than the
election of the first tribunes on the Sacred Mount in 493 compels us to assume that the
assembly was regularly held there. The only other possible instance of an assembly being
held on the Aventine was the election of Seianus as consul in AD 30, attested only in a
poorly preserved inscription.\(^\text{28}\) Even if the inscription made reference to a consular
election held on the Aventine in that year, elections of consuls were held in *comitia
centuriata*. A second argument would relate to the belief of some scholars that the first
secession went to the Aventine, rather than to the *Mons Sacer*. I shall argue below that
the association of the first secession with the Aventine was a late tradition. But first, it is
necessary to deal with what is probably the primary argument for an Aventine home of
the plebeian institutions—namely, the belief that the temple of Ceres, Liber, and Libera
was the headquarters of tribunician and aedilician activity, as well as the presence of
other supposedly plebeian cults.

3.4 Plebeian divinities on the Aventine

Ceres, Liber, and Libera. In the previous chapter, I argued that the *aedes Cereris*
should not be used as evidence for a plebeian “state within the state”. More to the point,
the cult of these three gods cannot be shown to have been particularly plebeian, or to
have contributed in any way to any kind of self-conscious plebeian community, separate
and distinct from the *Gesamtgemeinde*. In order to argue that the presence of Ceres’
temple on the Aventine contributes to the plebeian character of the hill, one would first

\(^{28}\) Syme, R. (1956), though even he relates Seianus’ election on the Aventine to an attempt to curry favor
with the *plebs*. 

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have to prove that Ceres’ cult was particularly plebeian in nature. Further, if one hoped to prove that the presence of Ceres’ temple on the Aventine made the hill the political and administrative center of the plebeian “state within the state”, one would have to prove that the aedes Cereris itself was the headquarters of the tribunes and aediles. However, as I argued in the previous chapter, the arguments for such an arrangement are few and all rest on the assumption of Ceres’ close relationship with the plebs.

More important is the fact that the temple was probably not situated on the Aventine, but rather in the Forum Boarium. The arguments for Ceres’ placement on the Aventine rest in large part on the assumption of a plebeian Aventine, which, as we see here, is based on the assumption of the placement of a plebeian Ceres on the Aventine. Accordingly, the placement of the temple of Ceres, Liber, and Libera does not contribute to the theory that the Aventine was the plebeian hill.

Mercury. It has long been argued that the cult of Mercury, which was situated on the Aventine, was associated during the Republic with the plebs. The most comprehensive study of the cult of Mercury during the Republic is Combet-Farnoux. In his formulation, there are two arguments for the plebeian association of this god and his cult. First, one might adduce his mercantile associations. To be sure, the majority of the merchants who would cultivate Mercury would have been plebeians. But that does not mean that the temple was associated with the plebeian class per se, but at most with an element of that class. The argument is no more persuasive than the idea that Ceres must have been plebeian because she was a grain goddess and plebeians ate grain. One might

29 Combet-Farnoux (1980); Ridley (1968); LeBonniec (1958); Merlin (1909): 181-84.
also suggest that Mars was a plebeian god, because he was a god of war, and the majority of the Roman army was made up of plebeians.

But Mercury’s plebeian associations are more commonly derived from the cult’s foundation myth. According to Livy, in 495, the frustration and desperation of the plebs was increasing. During the year, the consuls argued over which of them would be granted the honor of dedicating the new temple. In order to settle the dispute, the senate referred the matter to the populus. However, they chose to honor neither consul, but instead gave the dedication to a primipilus by the name of Laetorius, quod facile appareret non tam ad honorem eius cui curatio altior fastigio suo data esset factum quam ad consulum ignominiam. The concurrence of the fact of the god’s mercantile associations and this story of the cult’s origins in an assertion of the popular will have lead many scholars to believe that Mercury was a plebeian god. The story, as it is told by Livy and Valerius Maximus is generally not accepted as historical, but is sometimes seen to “commemorate the concern shown by the plebeians in the cult.” However, since this is the only episode in the historiographical tradition which seems to tie Mercury to the plebs, it seems overly optimistic to infer too much. One might instead interpret this episode as an ancient attempt to force a hard core of historical fact (the dedication of the temple of Mercury, possibly by a Laetorius, though the name of the dedicator may be a retrojection), into a narrative of struggle between patricians and plebeians. It is possible that there is an element of such a phenomenon at work. But even if we should accept this

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30 Liv. 2.27; Val. Max. 9.3.6.
story as historically sound, we would be on shaky ground to attribute permanent plebeian associations to a temple whose dedication was usurped from the consuls by the people before the plebeian institutions were even created.

To look at it another way, if we were to use the location of the temple of Mercury on the Aventine as evidence for the plebeian nature of the hill, we would have to accept it based on these two facts: that the temple was utilized mostly by plebeians, and that the tradition claimed that the temple was dedicated by a plebeian by popular decree, though the senate had wished it to be dedicated by one of the consuls. Even in the absence of my arguments to the contrary, these two facts do not stand as conclusive proof of Mercury’s plebeian associations.

Juno Regina. After the sack of Veii, we are told that M. Furius Camillus moved the temple of Juno Regina, that city’s patron goddess, to Rome, and rebuilt the temple on the Aventine.\(^{33}\) This cult of Juno is often asserted to have plebeian associations.\(^{34}\) The argument goes back at least as far as Ampere, who argued that Camillus could have built the temple within the pomerium (following the version of the pomerial rule according to which Italic deities were allowed within the pomerium), but preferred not to introduce the protectress of the enemy into the city that had spent so many years in fighting. Her preferred instead to build the temple in the “plebeian quarter” to honor their service and thank them for their cooperation.\(^{35}\) The argument goes, then, that the temple of Juno Regina was built on the Aventine to satisfy the plebs, who served in the Roman army,

\(^{33}\) Liv. 5.21-23.  
because building a temple on the Aventine would necessarily have been gratifying to the
plebs. This argument relies on the assumption that the Aventine is plebeian. If we must
assume that the Aventine is plebeian in order to show that Juno Regina was a goddess
particularly associated with the plebs, then we cannot use her plebeian associations to
argue that the Aventine was a particularly plebeian hill. However, Merlin makes a very
powerful observation:

Le monument fut érigé en un point du plateau de l’Aventin qui dominait le
Tibre, en face de la rive droite, pour attester la suprématie de Rome sur le
fleuve qui limitait autrefois les deux peuples, sur le territoire qui était jadis
au pouvoir des Étrusques de Véies et porta jusque sous l’Empire le nom de
ripa Veientana.36

Though his main point about the significance to the plebs of the placement of the
temple on the Aventine is unconvincing, his suggestion that the placement of the temple
overlooking the Tiber represents a powerful image is worth considering. The Aventine
could represent the public face, so to speak, of the city. Foreign deities represent both
Rome’s interaction with, and conquest of other cities. In this case, the placement of the
temple of Juno Regina in a prominent position on the Aventine would serve as a reminder
of Roman power, not only to the recently conquered Veientes, but also to anyone who
passes through Rome on the Tiber, or who enters the city.

Now a solution to an old problem begins to present itself. The Aventine’s extra-
pomerial status has contributed not only to theories about the hill’s plebeian significance,

36 Ibid. 198.
but has also inspired theories about the positioning of foreign cults. The theory, first introduce by Ambrosch,\(^{37}\) usually runs that there was a preponderance of foreign cults on the Aventine.\(^{38}\) Since the Aventine was outside the *pomerium*, the presence of foreign cults (usually including Juno Regina, Diana, Ceres, Mercury, and others) on the hill suggests that there was a rule during the Republic that no foreign cults could be brought within the city’s sacred boundary. This theory has found support in the fact that Augustus twice banned Egyptian cults from the *pomerium* as part of his propaganda campaign against Marcus Antonius.\(^{39}\) That, however, is the only explicit statement in an ancient source for the rule, and the presence of Egyptian cults within the boundary in 28 and 21 suggests that, at least at the end of the 1\(^{st}\) century there was no such rule. The “pomerial rule” has also had to be modified since Ambrosch has to account for the presence within the *pomerium* of certain cults of Italian extraction.\(^{40}\) The temple of Castor and Pollux, patently of Greek origin, was in the Forum—but this inconsistency was excused on the grounds that the cult was introduced through the Latins, and fell, therefore, within the Italian exception to the “pomerial rule”.\(^{41}\)

It has become apparent that this rule has had to be stretched so thin as to have become essentially useless. Orlin, however, argues that the Aventine was not a site for cults excluded from the community on account of their foreignness, but rather had a “hositable role” in marking the incorporation of a foreign cult (or a foreigner) into the

\(^{37}\) Ambrosch, J (1839).
\(^{38}\) This theory is explored in detail by Orlin (2002), including the thorny issue of what constituted a “foreign cult”.
\(^{39}\) Dio Cassius 53.2.4; 54.6.6.
\(^{40}\) Such as those of Juno Lucina and Fortuna.
\(^{41}\) Orlin (2002): 5; Schilling (1960).
community. This argument is based on the belief that the Aventine was the seat of the plebeian community. He argues that the Aventine, being the seat of plebeian cult and plebeian administration, served as the part of the city that welcomed outsiders into the wider Roman community. Those outsiders included both plebeians and foreign cults. Just as the plebeians had made the Aventine their base for seeking the recognition of the institutions and their community, the Romans used the Aventine as the seat of foreign cults (most of the time, anyway) in order to welcome them into the Roman fold. This theory, unfortunately, rests on the assumption that the Aventine was, in fact, the seat of the plebeian community.

The best solution to the problem, then, seems to rest with Merlin. While he was certainly wrong to follow Ampere in arguing that the placement of Juno Regina’s temple on the hill was a concession to the plebs, his argument that her situation served to remind foreigners passing and entering the city of Rome’s power stands up to scrutiny. This would also serve as a useful explanation for the location of the temple of Diana on the Aventine. Traditionally attributed to Servius Tullius, the temple’s foundation served as Rome’s first great claim to power among the Latins. The placement of this essentially Latin cult on the Aventine, designed to stake a claim to dominance in Latium, announced the claim to anyone who passed by or into Rome. We are, then, on the firmest foundation if we abandon any notion that temples placed on the Aventine were given a plebeian significance by their placement, or lent a plebeian significance to the hill thereby. Instead, we should begin to understand the presence there of certain cults from towns that
had been conquered by Rome (Juno Regina from Veii) or from regions over which Rome sought to make a claim of hegemony (Diana and Latium).

3.5 The Aventine and the Secessions of the plebs

“The Aventine was famous for two things,” writes Wiseman in his important book on the myth of Remus, “Remus in the augury contest, and the secession of the plebs.” The ancient tradition knew of three secessiones—one in 494/3, the second in 449, and the last, and the most poorly attested, in 287. While the tradition is not unified on the matter, Livy and Dionysius tell us that the first secession went to the Mons Sacer, with most accounts being in agreement. There exists, however, an alternate tradition. The first passage comes from Livy:

Ea frequentior fama est quam cuius Piso auctor est, in Auentinum secessionem factam esse.

This [i.e., the secession to the Mons Sacer] is the more common story than that whose author is Piso, that the secession was made to the Aventine.

According to Livy, then, Piso’s history, which is no longer extant, recorded a version of the first secession which had the plebeians camp on the Aventine instead of the Sacred Mount. Support for this view comes also from the following text from Sallust:

Maiores uostri parandi iuris et maiestatis constituendae gratia bis per secessionem armati Auentinum occupauere.

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43 Liv. 2.32.2; DH 5.45.2; Festus 422-424L; Ovid Fasti 3.663-4; Val. Max. 8.9.1; Pomp. Dig. 1.2.2.20; Cie. Brut. 54; Corn. Ap. Asconius 76C.
44 Liv. 2.32.3; Piso fr. 22P.
45 Sall. Jug. 31.17.
Your ancestors, for the sake of furnishing justice and establishing their dignity, twice took up arms and occupied the Aventine in secession.

Sallust implies that both the first and the second secessions made their way to the Aventine. We are, then, perhaps on solid ground. And many scholars have followed this version, claiming, for instance, that “[i]n the oldest accounts the plebs seceded to the plebeian hill, the Aventine, on the second as on the first secession.”46 This version has been so widely accepted by modern scholars, that reference to any secession to the Sacred Mount is often left unmade.47 The argument is rarely made explicit, but it seems that most scholars have accepted the version that Livy tells us he found in Piso’s history, and which Sallust implies in the words he puts into the mouth of C. Memmius, on the grounds that it is the oldest version.

On what grounds can the claim be made that Piso’s version is the oldest? It is certainly older than Livy’s account. But Livy says that the version he gives, that of the secession to the Mons Sacer is the frequentior fama—that is, most of his sources give that version. He even implies that Piso had invented this version by calling him its auctor. But let us consider the possibility carefully that Piso’s version was, in fact, the oldest. If that were the case, when Livy read his sources in search of information about the first secession, he found these two versions. If Piso’s version was, in fact, the older, then the

46 Ogilvie (1965): 489; but not p. 447, where he seems to suggest that the first secession to the Sacred Mount was authentic.
47 Orlin (2002) 8: “The most prominent feature of the Aventine hill to a Roman would have been not its extrapomerial status but rather its connection with the plebeian class. Most famously, the Aventine was considered to be the site of the first two Secessions of the Plebs…”; Ogilvie (1976): 108 (In regard to the first secession): “A body of plebeians withdrew to the Aventine and ‘struck’.”; Stockton (1979): 196: “The Aventine lay just outside the city boundary, the pomerium, and had originally been ager publicus which was given over to the plebs Romana for settlement in 456; thither the plebeians had regularly withdrawn in a body in the course of the formal secessions which had occasionally punctuated their struggles with the patricians in the very early Republic…”
story ought to have been in the accounts of his predecessors. Did the account of Fabius Pictor have the first secession go to the Aventine? What did Ennius have to say about it? Did Cato’s *origo populi Romani*, which covered the early years of the Republic, include an account of the first secession to the Aventine? If these works and others all tell of a first secession on the Aventine, then why does Livy insist that Piso is the *auctor* of that version? Who invented the *frequentior fama*, and why? Since Livy prefers older versions as being more reliable, why did he choose to attribute this version to Piso? Such an argument is untenable without reference to some of the more extreme and now thoroughly debunked versions of *Quellenforschung*, which would hold that Livy must only have been looking at Piso and maybe one other source.48

If the Aventine version is the older of the two, then why would someone have invented the Sacred Mount version? I can think of no obvious reasons. The best conclusion is that Piso was, in fact, the inventor of the idea that the first secession was on the Aventine. This argument can be explained with greater ease. Forsythe has argued persuasively that Piso, who was consul in 133, and who probably composed his history many years later, was heavily influenced by the political strife of his own day. Specifically, probably writing at some point after 121, Piso wrote that the first secession went to the Aventine under the influence of the fact that Gaius Gracchus had recently retreated there on the last day of his life. With this and the second secession in mind,

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48 See Luce (1977) for the dismantling of these theories.
Piso could naturally have associated the Aventine with popular politics, and therefore found grounds for changing the site of the first secession.⁴⁹

We are left, then, with three secessions—one to the Mons Sacer, one to the Aventine, and one to the Janiculum.⁵⁰ If the second secession to the Aventine causes that hill to become a plebeian hill, then we must also assert that the Mons Sacer was a center for plebeian identity. That should, perhaps, not be a stretch. But we would also have to argue that the Janiculum was similarly perceived by Romans during the Republic. In his account of events leading up to the first secession, Livy tells us that secret meetings were held by plebeians on the Aventine. That is no surprise, and could perhaps suggest plebeian associations. But he tells us meetings were being held also on the Esquiline.⁵¹ Is the Esquiline also an integral part of the identity of the plebeian “state within the state”? In sum, if we should accept the argument that the fact that the second secession went to the Aventine causes the hill to be an integral part of the identity of the plebeian community, then we would have to assign similar associations to any part of the city where specifically plebeian political activity took place—the Sacred Mount, the Esquiline, the Janiculum, the forum, where the seeds of unrest were first sown, and countless other places.

3.6 Conclusion

⁵⁰ For the third secession, Liv. Per. 11: Plebs propter aes alienum post graves et longas seditiones ad ultimum secessit in Ianiculum, unde a Q. Hortensio dictatore deducta est; isque in ipso magistratu decessit.
⁵¹ Liv. 2.28.1
Considered in sum, there are essentially three elements to the argument that the Aventine hill served, during the early Republic, as a central element in the self-conscious identity of the plebeian “state within the state”. The first element I have marked off in the first section of this chapter as “The origins of the ‘plebeian quarter’”. Many scholars have laid out the origins of the Aventine’s plebeian associations in the hill’s extra-pomerial status, in its early occupation by Latins, in re-settlement of the hill under the terms of the lex Icilia of 456. Each of these elements could serve to help explain the origins of the hill’s plebeian associations. But one would first have to prove those associations for these arguments to be useful. Of the arguments, the lex Icilia has the best hope of providing some independent evidence for a plebeian Aventine, but even it falls short. If the law were an extra-constitutional and unilateral commandeering of the hill for plebeian use, or if it resulted in the establishment on the hill of the headquarters of the plebeian institutions, then we might begin to form the basis of a theory of the plebeian Aventine. But the law cannot be shown to have accomplished this. Instead, the law seems to have accomplished the establishment on the Aventine of housing on a large scale.

The second element is the presence on the Aventine of temples to plebeian divinities. This argument was dealt with to some degree in the previous chapter in the discussion of the supposedly plebeian goddess par excellence, Ceres. Since she is neither a particularly plebeian goddess, nor is her temple even likely situated on the Aventine, the cult of Ceres can offer no support for the theory of the plebeian Aventine. The presence of temples to such gods as Mercury or Juno Regina offer little, as well, since
their plebeianess is highly questionable, in the case of the former being based only on one episode from Livy, the latter being based only on the fact of the temple’s presence on the Aventine. Ultimately, one cannot prove the existence of plebeian divinities without reference to the plebeian Aventine, and if we should use the presence of plebeian temples on the Aventine to prove the hill’s plebeianess, we would be engaging in a circular argument.

The final element consists of the argument that both the first and the second secessions were located on the Aventine. The problem is that it is very unlikely that the first secession went to the Aventine. Arguments that it did, however, rely on an alternate tradition that appears to have been invented only in the second half of the second century. The most plausible interpretation is that each of the three attested secessions went to different sites, and, as a result, each of those sites would have had some plebeian associations in the minds of Romans—but probably only insofar as they were the sites of the various secessions. Considered together, the only compelling reason to accept any of these three elements as evidence for the plebeian nature of the Aventine is the assumption that the hill was somehow particularly plebeian. The lex Icilia by no means proves that this hill, of all the seven hills, was considered the plebeian hill, nor does the presence of certain temples on the Aventine or the fact of the second secession, unless we should apply a plebeian significance to these things, which could only derive from the assumption that the hill was, essentially, the plebeian hill par excellence. In no way do I wish to argue that the Aventine hill did not have associations with popular politics in the late Republic. In this matter, I follow Forsythe and argue that it was only after the events
of 121, combined with the historical tradition of the second secession that the Aventine began to develop particular associations with popular politics. But these associations are developments of the late Republic and can, therefore, provide no evidence for the existence of a self-identifying plebeian “state within the state” during the early Roman Republic.
Chapter 4

The Development of the Roman State

4.1 Introduction

The common interpretation of the “struggle of the orders” holds that the *plebs*, which was a self-identifying group of citizens within the broader citizen body, struggled for two centuries to gain full standing in the Roman community, and to overthrow the patrician monopoly on civic power. In order to accomplish this goal, the *plebs* created its own institutions to protect the interests of individual plebeians and extend the power of their class as far as was possible. Finally, by the beginning of the 3rd century, plebeians were able to hold high office, almost every priesthood was shared between patricians and plebeians, the tribunes of the *plebs* had gained official standing in the machinery of the Roman state, and the plebeian assembly, the *concilium plebis*, was at last able to make decisions binding on the entire Roman citizenry. The assumption inherent in all of this is that the plebeian institutions strove at all times to increase the power of the *plebs* and to weaken patrician power. This, essentially, was the *raison d’etre* for the “plebeian organization”, as it is commonly called.

I intend to call this interpretation of the “plebeian organization” into question. My argument to this point has focused on the cultural aspects of the putative “plebeian
community”. Scholars have long believed that the plebeianness of the cult of Ceres (and of other divinities), of the Aventine hill, and of the *ludi Plebeii* show that the *plebs* viewed itself as a separate community—a “state within the state”, so to speak. But Ceres had no special relationship with the *plebs*, at least not more than any other god. It is also unlikely that the Aventine was viewed during the early Republic as the quintessentially plebeian hill. Nor can the existence of *ludi Plebeii* be shown to have any bearing, since, as far as can be discerned, these games were not instituted prior to the end of the 3rd century.

Still, though the Romans had no *di plebis* or *montes plebeii*, a set of institutions stand as distinctly and undeniably plebeian—the tribunes and aediles of the *plebs* and the *concilium plebis*. In this chapter, I will discuss the position of the plebeian tribunes and aediles in early Roman society. I will attempt to show that they were not merely the leaders of an extra-constitutional political organization, but rather served a very important role in the development of the Roman state. That is not to say, however, that these magistracies emerged fully formed at the beginning of the Republic, with well-defined and universally acknowledged powers within the state machinery. Their powers were certainly the product of a long process of development—one, indeed, which did not end with the establishment of the Twelve Tables, the Licinio-Sextian rogations, or the *lex Hortensia*, but rather continued throughout the history of the Republic. But that process was not a struggle between the official state apparatus, dominated by patricians, and an extra-constitutional “state within the state”. Instead, the development of the tribunate coincided with, and was part of, the development of the Roman state. In this chapter and
the next, I will attempt to show that the plebeian institutions developed alongside the consulship, the senate, and the centuriate assembly, as part of a process of the negotiation of power among various institutions.

Though at times the nature of the institutions and the circumstances of a particular moment in history would have unified the plebs against the power of the patricians, as has been noted by many scholars, if the “struggle of the orders” had been a struggle between the entirety of the non-patrician population and the patriciate, the struggle would not have lasted very long. However, as I believe I have shown in the previous chapters, it is difficult to find evidence for a unified and self-identifying “plebeian community”. The tribunate, the aedileship, and the tribal assembly all came into being as a result of discrete historical crises. In spite of the potential problem of some patricians refusing to recognize the jurisdiction of these institutions (and certainly all evidence suggests that this was rare, indeed), their development was not the product of a direct competition with their official “state” counterparts. Instead, each institution of the early Roman state developed in conjunction with the others, plebeian and otherwise. I begin my discussion with a consideration of what made some institutions particularly “plebeian”, and what the significance of plebeianness was.

4.2 The nature of the lex sacrata of 493

It has long been argued that the lex sacrata which created the tribunate\(^1\) of the plebs had a basis similar to the Italic military oaths related in Livy.\(^2\) The fact that the

\(^1\) DH 6.89; Liv. 2.33; 3.55.
tribuni plebis and the armies of the Samnites and other Italic peoples were founded on leges sacratae meant that they had essentially the same meaning. In the case of the tribunate and of the armies of the other Italian peoples, an oath commanded obedience, and death was the punishment for those who transgressed. Consequently, the “plebeian organization” was, in origin, a military organization—one separate from the Roman community. The lex sacrata of 493 was an oath sworn by soldiers to obey their leaders, in this case the tribuni plebis, whose office was originally military (i.e., they are the tribuni militum of the seceding army). Accordingly, it was no “law” of the Roman community. Most modern scholars have accepted this fundamental connection. In the formulation of Ogilvie, “the creation through a lex sacrata of a sworn confederacy who are dedicated to a particular objective and elect their own leaders is a phenomenon to be observed in the social and military history of the Osco-Sabellian races.” During the first secession, to be sure, the Roman plebs created such a confederacy. While later Roman writers made the lex sacrata into a lex passed in the comitia curiata, it was originally nothing more than an oath, sworn to by the plebs alone, binding themselves together and dedicating themselves to “the goals of self-help and hostility to the patricians.”

Although the view which draws a connection between the foundation of the tribunate and the military institution of the Osco-Sabellian peoples has been widely accepted, the relationship is not as secure as it might initially seem. The two instances of

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2 Altheim (1940).
3 For the “oaths” of the various Italic peoples cited as evidence, see Liv. 4.26.3; 7.41.4; 9.39.5; 10.38.2-12; 36.38.1.
5 Ibid. 313.
6 Ibid.
the Osco-Sabellian institution from Livy which Ogilvie cites (at 4.26.3 and 10.38) describe nothing like “the creation…of a sworn confederacy who are dedicated to a particular objective and elect their own leaders”. In each case (and in all of the other cases of leges sacratae enacted in response to military emergencies and times of crisis among Italic peoples), what Livy describes is a law requiring conscription on the pain of punishment of being made sacer. No confederacy of like-minded partisans is established. No election of leaders. However, such a description suits the accounts of the First Secession admirably, so that Ogilvie’s declaration that the secession “exactly reproduced the character of such a confederacy” is true—but the Italic peoples have nothing to do with it.

Ogilvie also expands on Altheim’s attempts to relate the lex sacrata of 493 to Italic military oaths also on the ground that the oath included the name of Ceres. The oath, he argues, was made to Ceres, as we are told by Dionysius. While Livy’s formulation of the oath made the transgressor sacer to Jupiter, and Dionysius asserted that the seceding plebs dedicated an altar to Jupiter Territor (Ζευς Δειμάπος), Jupiter must have been left out of the original lex sacrata, because he was the “god of the community as a whole”. Ceres, on the other hand was the tutelary deity of the plebs, and must therefore have been an authentic element of the original lex. The episode, then, reflects the Italian character of the First Secession. Ceres had been brought to Rome from Campania. Accordingly, we can connect the lex sacrata of 493 with the military

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7 Ogilvie (1965): 314.
8DH 6.89.3.
9 Liv. 3.55.7.
10 DH. 6.90.1.
leges sacratae of the various Italic peoples. The First Secession of the plebs was, therefore, both peculiarly Italic and partisan to the cause of the plebs. However, while it is possible that the cult of Ceres came to Rome from Campania, and that the cult was, therefore, associated in particular with other Italic peoples, this argument requires that we leave out of consideration the associations of the First Secession with Jupiter, whatever form those associations might take in the various sources. That is to say, if Ceres should be associated particularly with the Italians (i.e., that hers is not a “Roman” cult), then the First Secession, and its outcome must have a particularly “Italian” flavor. However, no particularly “Italian” associations can be attributed to Jupiter, because he is “the god of the whole community” of Rome, and would, therefore, be associated first and foremost with Rome. So, if the lex sacrata made the transgressor sacer to Jupiter, as Livy tells us, then the First Secession’s flavor would be undeniably “Roman”. The argument for denying Jupiter’s role in the First Secession, however, is unsatisfactory. It assumes that the plebs would have incorporated only Ceres into their oath, because she was their tutelary goddess, and that they would have left Jupiter out of the matter altogether, because he was not their god, but “the god of the community as a whole”. As I have shown, one cannot separate “plebeian religion” from “the religion of the whole community”. Ceres cannot be shown to be a particularly “plebeian goddess”. Consequently, we cannot use such grounds for dismissing Jupiter’s role in the First Secession.

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11 In chapter 2

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Mitchell linked the *lex sacrata* with the military oath, *sacramentum*, which he believes originally tied a soldier to his patron, and with the *iusiurandum*, which men swore voluntarily in their infantry *centuriae* and cavalry *decuriae*, an oath not to abandon their positions or their comrades except to pick up a weapon or save a fellow soldier. For Mitchell, these oaths are key indicators of the military origins of Roman society.\(^\text{12}\) Mitchell, therefore, accepts the military origins of the *lex sacrata*, but insists that “[a]ny distinction between the two oaths corresponds to the respective spheres of the citizen as soldier and the citizens as civilian.”\(^\text{13}\) For Mitchell, *leges sacratae* were “public decisions enacted by men-at-arms.”\(^\text{14}\) The goal of the *plebs* was the primacy over the military of the domestic and the urban. He cites the episode of 357, when the soldiers were drawn up in their camps by tribe and passed a law establishing a 1/20\(^{\text{th}}\) tax on manumitted slaves.\(^\text{15}\) When the tribunes subsequently made it a capital offense to propose legislation to the *populus* outside of Rome, this action, if it happened as Livy tells it, represents a public interest in something that had up to that point been left up to the military. Tradition, he argues, associated those who took a military oath with those who passed *leges sacratae*, which were the voice of plebeian demands for reform.

Mitchell argues that this episode, in which a law is passed by the men-at-arms, tells the story of the passage of a *lex sacrata*. Although Livy did not explicitly call the

\(^\text{12}\) Mitchell (1990): 158-162. See p. 158 n. 82 for key texts. Cf. Momigliano (1967c): “[the *iusiurandum* was originally introduced to consolidate the homogeneity of any army in which many men, as *clients*, must have had particular ties of loyalty to their *patroni*. Such an oath was appropriate to emphasize the requirements of hoplite discipline against the personal obligations characteristic of Roman society in the early Republic.”

\(^\text{13}\) Ibid. 159.

\(^\text{14}\) Ibid. 160.

\(^\text{15}\) Liv. 7.16.7-8.
law *sacrata*, he insists, that much was implied.16 One law which Livy does explicitly call *sacrata* is the *lex sacrata militaris*, which Livy tell us was passed in 342.17 In that year, we are told, a mob of unhappy soldiers was intercepted on its way to Rome by the dictator M. Valerius Corvus. They demanded that he present their grievances at Rome and also asked for immunity for their *secessio* just as had been granted in their ancestors’ time to *plebs* and to *legiones*. Valerius obtained this immunity and secured the passage of a *lex sacrata militaris*, according to which it would not be legal for any soldier’s name to be stricken from the rolls without his consent, or for anyone to hold continuously the position of *primus centurio* in a legion in which he had previously been military tribune. Under the same year, Livy tells us that he found in some of his sources references to a *tribunus plebis*, L. Genucius, who passed a plebiscite prohibiting repetition of a magistracy by any individual twice within a ten-year period, as well as the holding of two offices at once, and allowing for the possibility that both consuls might be plebeian. “In this instance,” argues Mitchell, “references to *lex sacrata* and to *plebiscitum* apparently are to the same measure.”18 The existence of the dual tradition, one which remembers a *plebiscitum* and one which remembers a *lex sacrata*, means that the tradition is trustworthy, but that it had come to misunderstand the nature of the original law. Taken out of the context of the long-term revolutionary struggle between *patres* and *plebs*, this episode can make sense when it is viewed as a reflection of an immediate and short-term

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16 Mitchell 1990: 160 n. 87.
17 Liv. 7.38-42.
conflict between rank-and-file citizen-soldier and his aristocratic military leaders. The men-at-arms, in order to deal with their particular grievances, passed this *lex sacrata*.

Mitchell’s theory explains the connection between the *leges sacratae* of the Italic peoples and the *lex sacrata* of 493 as a military institution. It also explains how such a law might have had status in the community early in the 5th century. That is, the passage of such a law was in no way irregular. The men-at-arms passing a law in their own interest was by no means unacceptable. In fact, he argues, it was standard practice. But by solving these problems, Mitchell creates more difficulties. Outside of the First Secession, Mitchell is able to find one episode in which our sources say explicitly that a measure was passed by the men-at-arms. The episode of 357 is a striking one, but it does not support Mitchell’s argument. As he admits, Livy nowhere calls this law a *lex sacrata*. Nor can I see where that is implied, as he suggests. Instead, what is striking about this episode in particular is its peculiarity. Livy says that the measure was passed *nouo exemplo*. The tribunes, Livy tells us, were disturbed not by the law itself, but by the manner of its passage. It would be dangerous, they argued, to allow consuls to put measures before the *populus* while it is under arms, sworn to obey them.19 If the story reflects any historical reality—and certainly its peculiarity suggests that it is based on some historical episode—it more likely reflects an attempt by consuls and *patres*20 to subvert tribunician authority over legislation. The consuls took advantage of the army’s being outside of the tribunes’ area of jurisdiction, the city of Rome itself, and were able

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19 Liv. 7.16.8. ceterum tribuni plebis, non tam lege quam exemplo moti, ne quis postea populum seuocaret, capite sanxerunt: nihil enim non per milites iuratos in consulis uerba, quamuis perniciosum populo, si id liceret, ferri posse.

20 7.16.7. patres, quia ea lege haud paruum uectigal inopi aerario additum esset, auctores fuerunt.
to pass a law, which, as far as we can tell, really had no reason to be controversial. The uncontroversial nature of the proposal suggests that the consul, Cn. Manlius, was testing the limits of consular and tribunician jurisdiction. If he could get away with such a precedent, consuls might have been able to legislate freely in the future. As it happened, however, the tribunes of the *plebs* acted quickly to prevent such actions in the future. The episode of 357 sheds no light on the nature of *leges sacratae*.\(^{21}\)

Livy does, however, tell us explicitly that the dictator of 342, M. Valerius Corvus, secured the passage of a *lex sacrata militaris*. While Mitchell is certainly right to insist that this law be understood as reflecting the immediate concerns of the men-at-arms in the year 342, rather than as part of a centuries-long struggle between *patres* and *plebs*, his argument falls short when he insists that the *lex sacrata militaris* reveals the military nature of *leges sacratae*. Taken in context, it is clear that Livy believes the law to have been passed under the direction of the dictator, at Rome, in the *lucus Petelinus*.\(^{22}\) It was not unprecedented for meetings of the people to be held in the *lucus Petelinus*.\(^{23}\) Livy describes the dictator as speeding home on his horse ahead of the army to secure the demands of the soldiers, and so it is clear that Livy, at least, believes that the army was

\(^{21}\) Mitchell’s attempt at p. 160 n. 87 to make this law about ransoms paid by clients to secure the return of their *patroni* taken in battle is unconvincing. If true, then the law would, in fact, reflect the expression on the part of the soldiers of their own interests, by limiting the obligation of a client in paying for the return of his patron to 5%. However, I can see no reason why this is more likely than Livy’s version, and Mitchell’s proposed study on measures undertaken or demanded by soldiers has not been forthcoming, so that it remains a mystery why one ought to believe that Livy and his predecessors have misinterpreted the genuine kernel of truth in the story.

\(^{22}\) Liv. 7.41.3-4. …dictator equlo citato ad urbem reuectus auctoribus patribus tulit ad populum in luco Petelino ne cui militum fraudi secessio esset. Orauit etiam bona uenia Quirites ne quis eam rem ioco seriuo cuiquam exprobraret. Lex quoque sacrata militaris lata est ne cuius militis scripti nomen nisi ipso volente deleretur…

\(^{23}\) Liv. 6.20.10-11, with Oakley (1998) n.; Plut. *Cam.* 36.6. This is where tradition held that the trial of Manlius Capitolinus was moved in order to prevent the people from being shamed into taking pity on the accused by the proximity of the Capitoline.
absent when the vote was taken. Nor is Mitchell justified in assuming that “references to
*lex sacrata* and to *plebiscitum* apparently are to the same measure.”24 It is possible that
the tradition here has misinterpreted a single package of laws as two separate laws,
passed in two separate legislative bodies and by two separate magistrates, but that is mere
conjecture. In order to interpret the episodes of 357 and 342 in this way, Mitchell began
with the assumption that *leges sacratae* were laws passed by men-in-arms in their own
interests. He then proceeded to use those episodes as evidence for this theory.25

It is necessary, then, to test the theory that the *lex sacrata* is necessarily, or even
primarily, a military institution. The key text comes from Festus:26

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sacrae leges quibus sanctum est, qui quid adversus eas fecerit sacer alicui
deorum sit sicut familia pecuniaeque.
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Those laws are *sacratae* by which it is enacted that anyone who shall have done
anything contrary to them become *sacer* along with his property and money to a
particular god.

In Festus’ formulation, any law is *sacra* if it declares that the transgressor becomes
*sacer* to a particular god. Festus says nothing of laws passed by men-at-arms, nor does
he even hint at it. It would be possible, if we were only to consider this passage, to
suggest that only laws passed by men-at-arms could require such a severe penalty. But

25 One can make the minor objection that the phrase *lex sacrata militaris* suggests that the ‘military’ nature
of this particular law was unusual. If we should argue that the phrase reflected the 4th century reality, such
an interpretation would force us to acknowledge precisely that—a ‘military’ *lex sacrata* rather than any
other kind of *lex sacrata*. If, on the other hand, we should argue that the phrasing was not that of the 4th
century institutional history of Rome, but rather of Livy or his sources, then the use of the term should not
influence our understanding of 4th-century realities. Instead, Livy is simply telling us that a *lex sacrata* was
passed regarding military service.
26 Festus 422 L, s.v. *sacratae leges*.
we are thankfully not limited to Festus’ definition. The Twelve Tables includes the following provision:  

\[ \text{patronus si clienti fraudem fecerit, sacer esto.} \]

Let the patron, if he should defraud his client, become \textit{sacer}.  

According to this clause from the 5th-century law code, any patron who defrauds a client becomes \textit{sacer} as a result. The law is, by Festus’ definition, a \textit{lex sacrata}. The Twelve Tables were not passed by men under arms according to any of our sources.  

Nor are the \textit{leges sacratae} of the Italic peoples laws passed by the men under arms. In 431 the Aequi and the Volsci held a \textit{dilectus} under a \textit{lex sacrata}.\footnote{Liv. 4.26.1-3. \textit{lege sacrata, quae maxima apud eos cogendae militia erat, dilectu habito…}} Here, the law is not passed by the men-at-arms, but is enacted in order to bring men under arms. Livy calls the law “the strongest compulsion to military service”. It is used to force men to take up arms. In 310, the Etruscans raised an army under a \textit{lex sacrata}.\footnote{Liv. 9.39.5. \textit{et ad Vadimonis lacum Etrusci lege sacrata coacto exercitu, cum uir uirum legisset, quantis nunquam aliam ante simul copiis simul animis dimicarunt.}} Here again, the army was compelled to serve by a \textit{lex sacrata}, and is not said to have passed the law itself while under arms. The most famous example is the Samnite levy of 293, which Livy describes in gruesome detail.\footnote{Liv. 10.38. Although Livy does not call this a \textit{lex sacrata} specifically, see Oakley 2005 392-398 for an argument that Livy’s use of cognate words, such as \textit{sacramentum}, show that Livy was, in fact, describing a \textit{lex sacrata}.} The terrible oath is taken by the soldiers, but the \textit{lex sacrata}—at least by Festus’ definition—is the declaration that any Samnite of military age must report for service and not desert without permission or else become \textit{sacer} to
Finally the Ligurian army of 191 is “mustered” under a *lex sacrata*.\(^{32}\) Ultimately, the only example of a law that was explicitly a *lex sacrata* being passed by men under arms is that of the *plebs* on the *mons sacer* in 493. But even this example is a matter of divided tradition. Whereas Dionysius clearly believes that the law was passed by the *plebs* on the *mons sacer*, Livy is incredulous. He cites the tradition that the *lex sacrata* was passed there by the men under arms as an alternate tradition, to which he clearly does not adhere.\(^{33}\)

Modern scholars have offered an interpretation of the *lex sacrata*, using the Italic *leges sacratae* to help explain the nature of the institution. Cornell calls the *lex sacrata* a “collective resolution reinforced by solemn oath.”\(^{34}\) In his view, the plebeians elected their leaders and swore to obey them and protect them. The plebeians, by this oath, declared anyone who should harm a tribune *sacer*. That is, a person who offends a god (the god in whose name the oath is sworn) becomes *sacer* to that god. The only way to surrender the transgressor to the god in question was through death. Accordingly, the offender could be killed with impunity. The tribunes were sacrosanct as a result. Cornell acknowledges the similarity to the Italic military oath, and admits that the name “tribune” is highly suggestive of a military origin for the tribunate.\(^{35}\)

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31 Liv. 10.38.3. dilectu per omne Samnium habito noua lege, ut qui iuniorum non conuenisset ad imperatorum edictum quique iniussu abisset caput Ioui sacraretur.

32 Liv. 36.38.1. lege sacrata coacto exercitu.

33 Liv. 2.33.3. Sunt qui duos tantum in sacro monte creatos tribunos esse dicant, ibique sacratam legem latam. Livy shows his incredulity by including this with the tradition passed along by “those who say that only two tribunes were created on the *mons sacer*”, which he has already contradicted by asserting that there were five tribunes from the beginning.


35 In this respect Cornell is urging against any connection with the tribes.
According to Cornell, the extensive powers of the tribunes were originally based solely on the terms of the *lex sacrata*. The tribunes had the right of *coercitio*; they could fine, imprison, or put to death anyone who assaulted them physically or verbally.\(^{36}\) Because they were protected by sacrosanctity, the tribunes had the power to protect members of the *plebs* from the cruelty of their creditors and patrician magistrates. But in the beginning, the powers of the tribunes rested solely on the oath of the *plebs*, and had no basis in legal authority. The tribunate when it was founded was a fully extra-legal office. In order to protect a plebeian, the tribe could only intercede with his person, using the inviolability of his office for protection. The efficacy of the tribe’s intercession rested in the threat of mob violence against anyone who would harm the tribe’s person. But the *lex sacrata* was in no way the official law of the community. Instead, it was nothing more than an oath sworn to by the *plebs*, and so the tribe’s power to intercede on behalf of plebeians was essentially an act of “self-help” by the mass of plebeians, threatening force if the tribe’s person was harmed. The *lex sacrata* and the tribes’ sacrosanctity was essentially “lynch-law disguised as divine justice”.

Whereas Livy speaks of a *pactio* between *patres* and *plebs*, and Dionysius says that the sacrosanctity of the tribes was guaranteed by “treaties”, Cornell insists that the sources make it clear that the plebeian organization was an extra-legal body, and that many patricians refused to recognize its existence. The tribes would not be incorporated into the official machinery of the state until the passage of the Valerio-Horatian laws in 449.\(^{37}\)

\(^{36}\)Cic. *Sest* 79; DH 7.15.5; Dio 53.17.9.  
Cornell is certainly correct to separate the *lex sacrata* of 493 from the *leges sacratae* of Italic military conscriptions. As is demonstrated above, there is no evidence for seeing the institution as a common military practice of the Italic peoples, or in any way bound up with the *sacramentum*, except insofar as the violator of either is declared *sacer*. However, Cornell is unable to show, from the surviving accounts in our sources, that the *lex sacrata* of 493 was nothing but a solemn oath, binding only on those who had taken it. When Livy speaks of a *pactio* between *patres* and *plebs*, Cornell argues, he cannot possibly be correct. Such a dismissal is based only on the fundamental assumption that the creation of a plebeian organization was equivalent to the establishment of an extra-legal organization based only on an oath sworn by disenfranchised plebians. Cornell dismisses Dionysius’ talk of treaties on similar grounds. The accounts of these two 1st-century authors can certainly not be considered reliable for the events of the early 5th century, but it is vital to understand what they are actually describing.

In Cornell’s interpretation, Livy and Dionysius speak of an “oath” sworn by the *plebs* to protect the tribunes. He believes that the two authors are correct to this point. However, when they insist that the *patres* agreed to these terms, or that the *lex sacrata* was binding on all Romans, they must be wrong, because the subsequent accounts of tribunician activity prove that the tribunes were nothing more than leaders of a kind of extra-constitutional union. But Livy tells us nothing about an “oath” sworn by the
members of the *plebs*, and unrecognized by the *patres*. It is necessary to consider his entire account.\textsuperscript{38}

Agì deinde de concordia coeptum, concessumque in condicioes ut plebi sui magistratus essent sacrosancti quibus auxilii latio aduersus consules esset, neue cui patrum capere eum magistratum liceret. Ita tribuni plebei creati duo, C. Licinius et L. Albinius; hi tres collegas sibi creauerunt. In his Sicinium fuisse, seditionis auctorem; de duobus, qui fuerint, minus conuenit. Sunt qui duos tantum in sacro monte creatos tribunos esse dìcant, ibique sacratam legem latam. Then discussion began regarding restoring harmony, and it was granted on condition that the *plebs* receive their own magistrates who were sacrosanct and to whom was granted the power of bearing aid (*auxilium*) against the consuls, and that none of the *patres* be allowed to hold this magistracy. So two tribunes of the *plebs* were elected, C. Licinius and L. Albinius; these chose three colleagues for themselves. Among these was Sicinius, the instigator of the sedition; there is less agreement about who the other two were. There are those who say that only two tribunes were elected on the *mons sacer*, and that the *lex sacrata* was passed there.

When the *patres* had made the calculation that it would be in their interests to effect reconciliation with the seceding *plebs*, they sent Menenius Agrippa, who was charged with carrying it out. After his famous speech, the plebeians were ready to negotiate. Livy says explicitly that the following agreement was *concessum*: “that the *plebs* receive

\textsuperscript{38} Liv. 2.33.1-3.
their own magistrates who were sacrosanct and to whom was granted the power of bearing aid (auxilium) against the consuls, and that none of the patres be allowed to hold this magistracy.” In this case, Livy says nothing about an oath. Livy speaks of a concession on the part of the patres to the demands of the seceding army. The only reading of that passage which could limit the establishment of the tribunate to the swearing of an oath on the part of the seceding plebeians is one which understands the lex sacrata—which Livy suggests was not even lata on the Sacred Mount, but apparently some time later—as necessarily a kind of oath. In this respect, Cornell follows the interpretations of Altheim and Ogilvie according to which this institution, which is called a lex, is nothing more than an oath.

This interpretation finds its support in the texts of the Italic leges sacratae which I have cited above in reference to Mitchell’s arguments. But, of the cases which Cornell cites to show that the lex sacrata is an oath sworn by soldiers, only one explicitly involves an oath at all—and that is the one in which the words lex sacrata do not appear at all! Many have taken this one instance in 293 of Samnite soldiers being forced to undergo a terrible ritual and swear a binding oath to serve loyally and have called it a lex sacrata, because of the prevalence in the passage of words cognate to sacer. Then they have proceeded to apply similar terms to the leges sacratae which Livy tells us were enacted by various Italic people. In the other instances, it is clear that what Livy is describing is not an oath sworn by conscripted soldiers, but instead the terms of the conscription (i.e., that any man of military age who does not show up will be declared

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39 Liv. 10.38.
sacer,\textsuperscript{40} and one in which the specific meaning of the term is unclear.\textsuperscript{41} There is no compelling reason to limit leges sacratae to oaths. Therefore, if we do not read sacratam legem latam in Livy’s text as “an oath was sworn”, then we have no basis whatsoever in Livy for understanding the tribunate to have been based on nothing more than an oath sworn by a subsection of the community. Instead, all we are left with is Livy’s firm assertion that the existence of the tribunate was something that was conceded to the plebeians by the patres, and was, therefore, binding on all Romans.

This reading is supported also by Dionysius, who insists that what was established on the mons sacer was, in fact, a law.\textsuperscript{42} In his account, Iunius Brutus, one of the leaders of the First Secession, insisted that the newly created magistrates be made sacrosanct νόμωι τε καὶ ὀρκωι, that is, by law and by oath. He then gives the terms of the law: “Let no one force a tribune to do anything against his will, as if he were just any person. Let no one whip him or command another to whip him. Let no one kill him nor bid another to kill him. If anyone does any of these forbidden things, let him be accursed (ἐξάγιστος ἔστω, certainly Greek for sacer esto), and let his property be consecrated to Demeter, and let the man who kills anybody who has committed these crimes be free of the charge of murder.” Dionysius is specific that this is a law. There is an oath, too, but that oath comes in addition to the passage of this law and is sworn by the entire Roman people in

\textsuperscript{40}Liv. 4.26.3, in which Livy calls the armies of Aequi and Volsci ualidi, precisely because they were comprised of so many men, who were compelled to show up for service; 9.39.5, in which he describes the manner of conscription (i.e., men choosing other men to join the army).
\textsuperscript{41}36.38.1. The Latin word coegi can have the meaning “collect, gather”, which would support my reading, or “compel, force”, which could support either reading.
\textsuperscript{42}DH. 6.89.2-3.
order to ensure that the law may never be repealed. Dionysius regards the law as having been agreed to by the patres, and the oath as having been sworn by all the Romans. Between the account of Livy and the account of Dionysius, there is no evidence for an oath sworn only by plebeians. In both accounts, the terms of the agreement are that the plebeians be given their own magistracy to ensure that their interests be served even when the consuls and senate refused to do so.

There is no question, however, that the accounts of these two authors are highly questionable in details, or even in broad understanding of the general course of Rome’s early history. It is not possible to declare that the tribunate was an official institution of the early Republican state simply because Livy and Dionysius say so (though they certainly do). The important point here is that there is no evidence in our sources for the first establishment of the tribunate and its sacrosanctity that the establishment was somehow fundamentally related to the Italic military oaths of questionable historicity, or to the earliest military origins of the Roman state, or that the sacrosanctity was backed only by an oath of some plebeians, swearing to protect the tribunes though “lynch law disguised as divine justice”. Cornell recognizes that Livy and Dionysius believed that the tribunate was accepted as an institution of the Roman community from the beginning, but he asserts that the nature of the lex sacrata as nothing more than an oath sworn by the plebs reveals that this was simply not true. It has already been demonstrated that there is no evidence for such an assertion. Now it is necessary to examine the common view that the subsequent history of the tribunate and legislation between 493 and the Valerio-

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43 6.89.4.
Horatian laws of 449 prove that the plebeian organization was essentially an extra-legal union backed only by “self-help” and “lynch justice”

4.3 Tribunes as Magistrates

Does the plebeianess of the tribunate mean that the tribunes were not magistrates of the state? It may seem a rather small point to show that the tribunes of the *plebs* were called magistrates during the Republic—that is, that their office was considered to be a *magistratus*. However, it is a commonly held view that, in a technical sense, the tribunate was not a *magistratus*, at least during the early Republic. This is no minor technicality in modern scholarship, because the lack of magisterial status has been used to show the revolutionary or extra-constitutional origins of the tribunate and the other plebeian institutions. For Mommsen, the fact that the tribunate, as well as the other plebeian magistracies, stood “im Gegensatz zu der Magistratur der Gemeinde” could be shown by the fact the tribunate did not originate as a magistracy.\(^4^4\) The argument rests, first, on the designation of the office. That is, since the tribunate was *plebis*, it was, therefore, not a magistracy *populi*. I will show below that the contrast between *magistratus populi* and *magistratus plebis* is a false distinction that would have meant little to Romans during the Republic. More important, however, is the argument of Mommsen that our sources themselves recognized that the tribunes were not technically magistrates. The most straightforward assertion of this position comes from Zonaras:\(^4^5\)

\(^{44}\) Mommsen (1887-8) II.1: 257-8.

\(^{45}\) Zonaras 7.15.
For though [the tribunes] did not immediately hold the title of magistrates, they gained power over all others…

This passage seems to offer fairly compelling support for the view that the tribunes were not originally considered to be magistrates (ἄρχοντες). However, we ought to take a cautious stance with the 12th-century chronicler. Plutarch offers some support, as well:

Why does the tribune not wear the purple-bordered toga (laticlauia), while the other magistrates wear it? Can it be that he is not a magistrate at all?

Plutarch then suggests that the tribunes were officials of a different type, in that they served as a check on the authority of the magistrates. On the other hand, he goes on to suggest another possibility. Perhaps the tribunes wore white in order to maintain the appearance of humility, while leaving the pomp and circumstance to the consuls. The tribunes had to be available to all at all times, like a temple. The simplicity of bearing and dress made the tribunes more accessible to individuals, and, therefore, more powerful. Plutarch is here offering potential explanations for the tribunes’ dress.

Perhaps they were not magistrates at all. Perhaps they dressed as they did to give the appearance of sanctity and humility. When Plutarch asks “ἣ τὸ παράπαν οὐδὲ ἐστίν ἄρχων;”, it is by no means the equivalent of one of our sources saying that the tribunate

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46 Plut. QR 81.
was not a *magistratus*. He is, instead, offering a conjecture, or rather, a stricture, as when he suggests that a demurrer, is, in fact, not a law suit, but the opposite of a suit. The explanation belongs to the juridical and antiquarian debates of the late Republic and early Empire.

Consider, now, the following passage from Livy:47

Tum ex his prendi quosdam Laetorius iubet. Consul Appius negare ius esse tribuno in quemquam nisi in plebeium; non enim populi sed plebis eum magistratum esse; nec illum ipsum submouere pro imperio posse more maiorum, quia ita dicatur: “Si uobis uidetur, discedite, Quirites.” Facile contemptim de iure disserendo perturbare Laetorium poterat. Ardens igitur ira tribunus iuicaturum mittit ad consulem, consul lictorem ad tribunum, priuatum esse clamitans, sine imperio, sine magistratu.

Then Laetorius commands that some of these men be seized. The consul Appius denied that the tribune had the right, except against a plebeian; for his was not a magistracy of the *populus*, but of the *plebs*; nor even, in accordance with custom, could a magistrate with *imperium* remove him, because the formula goes: “If it seems best to you, disperse, citizens.” By speaking contemptuously about his power, he was able to disturb Laetorius easily. Burning with anger, therefore, the tribune sent his attendant after the consul, the consul his lictor after the tribune, shouting that he was a private citizen, without *imperium*, without *magistratus*.

47 2.56.11-13.
As Mommsen acknowledges, Livy puts these sentiments in the mouth of the opponents of tribunician power.\textsuperscript{48} This is not a minor point. The words of Appius here are not the keen constitutional observations of a thoughtful jurist. Instead, they are the words of an ancient author put into the mouth of one of the major actors in his account—and a radically partisan one at that. It will be instructive to consider the context. In 471, says Livy, the tribunes Publilius and Laetorius pushed a bill which would move the election of *plebeii magistratus* into *comitia tributa*. The consul, wanting to prevent the power of the tribunate from becoming more independent from the patricians by being elected in an assembly in which they held little sway, opposed the bill at all costs. At this moment, Appius was attempting to disrupt the assembly in which the law was about to be voted on. He sought a confrontation. Consider his claims: first, he insists that the tribune has no power to command anyone but a plebeian, because the tribunate is a *magistratus plebis* rather than a *magistratus populi*. Second, he insists that not even a magistrate with imperium could move him, because the legal formula calling on citizens was issued in the form of a polite request. Having succeeded in provoking Laetorius into violence, Appius finally begins to shout that tribune was a private citizen without a magistracy.

A great deal of attention has been lavished on the formula “Si uobis uidetur, discedite, Quirites.”\textsuperscript{49} While one could argue that this episode was meant as a comment on the limitations of consular *imperium*,\textsuperscript{50} or that it represents confusion on Livy’s part

\textsuperscript{48} II.1: 257 n. 1.
\textsuperscript{49} Ogilvie (1965): 379-380; Mommsen (1887-84) 3.390 n. 1.
\textsuperscript{50} Henderson (1957): 85.
about the actual formulas involved,\textsuperscript{51} we must understand that Livy includes it as a part of Appius’ goal of \textit{contemptim \ldots disserendo perturbare Laetorium}. Only in this way can one make sense of what is clearly a contradiction. For Livy has Appius insist that the tribune is \textit{non enim populi sed plebis eum magistratum}, but later that he is \textit{sine magistratu}. Livy describes here a scene of increasing tension and hostility. Appius challenges the tribune by insisting that his powers do not extend to patricians, then throws out the quibble about the legal formula, then, when things are really heating up, he can insist that the tribune is a private citizen! This episode has no historical veracity, with the possible exception of a Publilian law passed in this year moving election of plebeian officials to a tribal assembly. We ought not to try to draw from it any conclusions about the constitutional strictures of the first half of the 5\textsuperscript{th}-century. Instead, this passage tells us a great deal about Livy’s understanding of the social and political conflict of this period. That is not to say, however, that Livy did not consider the tribunate to be a \textit{magistratus}—he has just called it precisely that when he first described the Publilian measure\textsuperscript{52}—but rather that Livy imagined that certain patrician opponents to tribunician power (and only the most hardline opponents, at that) would have made claims about it. The peculiar and contradictory nature of the comments reflects not a discussion of constitutional principles, but the tension and excitement of a heated and violent political conflict.

\textsuperscript{51} Ogilvie (1965) 379; Asc. Corn. P. 71 and Cic. De Leg. 3.11, where the magistrate gives the order to disperse, without “si\ldots uidetur”.
\textsuperscript{52} Liv. 2.56.2.
On the other hand, we find *magistratus plebeii* repeatedly in Latin literature. The phrase can refer to plebeians holding any magistracy;\(^{53}\) but it is most often used to describe specifically plebeian magistracies.\(^{54}\) In order to argue that the tribunes (as well as the plebeian aediles) were not *magistratus*, it would be necessary to take literally the words of one figure in one scene of Livy’s history, spoken explicitly in order to anger Laetorius, and assume that every other time Livy used the term *magistratus* to refer to plebeian officials was an example of Livian confusion or laziness. This theory would require that we attribute to Livy one moment of lucidity in his description of one particularly heated scene, but then to attribute to him ignorance and confusion throughout the rest of his early books. The more plausible reading is to recognize that Livy had Appius speaking derisively toward the tribune in order to provoke him. Livy must, therefore, have believed that *plebeii magistratus* was not a contradiction, and that tribunes (and aediles) were, in fact, *magistratus*. Nor can Plutarch’s question “Can it be that they are not magistrates at all?” be used to show that Plutarch believed that the tribunes were not technically magistrates, as I have argued. In light of these considerations, it is necessary to question whether the evidence from Zonaras, the only author ever to assert specifically that tribunes were not magistrates, offers any proof at all. Given that Zonaras worked primarily from Cassius Dio, who seems to have based his account of Rome’s early history largely on Livy, it is quite possible that Zonaras or Dio has misunderstood this particular episode as meaning that the tribunes were not originally called magistrates. The preponderance of evidence, therefore, suggests that tribunes were

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\(^{53}\) Liv. 7.1.5; Tac. Ann. 11.24.

\(^{54}\) Liv. 2.33.1, 2.34.9, 2.44.9, 2.56.2, 3.33.9, 6.11.7, 6.35.3; Mommsen (1887-8) 1: 47 n. 3.
magistratus. Whatever the case, there is little evidence to suggest that plebeian officials were ever considered to be something other than magistratus, or that any Republican author ever believed that such a situation obtained in the early Republic. We must acknowledge, then, that the argument that the tribunes were not magistratus provides no support for the theory that plebeian officials served as the leaders of a separate plebeian “state within the state”.

4.4 Magistratus Populi/Magistratus Plebis

The argument that the tribunes were not magistratus ties in closely with another important element in the “state within the state” theory. They were not magistratus, because they were officials not of the state, but of the plebeian organization. That the tribunes of the plebs were originally not magistrates of the Gesamtgemeinde, but rather of the extra-constitutional plebeian organization, is often inferred from the understanding that they were not technically magistratus populi Romani. Instead, they were technically magistratus plebis. As so often, we must return to Mommsen to find the justification for this theory: “Die gewählten der eigenen Gemeinde heissen bei den Römern magistratus populi Romani oder konnten doch von Rechts wegen also genannt warden…”55 The elected officials of the community were called magistratus populi Romani. But note the concession—they could be called such by law. In a note, he describes how he arrived at this conclusion:

55 Mommsen (1887-8) I:46. This view has found nearly universal support in subsequent scholarship. See, inter alios, Ogilvie (1965): 381: “The tribunes were officers of the plebs, not the populus: they had secured such recognitions as they had by force, not negotiation.”
Diese Bezeichnung ergibt sich folgerichtig einerseits aus dem bekannten Gegensatz von *populus Romanus* und *plebs*, andererseits aus der Benennung der Tribune und Aedilen der Plebs als *magistratus plebeii*; wie den auch die unabweisbaren Belege und Zeugnisse dafür, dass die Tribune und Aedilen der Plebs in älterer Zeit nicht also Magistrate angesehen worden sind, nur insofern einen Sinn haben, als sie nicht *magistratus populi Romani* waren. Aber allerdings dürfte kaum irgendwo die Bezeichnung *magistratus populi Romani* gegensätzlich gegen die der Plebs vorkommen. In den Gesetzen wird sie offenbar vermieden, vermuthlich weil sie in correcter Anwendung die plebeijischen Beamten ausschliesst und diese factisch doch längst ein Theil der Magistratur waren. Wo man den Gegensatz zu den magistratus plebis asudrücken wollte, sagte man vielmehr *magistratus patricii*…

That is to say, the notion that elected officials at Rome—state officials—were called *magistratus populi Romani* is derived “logically” (folgerichtig) from two facts. The first is that there is a well-known distinction between *populus Romanus* and *plebs*. The second is that the tribunes and aediles of the *plebs* were called *magistratus plebeii*. Therefore, since the opposite of *plebs* is *populus*, and, since tribunes and aediles were magistrates of the *plebs*, other magistrates must belong to the *populus* and were, therefore, called *magistratus populi Romani*. Let us analyze this conclusion in detail.

There is no question that the Romans made a distinction between *populus* and *plebs*. I have already explored that distinction.\(^{56}\) It is enough at this point to note that the

\(^{56}\) Above, pp. 3-5.
distinction was prevalent in Roman literature. But is this enough to show that magistrates who were not *magistratus plebis* were therefore *magistratus populi*? Certainly not. Just as *populus Romanus plebsque* (or, as in the passages cited below, *populus plebsque Romana*) was a distinction of some significance to Roman authors, we must also recognize that a similar pairing between *senatus* and *populus* in the ubiquitous formula *senatus populusque Romanus*. We can no more conclude that magistrates who were not *magistratus plebis* were *ipso facto* magistrates *populi* than that magistrates who were not *populi* were thereby *magistratus senatus*, which would seem to be nonsense.

It was likewise not the practice of our sources to make a distinction between *magistratus populi Romani* and *magistratus plebeii*. In fact, I am aware of only one instance. That is the passage, which I have discussed above, in which Livy puts a series of contemptuous claims about tribunician jurisdiction into the mouth of the consul Ap. Claudius. In this case, the key declaration, that *non enim populi sed plebis eum magistratum esse*, is one of many contentious and even contradictory claims by the arch-patrician. Below, I will show that it is quite likely that patricians at times during the 5th and 4th centuries claimed not to be bound by *plebiscita*. The distinction between *populus* and *plebs* would have served as the centerpiece of such claims. Just as patricians at

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57 Cic. Mur. 1: Quae precatus a dis immortalibus sum, iudices, more institutoque maiorum illo die quo auspicato comitiis centuriatis L. Murenam consulem renuntiavi, ut ea res mihi fidei magistratuique meo, populo plebique Romanae bene atque feliciter eveniret...; Cic. Verr. 2.5.36: mihi ludos sanctissimos maxima cum cura et caerimonia Cereri, Libero, Liberaeque faciundos, mihi Floram matrem populo plebique Romanae ludorum celebritate placandam....

58 2.56.11-13.

59 Liv. 3.55.3: Omnium primum, cum uelut in controuerso iure esset tenerenturne patres plebi scitis, legem centuriatis comitiis tulere ut quod tributim plebes iussisset populum teneret; qua lege tribunicis rogationibus telum acerrimum datum est; Gaius Inst. 1.3: olim patricii dicebant plebiscitis se non teneri, quia sine auctoritate eorum facta essent; sed postea lex Hortensia lata est, qua cautum est, ut plebiscita universum populum tenerent.
times claimed that they were not bound by decisions of the tribal assembly, because they were made *sine auctoritate eorum*, some may have made similar claims to freedom from tribunician jurisdiction. Remarkably, this passage stands alone as evidence for such a phenomenon, but it is poor evidence indeed.

However, Mommsen notes the fact that, when a source wanted to make a distinction between *magistratus plebeii* and others, the distinction was with *magistratus patricii*. The distinction was never between *magistratus populi Romani* and *magistratus plebis/plebeii*. Rather, the distinction in Roman thought was between patrician and plebeian magistrates. Therefore, we must no longer understand the plebeian magistrates—tribunes and aediles—as being magistrates *of* something different from the other magistrates. They are all magistrates, some patrician, others plebeian. What, then, is the distinction between *magistratus patricii* and *magistratus plebeii*?

In the introductory chapter, I made the argument that we ought to accept the traditional ancient differentiation between *populus* and *plebs*, that the *plebs* is the entirety of the Roman citizen population with the exception of the patricians. We must abandon the notion that *magistratus plebeii* were magistrates of a separate state. Instead, they were magistracies which could be held only by plebeians. That must have been Livy’s meaning when he insists that the holding of the office was limited *neue cui patrum capere eum magistratum liceret*. Likewise, *magistratus patricii* might have been magistracies originally limited to patricians. Or, perhaps more likely, they were

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60 E.g., Liv. 3.39.9: fuisse regibus exactis patricios magistratus, creatos postea post secessionem plebis plebeios.; 9.33.3: inter patricios magistratus tribunosque certamina.; Sall. Hist. 3.48.15 Reynolds: ne uos ad uirilia illa uocem, quo tribunos plebei modo, patricium magistratum, libera ab auctoribus patribus suffragia maiores uostri parauere.

61 2.33.1.
magistracies characterized by the possession of *auspicia*, the holding of which eventually allowed patricians to make claims of exclusive access to communication with the gods.\(^{62}\)

The proper distinction was not between magistrates of the *plebs* and those of the *populus*. Instead, our sources prefer a distinction between patrician and plebeian magistrates—a matter of the status of the holder of the office, rather than one of the conception of the community over which the magistrate held authority. What, then, was the process by which the distinction between patrician (primarily the consulship) and plebeian magistracies came to be defined? I begin with the contentious struggle over the power of jurisdiction.

### 4.5 Jurisdiction

We find in the histories of both Livy and Dionysius of Halicarnassus accounts of the trial of a certain Kaeso Quinctius, the son of the famous Cincinnatus. In both versions, the trouble begins in 462 when a tribune, C. Terentilius Harsa,\(^ {63}\) proposed a law which would establish a board of five men to write laws limiting the consular power (*quinque uiri legibus de imperio consulari scribendis*), the debate over which would eventually lead to the establishment of the decemvirate. Due to the strenuous opposition of the *patres*, the question of the law was deferred until 461, when the law was proposed again by the entire college of tribunes. As usual, the *patres* used every means they had available to them to oppose the passage of the bill, including the threat of religious


\(^{63}\) Or Terentius in DH.
danger and the fear of attack by foreign enemies. \(^{64}\) When the tribunes persisted, the consuls began to hold a levy. Each time the consuls called upon their lictors to lay hands on an individual, the tribunes commanded that the man be released. Violence eventually broke out. \(^{65}\) With the consuls mostly staying out of the conflict (*ne cui in conluuione rerum maiestatem suam contumeliae offerrent*), the patrician youth took the lead. Foremost of these was Kaeso Quinctius. Young, bold, an outstanding soldier and a talented orator, the young Quinctius led the resistance, forcing the tribunes from the forum and routing the *plebs* and forcing them to flee. If Kaeso were allowed to go on in this way, the tribunes realized, the bill would be defeated.

Most of the tribunes were terrified by Kaeso’s tactics, but one of them, Aulus Verginius, brought him to trial on a capital charge. Kaeso, his arrogance only inflamed by the charge, opposed the bill with even more furor, attacking plebeians and tribunes as if he were at war. Such actions incurred the wrath of the *plebs* against the young man. He was forced reluctantly to submit to the trial. Many powerful patricians spoke in his defense, citing in particular the young man’s martial valor and service to the state abroad. They threatened, also, that if he were forced to go into exile, Kaeso could use his outstanding military talents in service to Rome’s enemies! The young man’s father, Lucius Quinctius Cincinnatus, spoke in his defense, asking the *plebs* to acquit as a personal favor to himself. But the prosecution introduced the testimony of a former

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\(^{64}\) Liv. 3.10.6 goes so far as to say that, among other more credible omens, “bouem locutam, cui rei priore anno fides non fuerat, creditum”. The consultation of the Sibylline books also rendered the following admonition: “inter cetera monitum ut seditionibus abstinerentur”. Obviously, Livy and Dionysius imply, the *patres* were going to great lengths to stop the bill!

\(^{65}\) Liv. 3.11.2-3.
tribune, Marcus Volscius Fictor, who charged that Kaeso and his friends had, unprovoked, attacked and killed his older brother in the street. “Nec,” he added, “sibi exsequi rem tam atrocem per consules superiorum annorum licuisse.” With this testimony, the plebs were on the point of attacking Kaeso on the spot, but Verginius ordered that he be put in chains to ensure his appearance on the day of judgment. T. Quinctius convinced Verginius’ colleagues to compromise, and they used their auxilium to have Kaeso released on bail, at which point he went into exile, leaving his father to pay the exorbitant sum of ten uades of three thousand asses. In spite of Verginius, the other tribunes decided not to prosecute Kaeso in absentia.

Two years later, in 459, Volscius Fictor was accused of false testimony against Kaeso by the quaestors Aulus Cornelius and Quintus Servilius. A great deal of evidence was introduced to prove that Volscius had lied when he accused Kaeso of murdering his brother. The tribunes, however, refused to allow the quaestors to call the people to assembly until a vote was held on the Terintilian law. This question went undecided for the remainder of the year. In 458, new quaestors, T. Quinctius Capitolinus and M. Valerius, persisted in prosecuting Volscius.

There is no doubt that many of these details are fabrications of the annalistic tradition. The details of these events were certainly filled out for rhetorical effect. However, if we should accept the theory according to which the tribunes and the plebeian assembly amounted to nothing more than an extra-constitutional “state within the state”

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66 According to Livy 3.13.1, he had been tribune “ante aliquot annos”. But in the version of Dionysius (10.7.1), Fictor was Tribune in 461.
67 Liv. 3.13.3.
in the first half of the fifth century, we would be forced to deny the trial of Kaeso Quinctius at the hands of the tribunes altogether and find a new explanation for the trial of Volscius Fictor. If the tribunes were powerless except over the plebeian organization, they could not have tried a patrician. In Ogilvie’s formulation, “grave suspicion attaches to the authenticity of the account.” Ogilvie’s suspicion is inspired by uncertainty about the nature of the charges against Kaeso. Is the charge one of impeding tribunician auxilium, or of violating their sacrosanctity? If so, Ogilvie is unsure under what heading such a charge could have been lodged at this early date; perhaps perduellio. He also denies the historicity of this early example of uadimonium, which he asserts cannot have existed yet, “since it is the outcome of the stalemate caused when tribunes used their auxilium to prevent the arrest and detention in prison of criminal offenders. It was developed from the civil uadimonium.” Finally, never having been concluded, the case could not have been included in the Annales, and therefore could not have been known to the later historiographical tradition.69

Ogilvie’s criticisms are problematic, however. He is, essentially, not criticizing the ancient accounts on their own merits, but for not adhering to his preconceptions about what charges were available to prosecutors in the first half of the fifth century. In this case, he wonders whether the charge is of the violation of sacrosanctity, or of perduellio, or even parricidium (for the murder of Volscius’ brother). Livy nowhere states the nature of the charge, asserting simply that he was accused on a capital charge.70

68 Ogilvie (1965): 416.
69 Ibid. 417.
70 Liv. 3.11.9: “A. Verginius…Caesoni capitis diem dicit.”
However, Dionysius asserts positively that Kaeso was brought in “on a charge of a crime against the state, seeking to condemn him to a penalty of death.”\textsuperscript{71} It is impossible to know whether Dionysius’ ἀδίκημα δημόσιον represents perduellio which he would have found in one of his Latin sources, though it seems likely. There is also no indication that Kaeso was being tried for hindering a tribune’s bearing of auxilium, or of violating his sacrosanctity. Finally, while Volscius Fictor, in both accounts, accuses the young patrician of murdering his brother, nowhere is it said that the charge was parricide.

But these considerations miss the point. Uncertainty about the nature of the charge should not cast doubt upon the account as it stands. Excessive certainty, more than uncertainty, about the precise charge would suggest fabrication through systemization on the part of our sources. Instead they have offered us the bare fact that Kaeso Quinctius was put on trial by the tribune Aulus Verginius, who sought the death penalty. The uncertainty of our sources about the precise title of the charge brought against Kaeso cannot be introduced as evidence against the trial itself.

We must question also whether the use of uadimonium should lead us to remove the whole trial from historical consideration. Ogilvie’s description of the origins of uadimonium precisely matches the circumstances of the trial currently under consideration. The other tribunes prevented their more zealous colleague, Aulus Verginius, from detaining Kaeso until the day of his trial to prevent his going into exile.

\textsuperscript{71} DH 10.5.2: “εἰσάγουσιν αὐτὸν ὑπὸ δίκην ἀδικήματος δημοσίου, θανάτου τιμησάμενοι τὴν δίκην.”
prior to being convicted.\textsuperscript{72} The use of \textit{uadimonium}, in fact, seems here to support the accounts of Livy and Dionysius.

If we are to deny the historicity of the trial, we would need more evidence. However, if we cannot find good reason to dismiss the account on its own merits, then we must consider this account in formulating our understanding of the powers and activities of the tribunes in the early Republic. Therefore, it is necessary to consider Ogilvie’s most damning criticism, that “[t]he prosecution of a patrician by a tribune is inconceivable before the Decemvirate.”\textsuperscript{73} Such argumentation is central to most scholars’ understanding of the functioning of the institutions of the early Republic. The assertion seems \textit{prima facie} difficult because our sources tell us of twelve prosecutions by magistrates prior to the decemvirate, and of those, eight instances are of tribunes prosecuting patricians.\textsuperscript{74} The argument for this assertion, therefore, must be examined in detail. In Ogilvie’s words:\textsuperscript{75}

\begin{quote}
It will be seen that all mention of tribunial prosecutions at this date is rigidly excluded. The tribunate was a revolutionary and unconstitutional cadre which had no place in the regular framework of government. The tribunes were officers of the \textit{plebs} and not of the people as a whole. They could, therefore, have no possible jurisdiction over non-members of the
\end{quote}

\textsuperscript{72} Liv. 3.13.4-6. “Verginius arripi iubet hominem et in uincula duci. Patricii ui contra uim resistunt. T. Quinctius clamitat, cui rei capitalis dies dicta sit et de quo futurum propediem iudicium, eum indemnatum indicata causa non debere uiolari. Trinbus supplicium negat sumpturum se de indemnato; seruaturum tamen in uinculis esse ad iudicii diem ut, qui hominem necauerit, de eo supplicii summendi copia populo Romano fiat. Appellati tribune medio decreto ius auxilii sui expedient: in uincula conici uetant; sisti reum pecuniamque ni sistatur populo promitti placer pronuntiant.”

\textsuperscript{73} Ogilvie (1965): 417.

\textsuperscript{74} Indispensable is Ogilvie’s chart listing the trials that occur in Livy’s first pentad. Ogilvie (1965):323-324.

\textsuperscript{75} Ogilvie (1965): 325.
plebs any more than a Trade Union can discipline a member of the public.

It was only when the tribunate was absorbed in the constitution after the Decemvirate, and especially after the Licinian-Sextian laws and the legislation of 287, that the tribunes had a recognized place in Roman legal procedure. It is more than doubtful whether they had any jurisdiction even over plebeians in the early period.

Basing his argument on the assumption of tribunician extra-constitutionality in the early period, Ogilvie dismisses any ancient accounts which have the tribunes prosecuting patricians, or even plebeians, in the first half of the fifth century. He compares the plebeian organization to a trade union. Using such a conceptual framework, the tribunes, then, become union leaders, as legally powerless over the community as the head of a modern trade union. Finally, since tribunician prosecutions are a reality of the late third century and beyond, the tribunes, he argues, must have acquired that power during the course of the integration of tribunes and the plebeian organization into the constitutional machinery over the course of the fifth and fourth centuries.

Ogilvie’s basic premise, however, is one that we cannot accept if we desire to evaluate the “state within the state” theory. If we are looking for evidence that the tribunes and the plebeian organization represented nothing more than an extra-constitutional “state within the state”, we will find none in the argument that the tribunes and plebeian assembly had no judicial authority, because that argument is built on the fundamental assumption that tribunes were powerless in the early Roman constitution. If we do not first assume the revolutionary and extra-constitutional nature of the tribunate,
then Ogilvie’s grounds for rejecting the accounts of the eight tribunician prosecutions of patricians prior to the decemvirate are unacceptable. Ogilvie’s argument that the tribunes would have gradually acquired such jurisdiction as they would have in the middle Republic over the next century and a half is noticeably vague. The tribunate, he claims, could only have had jurisdiction when it “was absorbed in the constitution after the Decemvirate, and especially after the Licinian-Sextian laws and the legislation of 287”.

He passes over about 160 years of Roman history in one sentence without naming a single piece of evidence of the tribunes’ acquiring judicial power. There is no agitation, no legislation, no mention at all in any of our sources of any movement to hand over jurisdiction to the tribunate during this time. Ogilvie can only offer the a priori argument that, if the tribunes had no jurisdiction in the early fifth century (and they certainly must not, if we accept the “state within the state” model), but they had it in the third, second, and first centuries (and they did), then the tribunate must have acquired that power in the intervening period.

Livy will tell us about nine more prosecutions by the plebs and its officials between the ouster of the decemvirate and the end of his first pentad, most of which were against patricians. There can be found no apparent evidence for change in procedure, or in the efficacy of the trials. But, remarkably, after the trial of Camillus in 391 by the tribune L. Apuleius, there is a striking drop off in tribunician trials. Ogilvie’s argument would have us believe that all of the prosecutions by plebeian officials in the first half of the fifth century were fictitious retrojections of later constitutional realities, but that just as the tribunes acquired the power of prosecution (whether it was with theLicinio-
Sextian laws, or the *lex Hortensia*, or somewhere in between is unclear), notices of tribunici
ian prosecutions become significantly less common. As I will discuss below, a similar
argument is made for the significance of the *lex Hortensia*. According to many modern
scholars, the passage of this law granted to the *plebs* the unfettered power to legislate. Some-
how, it is at this point that the “struggle of the orders” ends. That is, at the very point at which the *plebs* is supposed to have been granted the unlimited power to achieve all of the goals it had set for itself in the preceding two centuries (e.g., debt relief, land redistribution, the removal of patrician power), the plebeians are suddenly pacified.

The argument proposed by Ogilvie suggests that tribunes were granted the power to prosecute at about the time when tribunici
an prosecutions become less common in our sources. Ogilvie goes on to speculate about the nature of jurisdiction in the fifth century, arguing that many of the cases found in our sources are historical, having been recorded in the Annales Maximi, but that later historians had replaced *duouiri perduellionis* and *quaestores parricidii* with plebeian tribunes to match later legal practice. The argument would be an interesting one if one should accept the premise that tribunici
an prosecutions are to be dismissed. However, Ogilvie has failed to make the argument convincingly. Unless it can otherwise be shown that the tribunes operated outside of the early Republican “constitution”, and therefore had no prosecutorial authority, there is no reason to dismiss these accounts. Consequently, it is also possible to assert that there is no evidence here for the “state within the state”.

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76 Ogilvie (1965): 325-326.
How, then, can tribunician trials in the earliest decades of the Republic be interpreted? For Botsford, the decline in tribunician prosecutions in the fourth century suggested that the earlier accounts were unhistorical. Although that is a possibility, as Ridley has pointed out, one could just as easily argue that the tribunes stopped causing trouble for patricians through trials when their office became a part of the constitutional framework of the state. Niccolini argued essentially that. In his understanding, the tribunes did not receive recognition of their jurisdiction until sometime between the Licinio-Sextian rogations and the lex Hortensia. Niccolini’s argument, like Ogilvie’s, fails to account for the apparent drop off in tribunician trials during the time in which such things would have become constitutionally possible. Not all scholars, however, have denied the historicity of the trials. Siber, for instance, accepted them as historical, but as a kind of “lynch law” exercised by the plebs against the patricians. Siber, unlike the others, however, is able to provide a moment for the legitimization of tribunician trials. He argues that the lex Aternia Tarpeia of 454 was actually a plebiscitum according to which the tribunes were given the right to issue fines. Unfortunately, Siber’s explanation of the law of 454 is unsatisfactory, because there is no basis for turning it into a plebiscitum designed to legitimate tribunician judicial authority. Both Cicero and Dionysius assert that Tarpeius and Aternius were consuls, Cicero even directly asserting

77 Botsford (1909): 289.
80 Siber (1936): 26 ff.
81 Rep. 2.60.
82 DH 10.50.1-2.
that the law was passed in the *comitia centuriata*. Nor do any of the other sources who report this piece of legislation attribute to it tribunician or plebeian origins.  

Ridley largely followed Siber regarding the historicity of the tribunes’ judicial activity.  

Working solely from Livy’s account, Ridley argues that Livy’s version, at the very least, makes some sense. The constant theme, as he calls it, is “the high feeling of the *plebs*. Tribunician trials in the fifth century amounted to “the assumption of jurisdiction by the mass of the population when they became enraged against individual patricians, often even state magistrates.” Ridley still considers the trials to be operating outside of the established norms of law, but imagines the circumstances which would require a patrician to submit. After all, when the great majority of the population is up in arms against you, there is very little recourse but to accept punishment, or else go into exile. But though these trials are certainly extra-legal, Ridley stresses that we should not follow Siber in thinking of them as a “campaign of violence” against the patricians. The *plebs* never kills the accused. Ridley adds the final point in arguing for the reasonableness of Livy’s understanding of tribunician trials that the Twelve Tables outlawed the trial of any citizen on a capital charge except in the *comitiatus maximus*.  

Although Livy does not mention this provision of the Twelve Tables, Ridley argues, he

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83 Cf. Gellius NA 11.1.2; Fest. 270 L; Plin. NH 18.11; 33.1.1.  
85 For a similar argument, largely inspired by the work of Ridley, regarding Livy’s account of the Licinio-Sextian rogations, see the Appendix.  
87 Cic. Leg. 3.11. Presumably the *comitiatus maximus* is the same thing as the *comitia centuriata*, but Cicero’s reliability on the issue of comitial jurisdiction over *priuilegia* is necessarily suspect.
does have tribunes prosecuting capital cases in *comitia centuriata* later. As evidence for this assertion, Ridley cites the trial and execution of Manlius in 384.

Ridley is correct to emphasize two things. First, prosecutions by tribunes and other plebeian officials were assertions of popular will on the part of the *plebs*, or more accurately, I would assert, assertions of power by the plebeian magistrates themselves. Second, attempts were made at various points to set legal limits on the judicial behavior of magistrates, including the tribunes. But Ridley’s analysis fails on one key point. In what sense can it be asserted positively that the trials by plebeian magistrates were trials “outside the usual legal process”? Such a perspective can only be supported by the assumption that the tribunes always operated outside of the law, by their nature. But this must not be assumed if we are to examine the validity of the “state within the state” model. It is necessary to ask what precisely the “usual legal process” was, to the extent that we are capable of discerning such a thing from our scant sources. As I have shown, the picture is not so simple as a strict division between “state magistrates”, such as consuls, *duouiri*, and *quaestores* conducting legal trials according to established practice and with due reverence to the law, and “extra-constitutional” plebeian magistrates conducting trials extra-legally and only through the force of the will of a furious majority of citizens.

What, then, is the “usual legal process”? That is, what was the process by which the “state” exercised jurisdiction? An examination of the evidence for jurisdiction in the

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89 Liv. 6.19-20.
fifth century leads to a striking realization. Whereas the tribunes and plebeian aediles can be seen repeatedly engaging in the prosecution of defendants in this period (always patricians, it should be noted, with the one exception of the prosecution in 393 of the tribunes from the previous year, Q. Pomponius and A. Verginius, for the improper hindrance of the bill for the settlement of Veii), only three examples of the supposedly “state” office of *quaestores* engaged in prosecution can be found. A consideration of these is necessary to give us some insight into the operation of tribunician jurisdiction.

The first appearance of *quaestores* in the Republican period is the trial of Sp. Cassius in 485, who was accused of aiming at tyranny.\(^9\) In this case, Sp. Cassius had spent 486, the year of his third consulship, agitating for a program of legislation to divide up land recently conquered from the Hernici equally amongst Roman citizens, Latins, and the Hernici themselves. Cassius’ desire to share the land equally with the recently conquered Hernici alienated him from the *plebs*, whereas the proposal of Rome’s first piece of agrarian legislation inspired the *patres* to mount a prosecution through the *quaestores*, K. Fabius and L. Valerius. His property then was the subject of a *consecratio bonorum* to the temple of Ceres. There is nothing surprising about this narrative, and nothing that would suggest that the *quaestores* were operating as anything other than officials of the state. The *patres*, suspecting Cassius’ ambitions, saw to it that a charge was brought against him, *perduellio* according to Livy, by the *quaestores*. The

\(^9\) Liv. 2.41 and DH 8.68-80 provide essentially the same narrative, offering also the alternate tradition that Sp. Cassius’ father had been responsible for the death of his son; Cic. Rep. 2.60 presents an alternative tradition which incorporates both a trial at the hands of *quaestores* and the father’s sacrifice of his son in the interest of liberty, with the *populus* ceding the right of punishment to him; the legend of the father’s responsibility can be found also in Flor. 1.17.7; Val. Max. 5.8.2 peculiarly calls Sp. Cassius *tribunus plebis* in 486; cf. also Plin. NH 34.4.
arguments were made, and, ultimately, he was condemned by a *iudicum populi*. By all appearances this was a fully “constitutional” action, with magistrates duly prosecuting a suspect before an assembly of citizens.

Other than this, there are only two more years in which we find these supposedly “state” magistrates prosecuting cases. Both cases, however, involve the prosecution of the same man, M. Volscius Fictor, the plebeian whose testimony had been so instrumental in the prosecution of Kaeso Quinctius. The first attempt, according to Livy, came in 459.\(^{92}\) The *quaestores*, A. Cornelius and Q. Servilius, introduced the charge of *falsus testis* against Volscius. But the tribunes, who were still in the process of agitating for the Terentillian law, refused to allow the *quaestores* to assemble the people for trial until they had first been assembled to vote on the bill.\(^{93}\) The next year, new *quaestores* continued the effort to prosecute Volscius. This year T. Quinctius and M. Valerius prosecuted Volscius successfully, though the tribunes did what they could to stop the trial.\(^{94}\) But it was not, in fact, the “constitutional” status of the *quaestores* that allowed them to pursue the prosecution unhindered. In fact, Livy tells us, it was only the power of the dictator, the father of Kaeso himself, Cincinnatus, which was able to cow the tribunes and force them to submit to the trial.\(^{95}\)

Ultimately, those who wanted to see Volscius prosecuted for his testimony against Kaeso were able to get the job done, and they were able to do so through the office of the *quaestores*. However, their success should not incline us toward granting this obscure

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\(^{92}\) Liv. 3.24.3-7.
\(^{93}\) Liv. 3.24.7. *In mora tribuni erant, qui comitia quaestores habere de reo, nisi prius habita de lege essent, passuros negabant.*
\(^{94}\) Liv. 3.25.2-3.
\(^{95}\) Liv. 3.29.6.
early quaestorship full “constitutional” status, while denying such a status to the tribunes. The tribunes were able to block the prosecution of Volscius for more than a year, according to Livy. Nor do we have any reason to question the historicity of this example of tribunician obstruction. It is not obvious why the annalists should have invented a quaestorship for A. Cornelius and Q. Servilius in 459 if the trial and prosecution of Volscius took place only in 458, under different quaestores. Instead, it is likely that there is a firm historical basis for the tradition that Volscius was prosecuted in 458 after a failed attempt in 459. How, then, is one to interpret the events of these years? Does the success of the quaestores in prosecuting Volscius in the face of tribunician opposition prove that the quaestorship was a “state” office, while the tribunes were “extra-constitutional”? Certainly not. To offer the victory of the quaestores of 458 over tribunician obstruction as evidence for the “constitutional” nature of the quaestorship or the “extra-constitutional” nature of the tribunate would require that we also take tribunician success in prosecuting Kaeso Quinctius in 461, or in the many other examples, as evidence that the tribunes were themselves state officials.

But to argue that the tribunes’ success in prosecution shows that the tribunes were “state” officials in the first half of the fifth century is equally unsatisfactory. I have already shown that the basis of tribunician power on the lex sacrata of 493 is a very uncertain and difficult issue, and that it cannot offer clear answers to questions about the nature or limits of the authority of the tribunate at any period in Republican history. Although tribunes begin at a very early date to behave in certain respects like magistrates of the state, not only through prosecutions, but also in presiding over assemblies and
proposing and passing legislation, our sources suggest that there was much debate in the early years of the tribunate about the powers and limitations of the office. While the assertions of the annalists about the parameters of the debate cannot be used as hard evidence for the specific nature of political discourse in the early Republic, the preponderance of evidence suggests that many patricians would have questioned the powers of the tribunate, or even its right to exist.

Opposition arises at the very beginning of the tribunate’s existence. Coriolanus, we are told, wanted to see the new office abolished in 491. When the tribunes threatened him with prosecution, he rejected their right to do so: the tribunes were created with the power of bearing auxilium, not with the power to punish. They were, further, officials of the plebs not of the patres. Twenty years later, while opposing the tribunes’ attempt to pass the lex Publilia, which would move the election of tribunes to comitia tributa, Livy tells us that Appius Claudius opposed the measure most strenuously. The significance of these two events is clear. If there is any truth to these accounts, there were those who refused to recognize the power of the tribunes. However, such accounts, as I have argued above, do not show positively that the tribunes were not magistrates and possessed an authority inferior to the consuls, but rather that the powers of the tribunes and of the consuls were subject to ongoing argument.

If, then, we acknowledge that there is no good reason to dismiss accounts of tribunician jurisdiction in the fifth century unless we first assume the extra-

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96 Liv. 2.35.1-6. auxilii, non poenae ius datum illi potestati, plebisque, non partum tribunos esse.
97 Liv. 2.56.11-16.

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constitutionality of the tribunate, or to reject the efficacy of the tribunician prosecution, then we must accept the historicity of tribunician trials in this early period. Individual trials may have been invented or greatly elaborated by the ancient tradition, but the trials play such a major role in the narrative of the early Republic that they must be based on some historical reality. Once we have accepted this, a careful look at public trials during the fifth and fourth centuries reveals an interesting pattern. Far from being out of the ordinary, or “unconstitutional”, tribunician trials served as an important part of the political fabric of the early Republic. Although he wrongly considered tribunician trials to be outside of the constitutional framework of the early Roman state, Ridley correctly identified the patterns of tribunician trials.\footnote{Ridley (1980): 349.}

The charges seem to break down into a few categories: obstructing the tribunes or plebs (491, 473, 470? 461); military incompetence (476, 475, 432, 422, 420, 401); improper distribution of booty by a general (454, 391); tyrannous behavior (449); contravening the comitia (442, 310); contravening the ius gentium (389); false witness (435); improper tribunician veto (393).

In the great majority of these cases, the tribunes take action either in defense of their powers (i.e., when they charge a patrician with obstruction of assemblies), or against ex-magistrates in attempts, essentially, to limit the free exercise of consular (or decemviral)
imperium (as in the case of trials for military incompetence, improper booty distribution, or tyrannous behavior).

It must be the case, of course, if certain individuals did not recognize the tribunes’ authority to try a patrician, that these prosecutions would have amounted to assertions of jurisdiction, and of the tribunes’ right to carry out their duties without obstruction. The prosecutions certainly were very real and had a very real effect, but they were ultimately statements of the tribunate’s power to undertake them. What, then, of the trials presided over by quaestores? What is interesting is that the first such trial in the Republican period was that of Sp. Cassius carried out by the quaestors K. Fabius and L. Valerius. In this case, the two patrician quaestors prosecuted a popular leader for an attempted tyranny. The historicity of this story has certainly been called into question by modern scholarship, but is the idea so unlikely? The new aristocracy, its power still in its infancy after the overthrow of Tarquin, was faced with the threat of a popular leader, who aimed to acquire for himself as much power as possible. If Sp. Cassius had, in fact, acquired for himself great popularity with the plebs, the tribunes would not necessarily have found it in their interests to prosecute. But the quaestors, as members of the aristocracy, had reason to protect the dominance of their class against a potential threat.101

100 Cf. Rosenstein (1990), who shows decisively that the nobilitas of the middle Republic had successfully diverted blame for military defeats away from the generals. The persistence in the tradition of trials of ex-consuls for military incompetence is highly suggestive of there being a kernel of historical truth here. It is difficult to imagine how historians of the last two centuries of the Republic would have come to invent trials of this sort. Whatever the case, the usual charge against the tradition is that of retrojection of later historical realities. We cannot also reject the tradition on account of the appearance of trends which do not conform to later conditions.

101 Ogilvie (1965): 337-340 offers good reasons to believe that this episode had its origins in historical events.
The trials of Volscius Fictor are equally telling. The man is tried for false witness. The circumstance of his false witness was the trial under tribunician presidency of the hotheaded young patrician, K. Quinctius. Friends and family of the young man would certainly have wanted to punish the witness who had offered the most damning testimony against him, but there was a deeper concern. By 461, when Kaeso was tried, the tribunes had been successfully prosecuting their political opponents for three decades. The precedent had been firmly set. The opponents of the tribunes could not claim any more that the tribunes were powerless to prosecute Kaeso, so their only hope to weaken the principle of tribunici prosecution would have been to undermine it indirectly, by setting a precedent of their own. They would prosecute those who bore witness against patricians in tribunici trials. Admittedly, this is a speculative picture based on a series of uncertain accounts, but it is consistent with the evidence and does not require the wholesale distortion of early Republican trials by some unknown early annalist.

Another key point must be considered. The lex Aternia Tarpeia of 454 was a consular law, according to Dionysius passed in the comitia centuriata. There were two elements of the law:102

1. The permission to all magistracies (hai archai pantes) of the right to prosecute anyone who was guilty of behavior that was disrespectful of their authority, or who illegally attempted to limit their power. A right which Dionysius says was only available to consuls before this law.

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102 DH 10.50.1-2.
2. The setting of maximum fines, so that setting the amount of the fine would not be open to the arbitrary judgment of the prosecutor.

As I noted above, Siber interpreted this law as a *plebiscitum* designed to grant the authority to hold trials to the tribunes.\(^\text{103}\) This view is unlikely, however, since under the “state within the state” model, this *plebiscitum* would have been meaningless, given the powerlessness of the *concilium plebis* prior to the *lex Hortensia*. Others have insisted that this law pertained only to consuls and other “state” magistrates.\(^\text{104}\) But there is no evidence for such a theory, except for the basic assumption that the tribunes and aediles were “extra-constitutional” offices. Instead, the sources quite strongly assert that the law was consular and that its provisions extended to all magistrates, including tribunes, and there is no reason to doubt them here. In fact, it makes perfect sense. In the year 454, two consulars were subject to harsh prosecution. Veturius and Romilius were tried and fined large sums (15,000 asses for Veturius, 10,000 for Romilius). Dionysius says that the consuls Aternius and Tarpeius were terrified that they would suffer the same fate in the next year. Because of this, he says, they proposed laws in the interests of the *demos*, including this law, and supporting the proposal of the tribunes to send an embassy to Greece to learn the laws. But, I suggest, Dionysius, whose attribution of motivations is only a guess on his part or on the part of his sources, has slightly misinterpreted the circumstances. To be sure, Aternius and Tarpeius must have feared tribunician prosecution, which had become a frequently used tool in the hands of the tribunes. The law was not so much an attempt to appease the *plebs* in general as an attempt to curb the

\(^{103}\) Siber (1936): 26 ff.

\(^{104}\) Botsford (1909) 269.
power of the tribunes. The patricians could no longer hope to claim that tribuniciand prosecutions were illegal. The precedent had been set and had become firmly entrenched in tradition. The likeliest explanation is that the consuls recognized this fact and offered their formal recognition of tribuniciand jurisdiction as a means of bringing it to some degree under their control. The consuls passed a law recognizing the tribunes’ right to prosecute, but thereby attempted to set limits on the fines that could be issued.

In my admittedly speculative reconstruction, the strategy behind the proposal of this legislation would have been to try to bring the tribunes under control, not by bringing them into the orbit of the “state”: the tribunes had clearly gained the upper hand in this regard—but by means of a kind of truce. A mutual recognition and limitation of powers was the result. From now on, it would be impossible for patricians to claim to be exempt from tribuniciand authority, but a law of the people had now set limits on the size of the fines which tribunes could impose. In the first half of the fifth century, there was no “state” or “constitution” in regard to jurisdiction—there is only tradition. The tribunes set the precedent very early on that they would prosecute those who set out to limit their authority. They would also use it to limit the independence of the consuls, whose authority they themselves challenged. The tribunes were clearly winning the debate regarding jurisdiction. The long series of successful prosecutions and the lex Aternia Tarpeia attest to that fact. On the one hand, the plebs trusted a small group of families, the gradually emerging patriciate, to command Rome’s armies. The consolidation of the consulship in the hands of a few families attests to the fact that these families had had great success in winning the debate before the people about their peculiar ability to
command armies successfully. On the other hand, they also appear to have trusted the tribunes to keep a careful eye on those families and ensure that they adhered to the limitations of their office, or even to set those limitations. Given this set of circumstances, it is understandable that patricians would refuse to recognize the authority of the tribunes—they did not hold that office. Instead, they would recognize, at first, only the power of the office over which they had a slowly developing monopoly. But one must not make the mistake of confusing the patrician refusal of recognition with constitutional reality. The tribunes’ power was very real. And just as the patricians and their consuls would refuse to recognize the tribunes, the tribunes would refuse recognition to the consuls in the exercise of their own claimed privileges. Their means of doing this went beyond legislation and jurisdiction, to the outright obstruction of consular levies.

4.6 The Decemvirate

Now we must turn our attention to the establishment of the Decemvirate (decemvirī legibus scribendis), the board which, according to tradition, composed the law of the Twelve Tables. The establishment of this board and this first codification of Roman law were viewed by the Romans as a fundamental moment in the development of their state. Livy refers to the Twelve Tables as “the source of all law, public and private”\(^{105}\). For modern scholars, however, it also represents a key moment in the “struggle of the orders”—in particular, it reflects a great advance for the plebs, when they

\(^{105}\) 3.34.6: fons omnis publici priuatimque est iuris.
were able to demand that Roman law be codified for the first time, and thus protect themselves from the arbitrary legal judgments of the *patres* and their *agraphoi nomoi*.\(^{106}\) Indeed, most scholars view the composition of the Twelve Tables as one example of a broader trend in antiquity, in which oppressed classes throughout the Mediterranean gained a major victory over the ruling classes by means of the codification of law.\(^{107}\)

However, this interpretation has been called into question most strikingly by Eder, who argued that the first codifications of law in the ancient Mediterranean, far from being spectacular victories for the popular cause, “must primarily be regarded as a measure to ensure aristocratic predominance; it was an attempt to stabilize the political and economic status quo, which was being seriously threatened by social unrest.”\(^{108}\) Eder argues convincingly that in Greece and in Rome, the codification of law was a process undertaken by the aristocracies in times of economic and political crisis to ensure their predominance in the community by guaranteeing economic and political stability, and by creating a sense of unity among the aristocracy by establishing rules which would prevent individual members of the aristocracy from exploiting the crisis to further their individual interests. Two facts stand out: 1) the measures of the Twelve Tables, as is the case with the early Greek law codes, do not themselves seem overtly to benefit the most downtrodden classes, and 2) there is not, in the case of Greece, direct evidence for popular demands for codification. It seems, instead, that codifications were efforts on the parts of the aristocracy to protect their own interests. However, Eder notes, the Roman

\(^{106}\) Scullard (1980) 89; Ogilvie (1965) 412.
\(^{107}\) Gschnitzer (1981): 75.
case is somewhat different, in that our sources report that the demand did come from the representatives of the downtrodden—the tribunes of the *plebs*. However, he dismisses this problem:  

In Rome, however, such a demand is attested in the sources, but it appears rather late and is pursued inconsistently. Thus there is reason to suspect that we are confronted here with a later invention—just as in the case of the second Decemvirate. Yet, although a convincing demand for codification is not traceable, the laws were codified. This was done by members of the upper classes, probably the *eupatridae* in Athens and certainly the *patricii* in Rome.

Eder is certainly correct in his identification of the classes responsible for putting together the codes. He is also correct when he suggests that the codes do not seem to reflect the interests of those in whose interests most modern scholars insist the law codes were originally supposed to have been written. However, his dismissal of the ancient tradition regarding the original demand for codification at Rome is perhaps too hasty. Proper interpretation of this demand, I argue, is key to our understanding the nature of the development of Rome’s political institutions in the middle of the fifth century.

According to Livy and Dionysius, the first demand for codification at Rome came in 462, when a tribune by the name of C. Terentilius Harsa (or Terentios in Dionysius) proposed a law *ut quinque uiri creentur legibus de imperio consulari scribendis*.  

This wording might seem a bit strange at first sight, since the board elected would be *decemuirii imperio consulari legibus scribundis*. The reading found in Livy has generally

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109 Ibid. 247.
110 Liv. 3.9.5;
been rejected by modern scholars.\textsuperscript{111} The demand, they believe, was by the plebeian organization for the codification of laws in order to protect the \textit{plebs} from the arbitrary judgment of the patricians. At this point, “[t]he power and prerogatives of the consuls could not have been subject to such investigation, whereas the Decemvirate ultimately was just such a commission \textit{legibus scribendi}.”\textsuperscript{112} Accordingly, though Livy believed that Terentilius’ proposal was designed to limit the powers of the consuls, modern consensus rejects this possibility. Mommsen changes \textit{quinque uiri legibus de imperio consulari scribendis} into \textit{quinque uiri consulari imperio de legibus scribendis}—that is, for Mommsen, the original bill of 462 was changed by the time of the establishment of the Decemvirate in 451 only by the doubling of the board’s size.

But what is our reasoning for rejecting Livy’s version of the original proposal? Apparently, the only reason for rejecting it is that it does not fit the narrative of the “struggle of the orders”—the limitation of consular power is not possible yet. The \textit{plebs} is still too weak and is only now beginning to demand recognition under the law.\textsuperscript{113} But such reasoning requires that we first accept the “state within the state” hypothesis, and begin with the assumption that the \textit{plebs} is nothing but a downtrodden class only just beginning to assert itself against the all-powerful patriciate.

I suggest an alternative reading. If, with Ogilvie, we accept the historicity of the original proposal, there is no reason to change its nature. We have seen how our sources

\textsuperscript{111} Ogilvie (1965) 412; Mommsen (1887-8) 2. 702 n. 2.
\textsuperscript{112} Ogilvie (1965) 412.
\textsuperscript{113} Ogilvie ibid. suggests that the distortion of the nature of the original proposal was concocted by Valerius Antias, because Antias was supposedly a partisan of Sulla, whose political program was concerned with limiting the power of individuals. Ogilvie believes that he is able to show that Livy’s source for these events is Antias because at 3.10.8 Antium is mentioned.
painted a consistent picture regarding the development of jurisdiction. Tribunes and *quaestores* battled it out for control over the power to prosecute individuals. But this was not a battle between “state” and “state within the state”, nor was this a battle between *patres* and *plebs*. In every case, the trial took place before an assembly of the people, and the verdict came by way of a vote of the people. The conflict was one between plebeian officials and patrician officials over legitimacy. In each case, this was a conflict of institutions, and that conflict was played out as a debate to gain the acceptance of the citizenry. In the case of the proposal which led to the establishment of the Decemvirate, we can see a jurisdictional battle. Rather than an attempt by the downtrodden *plebs* to assert its right to legal recognition, we see a conflict between institutions. In this case, we see a tribune of the *plebs* attempting to limit the *imperium* of the consuls through the establishment of a board of five men whose responsibility it would be to write laws regarding consular power.

Admittedly, this reconstruction is speculative. However, it finds its basis in the accounts of Livy and Dionysius and does not require that we make reference to manuscript corruption, or the direct distortion of the historical tradition by Livy or his predecessors. It offers the further benefit of explaining the final nature of the law code. The code would ultimately do little to improve the legal or economic status of the poor. Livy portrays the eventual establishment of the Decemvirate as a compromise.\(^{114}\) Rather than a board to write laws to limit consular *imperium*, one would be created to write laws which would benefit both the *patres* and the *plebs*. What Livy describes is an initial

\(^{114}\) 3.31.8.
proposal designed to increase the power of the tribunate by limiting consular power. In the end, a board was created which codified laws to benefit the wealthy and powerful, both patrician and plebeian. The code would, of course, establish laws that were less than beneficial to plebeian leaders (for instance, the ban on intermarriage between plebeians and patricians), and those plebeian leaders would almost immediately begin to work to dismantle those aspects of the Twelve Tables.

In the end we must, with Eder, abandon the notion that the Decemvirate and the codification of the law in the Twelve Tables was a boon for a popular movement. As with other codifications, the Twelve Tables was an attempt by an aristocracy to shore up the basis of its power and increase the stability which it needed to maintain its position. However, the Roman example is a slight outlier in that it does involve a demand for codification on the part of a group that was to some degree outside of the aristocracy. I suggest that Eder is wrong to dismiss the original proposal by Terentilius on the grounds that the Decemvirate would not be established for another eleven years. After all, there was some conflict over the passage of the law. But that conflict was not between the elite and the masses. What is peculiar about the case of Rome is that it involves two groups of aristocrats, the patricians and the elite plebeians represented by the tribunes. Terentilius’ proposal was not a demand by the masses, but a claim to power on behalf of his magistracy, as was the case with the struggle over jurisdiction, as well as the struggle over legislative authority, to which we shall now turn our attention.

4.7 Legislation
A tremendous amount of the evidence offered to support the “state within the state” theory is based on the scholarly consensus about the nature of legislation in the early Republic. The bibliography on the subject is characteristically massive.\textsuperscript{115} The usually accepted theory goes that the “state” assembly at the foundation of the Republic was the \textit{comitia centuriata}, which mostly replaced the \textit{comitia curiata}, with the exception of a few functions, such as the \textit{lex c uriata de imperio}. The \textit{plebs}, however, created for itself a revolutionary assembly, the \textit{concilium plebis}. This assembly, which consisted only of plebeians, was extra-constitutional and had no ability to make laws. However, at some point, there came into existence another tribal assembly, the \textit{comitia tributa populi}, which, according to some scholars, included both plebeians and patricians and was presided over by an official magistrate of the \textit{populus}. It was only gradually that the \textit{concilium plebis} gained full status as an assembly of the Roman community—finally being granted the power to legislate without any limitations by the \textit{lex Hortensia} of 287.\textsuperscript{116} Though one of the Valerio-Horian laws of 449 and one of the dictatorial \textit{leges Publiliae} of 339 both appear to have granted the plebeian assembly the right to legislate, they are usually either disregarded by modern scholars, or else are considered to have granted the \textit{concilium plebis} some freedom to legislate, but only with the ratification of \textit{patrum auctoritas} or by the \textit{comitia centuriata}.\textsuperscript{117} The “struggle of the orders” is usually considered to have ended with the passage of the \textit{lex Hortensia}, with the law serving as

\textsuperscript{115} To cite just some of the important works supporting the consensus view: Lintott (1999) 40-64; Staveley (1955); Botsford (1909).
\textsuperscript{116} For the sources for the \textit{lex Hortensia}, see Broughton \textit{MRR} 1: 185.
\textsuperscript{117} For the Valerio Horation law: Liv. 3.55.3; for the Publilian laws: Liv. 8.12.12-17.
the final full integration of the plebeian organization into the constitution of the Roman state.

There is no reason to engage in a full demolition of the common view. Develin has argued powerfully that there is good reason to believe that there was only ever one tribal assembly in the Roman Republic, and that tribal assembly had the power to legislate throughout the fifth and fourth centuries.\textsuperscript{118} Further, Farrell has shown that the difference between \textit{concilium plebis} and \textit{comitia tributa} is nothing more than a matter of describing the membership of the assembly and describing its organizing principle.\textsuperscript{119} The only reason one might have to posit a difference between the “state” assembly of the \textit{comitia tributa} and the extra-constitutional \textit{concilium plebis} is the assumption that the plebeian assembly must, by definition, be extra-constitutional. But, if we should make such an assertion, we would have to find a way of explaining the existence of tribal laws passed in the centuries before the \textit{lex Hortensia}.\textsuperscript{120}

We are left, then, to explain the apparent existence of three separate laws granting the tribal assembly the power to make law. The first comes in 449, among the Valerio-Horatian laws, which sought to reorganize the Roman state after the ouster of the second Decemvirate:\textsuperscript{121}

\begin{quote}
Omnium primum, cum uelut in controuerso iure esset tenerenturne patres plebi scitis, legem centuriatis comitiis tulere ut quod tributim plebes iussisset populum teneret.
\end{quote}

\textsuperscript{118} Develin (1975).
\textsuperscript{119} Farrell (1986).
\textsuperscript{120} E.g. Licinio-Sextian rogations of 367 (see Appendix).
\textsuperscript{121} Liv. 3.55.3
First of all, since it was practically a matter of legal dispute whether the patres were bound by plebiscita, they carried a law in the centuriate assembly which held that whatever the plebs had commanded in the tribes bound the whole populus.

For Livy, then, the passage of the first law was a matter of dealing not with a constitutional reality (i.e., that the tribal assembly had no power to legislate), but rather with a claim on the part of the patres that they were not bound by tribal legislation.

The second law, passed in 339, is also found in Livy:  

dictatura popularis et orationibus in patres criminosis fuit, et quod tres leges secundissimas plebei, aduersas nobilitati tuli: unam, ut plebi scita omnes Quirites tenerent; alteram, ut legum quae comitiis centuriatis ferrentur ante initum suffragium patres auctores fient; tertiam, ut alter utique ex plebe ut utrumque plebeium fieri liceret censor crearetur.

The dictatorship [of Publilius] was a popular one, both because he made accusatory speeches against the patres, and because he carried three laws which were favorable to the plebs and against the nobility: one, that plebiscita bound all Quirites; the second, that the patres be auctores of laws which were carried in the centuriate assembly before the vote began; and third, that at least on plebeian be elected censor, but both may be plebeian.

The second law also comes as part of a package of laws. The dictator Publilius also sought to require patrum auctoritas to be given before a law was voted on in the

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122 8.12-12-13.
centuriate assembly and to require that one censor be plebeian. It is important, I think, to consider the first two laws together. I suggest that the law *ut plebi scita omnes Quirites tenerent*, which, as far as we can tell, is essentially the same as the Valerio-Horatian law, was passed in conjunction with the law about *patrum auctoritas*. In defining the relationship between the *patres* and the centuriate assembly, it was necessary to reaffirm the independence of the tribal assembly from any ratification.

The *lex Hortensia*, however, is more difficult to explain. The events of 287 were described in Livy’s eleventh book, which is lost, and the description of the events in the Livian *Periochae* do little to explain the necessity for the law, describing only a secession of the *plebs* because of debt, and their return under the leadership of a dictator, Q. Hortensius, who died in office. Though our sources describe essentially the same law as those of 449 and 339 (i.e., declaring that tribal laws were binding on all *Quirites*), it is not readily apparent why such a law was necessary at the time. What I do suggest is that there is little reason to choose one of these laws over the others, or to imagine that their terms were different and offered the gradual emancipation of the tribal assembly. Instead, the need for repeated restatement of the efficacy of tribal legislation should be put into the broader context of the institutional struggles of the fifth and fourth centuries. Just as tribunes and consuls found themselves locked in conflict over the limitations of their powers, the assemblies, too, were the subject of institutional conflict. Patricians, who probably did not participate in the tribal assembly, might, as Livy suggests, have denied that they were bound by the assembly’s decrees. The fact that a law declaring the tribal assembly fully competent to legislate was passed in 449 does not mean that a
century and a half later no one would deny the assembly that power. The epitomator suggests that in 287, there was a struggle over debt. Perhaps a tribal law was passed which attempted to alleviate debt, but patrician creditors chose to claim that they were not bound by such a law. There is no way of knowing, though such a scenario would explain the need for the passage of the *lex Hortensia*. The fact is that we do not know enough about the events of 287 to declare this law to have been the only law which granted the tribal assembly binding force.

4.8 Conclusion: Senate and Magistrates

To this point I have focused my attention on the development of the tribunate and the tribal assembly. Its constitutional position changed dramatically over the first two centuries of its existence through a constant negotiation and re-negotiation of its relationship to the other institutions of the Roman state. The central argument of this chapter, however, is that the plebeian institutions did not develop from an extra-constitutional and revolutionary cadre to gaining acceptance into the official machinery of the state. Instead, the development of the prerogatives of the tribunate took place in tandem with the development of the other Roman institutions. We have seen, for instance, how the tribunate defined its powers with regard to jurisdiction through conflict with other institutions which would claim such authority. The tribunate was able to lay a nearly exclusive claim to legislative authority through conflict with the consuls, through
asserting both its dominance of the tribal assembly, as well as the primacy of the tribal assembly in the legislative process. What must be noted in this discussion is that the redefining of the position of the tribunate with respect to that of the consuls, the senate, or the assemblies constitutes also a redefinition of the powers of each of these institutions. That is, the development of the tribunate is not a process of gradual incorporation of a revolutionary organization into the machinery of the state, but is itself a process of state formation.

We must, therefore, remove from consideration the notion that the first two centuries of the Roman Republic was characterized by a conflict between a “state” and a “state within the state”. To some degree, we can meaningfully speak of a conflict between the plebeian institution of the tribunate and the mostly patrician institution of the consulship, in the sense that the former could be held only by plebeians, the latter being mostly dominated by patricians. And surely that class distinction must have been the source of much of the conflict. Members of the patriciate would certainly have wanted to extend the power of the institution which was under their control to the extent that they were able, while limiting the power of the office from which they were excluded. But the development of the Roman state was a much more complex process than a simple conflict between patricians and plebeians. We can see this particularly clearly by examining the history of the senate during this period.

At the time when the first Roman historians began writing early in the second century, the senate had already emerged to become one of the dominant forces in the constitution. In many ways, it was the governing body of the state. The senate guided
the magistrates and pro-magistrates in the conduct of their duties, decided on important religious matters, and, through the *patrum auctoritas*, served a fundamental role in the legislative process. According to our annalistic sources, the senate was created by Romulus, and that it had from a very early point the prerogatives it would enjoy during the middle Republic. For Livy, in many respects, the senate was at its most powerful at the beginning of the Republic, because it possessed what amounted to a legislative veto in the *patrum auctoritas*, which was required for actions of the *comitia centuriata* and *comitia curiata*. He places the origin of this institution after the death of Romulus, when the *plebs* had begun to complain about the senators’ failure to appoint a successor: 123

*Cum sensisset ea moueri patres, offerendum ultro rati quod amissuri erant, ita gratiam ineunt summa potestate populo permissa ut non plus darent iuris quam detinerent. Decreuerunt enim ut cum populus regem iussisset, id sic ratum esset si patres auctores fieren*.

*Hodie quoque in legibus magistratibusque rogandis usurpatur idem ius, ui addempta. Priusquam populus suffragium ineat, in incertum comitiorum euentum patres auctores fiunt.*

When the *patres* had realized that these things were being discussed, they thought it better to offer of their own accord what they were about to lose, and so gained the favor of the people by granting them the highest power that they did not give up more power than they held on to. For they decreed that when the people had chosen a king, this act would only be ratified if the *patres* become *auctores*.

Even today in voting on laws and magistracies this same prerogative is utilized,

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123 Liv. 1.17.8-9.
though with its force lost. Before the people undertake to vote, the patres become auctores of elections of uncertain outcome.

However, Cornell has recently called into question the ancient tradition that the senate held so powerful a position in the early days of the Republic. He has argued persuasively that we must reconsider the centrality of the senate during this period. Focusing on the lex Ovinia (Festus 290L), which took the lectio senatus (the appointment of senators) out of the hands of the consuls and granted it to the censors, and established guidelines for appointments, Cornell argued that the senate of the early Republic was a very different institution from the one with which we are more familiar from later periods. By taking the power of appointing senators away from the consuls, the lex Ovinia emancipated the senate from the whims of the consuls. Prior to the law, according to Festus, each new pair of consuls could appoint whomever they wished to the senate, and likewise they could drop from membership anyone for any reason. As a result, the senate had existed only as advisory council for the consuls. Before the law it gave the magistrates “advice and assistance”, but after, “it was now in a position to give them instructions.” Cornell convincingly argued that the lex Ovinia is to be dated to soon after the leges Publiliae of 339, when the new patricio-plebeian nobilitas was beginning to assert itself. By freeing up the senate’s authority from the whims of the consuls, the new nobility effectively established the senate as an independent institution, and as a voice for the concerns of their class. In essence, the lex Ovinia was a product of the end

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of the “struggle of the orders”, when the new patricio-plebeian nobility required an institution through which it might rule.

I suggest that there is still more evidence that the senate was struggling to assert itself as an independent institution against the power of the consuls from a very early point. As I discussed in Chapter 2, Livy tells us that one of the Valerio-Horatian laws included a provision requiring that *senatus consulta* be handed over to the plebeian aediles to be stored in the temple of Ceres. This has often been considered to be part of the lower-class demand for codification of law, which I have followed Eder in rejecting above. Instead, I suggest that we consider Livy’s explanation of the need for such a law:

Institutum etiam ab iisdem consulis ut senatus consulta in aedem Cereris ad aediles plebis deferrentur, quae antea arbitrio consulum supprimebantur uitiabanturque.

It was also established by these same consuls that *senatus consulta* be handed over to the plebeian aediles to be stored in the temple of Ceres, since they used to be suppressed and altered at the whim of the consuls.

The law was an attempt by the senate to assert itself against the suppression of its will by overbearing consuls. One might reject this law as ahistorical, but on what grounds? Did Livy or his sources, who believed that the senate was central to the Roman state almost from the city’s founding by Romulus, and that its power was at its height during this period, invent this law, which presupposes that the senate was being overwhelmed and

125 3.55.13.
I argue that we ought to accept this law as historical and understand it in the context of Cornell’s argument. Just as the tribunes and consuls were struggling with each other to assert their respective powers and prerogatives, and just as the tribal and centuriate assemblies were engaged in a process of forming their various competencies, so the senate was struggling to assert its independence from the consuls.

I would not be on solid ground to argue that the tribunate or the tribal assembly were institutions of the Roman “state” during the fifth centuries. But neither were they extra-constitutional and revolutionary organizations. The state—as we know it from the middle Republic—was only beginning to form during this period. The consuls, senate, assemblies, tribunes, aediles, and all other Roman institutions were engaged in a process of self-definition. Each institution had to define itself by making a series of claims to power over particular spheres of public life. The Roman “constitution”, as we know it from later periods, was the product of the conflict that arose out of this process of self-definition. The “struggle of the orders” was not a conflict between patricians and plebeians per se. If we can speak of a “struggle of the orders”, we must refer to the institutional conflict that persisted throughout these centuries in which each magistracy, each assembly, as well as the senate pushed to extend its powers and prerogatives as far as was possible.
Chapter 5

Conclusion

In their accounts of the first secession of the plebs, both Livy and Dionysius of Halicarnassus include a speech given by Menenius Agrippa, who had been sent by the patres in an attempt to negotiate the return of the seceding plebeians to the city.¹ Menenius tells the seceders a story of an ancient time when the parts of the human body were independent of each other, each with its own consciousness, each considering only its own interests. When the limbs conspired to starve the belly, complaining that it seemed to do nothing but receive food from the hard work of the other parts, they found that they starved as well. Having come at last to realize that even the belly is as necessary as any of the limbs, all the parts came together and worked in the common interest. In this manner, Menenius argued that the seceding plebeians should recognize that the patricians were vital to the functioning of the community. Without the patres, the plebs could not survive. What is remarkable about this story is that the Romans of later times believed that this argument was suitable to the circumstances and, most important, that it worked! For Livy and for Dionysius, as undoubtedly for their predecessors, the plebeians were not a unified movement dedicated to the overthrow of patrician rule. Instead, the plebs amounted to the mass of citizens who were not patricians. In times of crisis, they could be incited to revolutionary activity. But just as often, they could be inspired to follow their patrician leaders.

¹ Liv. 2.32.8-12; DH 6.83-86. For the origins of the parable of the belly and the limbs, see Nestle (1927).
I do not mean to suggest that this state of affairs held during the early Republic just because Livy and Dionysius believed that it did. Rather, I suggest that we ought to question the notion that the plebs was ever an organized movement fundamentally opposed to the patricians. In this dissertation, I have shown that the props used to support this theory cannot be upheld without a series of interlocking assumptions. Ceres, for instance, can be shown to be a plebeian goddess, because her temple was built on the plebeian hill, the Aventine. We know that the temple must have been there because she is a plebeian goddess. And we know that the hill is plebeian, in part, because Ceres’ temple was built there. The tribunate, to cite another example, was a revolutionary and extra-constitutional institution during the early Republic, because it had no official functions and only exercised extra-legal authority. We know that its authority was extra-legal, because there is no evidence that it had any judicial or legislative powers under the early constitution. There is no evidence, because when the sources suggest that the tribunes had such powers, those accounts are to be dismissed. They are to be dismissed, because we know that the tribunate had no such powers.

There remains little to support the theory that the plebs was a political movement, or an extra-constitutional “state within the state”. So, how do we account for the political struggles of the early Roman Republic? I suggest that we ought to take the parable of the belly and the limbs, as well as the events leading up to its telling, very seriously. Since there is no evidence for a unified and self-conscious “plebeian movement”, we have no need to expect the plebs to have resisted the patriciate intransigently, or to have identified in particular with wealthy plebeians who held the tribunate. Though the parable is itself
inauthentic, it quite likely reflects the kind of argument that the patriciate used to justify its existence and its near monopoly of political power during the early centuries of the Republic. In the Appendix, I discuss a particular episode from Livy in which the patres make the argument that their monopoly of the consulship ought not to be challenged, because only they had access to communication with the gods through the auspices. The argument is essentially the same as Menenius’ parable: the need for us is not always readily apparent, but without us, the whole community would cease to be. Ambitious plebeians, who wanted to have access to the consulship, did not have to battle against a patrician monopoly because the patricians actually had a monopoly of communication with the gods. They had to fight the patricians because the majority of the Romans believed that the patricians controlled divine communication—and the majority of that majority was made up of plebeians. In order to break that monopoly, the ambitious tribunes had to use the tools at their disposal. Over the course of the fifth and fourth centuries, the tribunes carved out authority for themselves over things like jurisdiction and legislation, while working to place limits on the power of the consuls. To gain the support of the majority of citizens, tribunes had to offer agrarian legislation and debt relief. But such tactics were necessary in order to gain their support, because the loyalty of the masses was not guaranteed by their identification with the “plebeian movement”.

The “struggle of the orders”, if we can speak of such a thing, must be reconsidered entirely. There can have been no struggle between the “state” and the plebeian “state within the state”, because the plebeians had no such thing. Nor can the battle have been between patricians and plebeians per se. The conflict was one between
patricians and wealthy and ambitious plebeians over the hearts and minds of the plebs—i.e., the majority of the citizen body. Each institution of power in the early Roman community—consuls, tribunes, senate, assemblies—fought to extend its own power at the expense of the others. No one of these institutions, or any combination of them, represented the “state” in the early Republic. It was the conflict among these various institutions which defined the extent and limits of their respective competency, and, in this respect, the “struggle of the orders” was essentially a process of state formation. It was through this conflict that the institutions of the Roman Republic took the forms which they would have in the better attested periods of the middle and late Republic.


--------. (1898) *Arii e Italici: attorno all’Italia preistorica.* Turin.


Staveley, E. S. “Tribal Legislation before the ‘Lex Hortensia’”, *Athenaeum* 33: 3-31.


Appendix

A Peculiar Episode from the “Struggle of the Orders”? 

Livy and the Licino-Sextian Rogations

The struggle for and passage of the so-called Licinio-Sextian rogations of 367 B.C. is generally regarded as the climactic moment of the “struggle of the orders”. According to Livy, this year saw the ratification of a package of three laws. One limited possession of land. Another required that all money having been paid toward the interest on a debt be counted against the principal, and that the remainder of the debt be paid off in three annual installments. The third law, which has received far the most attention in the sources and in modern scholarship, ended the practice of the annual election of tribuni militum consulare potestate, restoring the two-man consulship and requiring that one of the two consuls each year come from the plebs.¹²⁶ The centrality of the struggle over these laws in Livy’s account of the fourth century and their obvious effect, as reflected in the fasti by the subsequent election of two consuls every year, have led scholars to accept as genuine the tradition that an important reform of the Roman constitution took place in this year. However, every element of the laws, and of the narrative of how those laws came to be, has come under the scrutiny of modern scholarship. The most thoroughgoing of these criticisms is that offered by von Fritz, who

argued that Livy and his sources completely misunderstood the tradition that they were interpreting.\footnote{von Fritz (1950). I do not mean to imply that von Fritz was the first to attempt to show that Livy’s account was so completely confused. That view goes back at least as far as de Beaufort (1738) 308-16. However, in this paper I will focus on von Fritz’s important analysis, because it represents the most systematic demolition, and includes all of the major criticisms of this episode from Livy’s history.}

According to von Fritz, Livy’s account is so plagued by contradictions and impossibilities that it cannot possibly be accepted as historical. However, that very problem can lead to some hope for modern scholars, he argued, because the contradictory nature of the narrative could only have resulted from the misunderstanding on the part of Livy’s sources of a kernel of genuine historical tradition. After all, no one would create so self-contradictory an account if he were simply composing a fiction from a blank slate. The struggle for and passage of the Licinio-Sextian rogations must, he argued, be taken out of the context of the so-called “struggle of the orders” if we are to understand their true historical significance. In reality, the “reorganization of the Roman government” in 366 B.C. was effected in order to allow the Romans to deal with the changing requirements on the state as it recovered from the Gallic sack. The undifferentiated college of \textit{tribuni militum consulare potestate} had to be replaced by magistracies of more defined specialization to take on the increased military and domestic requirements burdening the community. In this way was born the elaborate system of magistracies with which we are more familiar from later centuries—the election of the two-man consulship was restored, one praetor was elected for the first time, and curule aediles were created to supplement the plebeian aediles which had existed since the first decades of the Republic. If there was any debate between patricians and plebeians in the run up to
the passage of the bill, it was secondary to the administrative needs of the state, and it was a simple matter of whether or not plebeians would be allowed to have a share in the restored consulship.

The apparent flaws of Livy’s account, as well as the hope of extracting kernels of historical truth from the nonsense, have dominated recent scholarship.\(^{128}\) As a result, any historian attempting to unpack the complicated history of the “struggle of the orders” and of the fourth century must begin with the assumption that Livy’s account is fundamentally self-contradictory and incongruous, and, therefore, must attempt to re-organize and reinterpret the genuine kernels to be found in Livy’s account (using whatever method the individual scholar has for distinguishing the “genuine kernel” from ancient speculation and reconstruction) into a coherent replacement narrative.\(^{129}\)

But, I argue, the case has not been made that Livy’s account is actually contradictory and incongruous. A flawed reading of the text of Livy has led many scholars to dismiss as incongruous and inconsistent what will prove to be an internally consistent narrative. To avoid potential confusion and the muddling of two separate and equally important considerations, in this paper I concern myself only with Livy’s account. I do not ask the question: *To what extent does Livy’s account reflect the historical reality of the events leading up to the passage of the Licinio-Sextian rogations?* Instead, I focus on the question: *Is Livy’s account internally consistent, and does it in any

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\(^{128}\) Oakley (1997) 645-52 arrives at conclusions similar to those of von Fritz regarding the improbability of Livy’s narrative and the possibilities for historians. And, as with everything relating to the second pentad, it is the best introduction to the problems of this episode. See, also, Ridley (1986) 461: ‘Von Fritz, in an epoch making discussion, demolished Livy’s account of the Licinio-Sextian laws.’

way contradict Livy’s overall narrative in the first decade? I will show that Livy’s account of these events is not only internally consistent, but it is also completely consistent with, and indeed helps to explain, Livy’s full narrative of the political and social struggles throughout these books. This approach is inspired by the work of Ridley, who has by these means made great strides in our understanding of Livy’s ideas about the consular tribunate, the *concilium plebis*, and the social and political struggles of early Rome in general.¹³⁰ He criticizes what he calls the “jig-saw approach” of most scholars to questions about early Roman history. Instead of combining bits of information from Livy with the accounts of various other sources (or even with the assumptions of scholarly consensus), treating all of our sources as parts of a single, monolithic “tradition”, we must make every effort to understand what Livy, our only continuous account of the period, believes. It is only then that we may begin to attempt to incorporate evidence from Livy’s history into our historical interpretations of the early Republic.

Von Fritz argues that “the tradition concerning the events which cumulated in these fundamental innovations and, though to a somewhat lesser degree, even concerning the character and meaning of these innovations themselves, is full of incongruities, contradictions, and historical impossibilities.”¹³¹ His criticisms begin with the story of the sisters Fabiae.¹³² This story cannot be taken as historical truth, von Fritz argues, because of what Livy says in the earlier chapters in his history. Prior to 377, there are several years in which one or more members of the college of consular tribunes were

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¹³⁰ Ridley (1990); (1986); (1980).
¹³¹ Von Fritz (1950), 3.
¹³² 6.34.5-11.
plebeians—and Livy is aware of this. Since according to Livy’s account the consular tribunate was open to plebeians, “there can have been no constitutional rule preventing Licinius from attaining the same position as that which his brother-in-law attained.”

This criticism is not totally damning to the historical veracity of Livy’s account, according to von Fritz, because it is simply an anecdote whose historicity should be disregarded anyway. However, analysis of the anecdotes in the story ‘may help toward a better insight into the nature of the tradition.’ What stands out to von Fritz about this anecdote is that ‘Livy obviously did not realize in the least that his story was in conflict with everything he had told before.’

Von Fritz is absolutely correct to dismiss this story from historical consideration, since it is purely anecdotal. It adheres to a principle of Livy’s historiographical thought that has little place in modern historical methodology: *parua, ut plerumque solet, rem ingentem moliundi causa interuenit.* Von Fritz is also correct that it is vital to understanding how Livy interprets the events which he describes. But I believe he misinterprets just how Livy understands the episode and how he incorporates it into his narrative of events. The anecdote does not, in fact, contradict what Livy has written for previous years. To be sure, there was, in fact, no constitutional rule preventing Licinius from holding the consular tribunate. But this is not what Livy is suggesting. Nowhere does Livy claim that plebeians were refused access by law to the highest office of state. Instead, their loss of access is a *de facto* situation, based upon the struggles of the *plebs*,

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133 Von Fritz (1950) 5.
134 Ibid., 4.
135 Ibid., 5.
136 6.34.5.
due mostly to debt and the cruelty of their creditors. For, in the very same chapter in which Livy describes the anecdote of the Fabiae, he informs us that the situation had gotten so bad for the plebs, that even their principes, far from running for the consular tribunate, were too weakened and demoralized even to stand for plebeian office. ‘The patres,’ explains Livy, ‘seemed to have reacquired for all time the monopoly of an office only taken up by the plebs for a few years.’ The patrician monopoly of the consular tribunate, Livy clearly states, is not a legal, but a practical one. This would in no way conflict with the story of the unsatisfied Fabia, whose plebeian husband would be prevented by an unfavorable political situation from attaining to the office held by her patrician brother-in-law.

Having dismissed the anecdote of the origins of the struggle as self-contradictory, von Fritz moves on to other elements of the story, ‘which, though not absolutely self-contradictory like the story of Ambustus’ daughter, nevertheless are somewhat difficult to believe.’ First, it is not readily apparent to von Fritz why it would be necessary for the plebeians to have the consulship restored in order to pass a law regarding debts, since the consular tribunate, which was the supreme office of the state at the time, was already accessible to them. Since the plebeians already had access to the highest office of state, what is the advantage of the consulship? Further, why would the plebeians not simply wait until the law regarding the plebeian consulship was secured before proposing laws regarding debt and land? Proposing all three laws together would have made it more

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137 6.34.1-4: possesionemque honoris usurpati modo a plebe per paucos annos recipersse in perpetuum patres uiderentur.
138 Von Fritz (1950) 7.
difficult to pass any one of them. He believes it to be particularly perplexing that Livy did not seem to notice this problem, because later in his narrative, Livy says that in 368 the plebeians were ‘ready to drop the law concerning the consulship on the condition that the two other laws were to be passed and ratified.’ Licinius and Sextius should have been aware that they would have met with less resistance trying to pass one of these laws at a time, and this is proven by the later anecdote. The plebs was willing to compromise, so why did Licinius and Sextius not follow the easier political road?

It would certainly seem implausible that the plebeians would think it to be ‘so essential to have the consulship restored if they wished to pass a law regarding debts, since, at that time, the consular tribunes were the highest magistrates and since this office was already accessible to the plebeians’. But Livy never claimed that Licinius and Sextius thought it was necessary to have the consulship in order to pass laws on land and debt. That would obviously be nonsensical, since they, as plebeian tribunes, were proposing the three laws together. Livy instead says the debt problem seemed to Licinius and Sextius to be an ‘opportunity for reform’ (occasio uidebatur rerum nouandarum)—that is, a pretext for Licinius and Sextius to propose their consulship law. This explains why they would not simply wait to propose the consulship law until after they had passed the laws on debt and land. To be sure, proposing all three of these laws at once would engender powerful opposition, and Livy is aware of this, and in his

\[139\] 6.39.2. As I will show, however, the plebs was not in the mood for compromise, but was only interested in the laws on land and debt.

\[140\] 6.35.1.
account so were the reformers. As has already become clear, the reformers were not interested in passing the debt law or the land law independently. The uneasy domestic situation was merely an opportunity for these men to pursue their own agenda. It will become clear as the narrative wears on just why they could not take an easier route, proposing debt and land laws first, and then pursuing the consulship law.

Another difficulty, according to von Fritz, is the fact that, beyond the intransigence already mentioned, Livy says that Licinius and Sextius did not believe it was sufficient to allow plebeians to be elected to the consulship, but insisted that one of the consuls must be a plebeian. Livy does explain their reasoning for so insisting, but von Fritz is unsatisfied with the explanation. Livy has the tribunes harangue the assembled plebeians in 369, insisting that eligibility for plebeians to hold the consulship was insufficient, since no plebeian would actually be elected unless it should be required. The tribunes reminded the plebs that the consular tribunate had been created to allow plebeians to hold the state’s highest office, but that for the first forty-four years of the institution’s existence no plebeians were elected. According to von Fritz, ‘it is hardly believable that the institution of the consular tribunate should have been created with the express purpose of making this office accessible to plebeians—and this after a long and violent agitation on the part of the plebeians—and that then the plebeians should nevertheless for forty-four years have been satisfied with the mere legal possibility of being so elected, never making a determined effort to have this possibility actualized.’

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141 6.35.5, cuncta ingentia et quae sine certamine maximo obtineri non possent.
142 6.37.5, an iam memoria exisse, cum tribunos militum idcirco potent quam consules creari placisset ut et plebeis pateret sumus honos, quattuor et quadraginta annis neminem ex plebe tribunum militum creatum esse? Oakley (1997) 681: ‘L. records that the consular tribunate was established in 444 (iv.7.1) and that in 400 the first plebeian (P. Licinius Calvus) was elected to the office (v.12.9).’
He contends that this problem can be solved by simply removing that element from the narrative—the law did not include a requirement that one consul every year must be plebeian. This is further supported by the fact that many colleges in the next few decades were all-patrician. Certainly, he argues, this cannot be if there had been a law insisting that one consul each year be plebeian, ‘[c]onsidering the high respect in which laws formally passed by the people were held as late as the last century of the republic’. A violation of a law long fought over and hard won would have inspired ‘a much more violent reaction’ than the protests of tribunes that Livy describes in the next books.\(^{143}\)

For the purposes of this study, I leave aside the question of whether or not the law actually contained a provision that one consul each year must be plebeian. Many scholars have followed von Fritz in believing that it did not.\(^ {144}\) But is there a problem with Livy’s narrative? Is it impossible for the plebeians to have created the office specifically for the purposes of opening up to themselves the highest office and then, satisfied with the mere possibility, to fail to elect members of their own class? Livy here is totally consistent with what he has said before, and what he will say later. Licinius and Sextius must include the demand, because, if they do not, their ambition of holding the consulship would ultimately fail, because the *plebs* in Livy’s history of this period shows a recurring tendency not to elect plebeians to the highest office of state. Livy’s explanation for this will become clear as the narrative unfolds. This conclusion also answers the argument that the plebeians would not have ignored this law in future decades, in choosing to elect

\(^{143}\) Von Fritz (1950), 8.
\(^{144}\) Oakley (1997) 652-4; Cornell (1995) 334-40; Billows (1989) all offer a variation on the theory that the law of 367 did not, in fact, include a provision that one consul must be plebeian and that such a rule was only instituted in 342.
several all-patrician consular colleges. Whatever actually happened in these years, Livy’s account is consistent. The plebs proved reluctant to elect plebeians to the highest office in the past, and they remained so, even after the passage of the Licinio-Sextian laws.¹⁴⁵

Livy’s account of how the patricians resisted these laws and induced the colleagues of Licinius and Sextius to use their veto is considered problematic on three accounts. First, the ‘anarchy’ raises the question of basic plausibility. Perhaps Livy assumed that during the five year solitudo magistratum, the state was governed by interreges. It hardly seems plausible that all of Rome’s affairs could have been overseen by a magistracy which can only be held by an individual for five days at a time.¹⁴⁶ Further, von Fritz is troubled by the need, assumed by Livy, of the patricians to utilize the tribunician intercession to prevent passage of the laws, since “in the period in question, laws, in order to become valid, still required the patrum auctoritas.”¹⁴⁷ A third question is raised by the manipulation of the tribunician veto by the patricians, which, he argued, must be a retrojection of post-Gracchan realities. In the later period, tribunes were usually elected from the nobilitas, and the struggle between patricians and plebeians was long over. Consequently, in that context the use of a tribunician veto to block popular legislation was to be expected. In the fourth century, however, things were much

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¹⁴⁵ 4.6.11-12 (regarding the first election of military tribunes with consular power): tribunos enim omnes patricios creauit populus, contentus eo quod ratio habita plebeiorum esset. In 353 (7.17.12), two patricians are elected, which was justified by the fact that in duodecim tabulis legem esse ut, quodcumque postremum populus iussisset, id ius ratumque esset.

¹⁴⁶ Oakley (1997) 647: “…interreges holding office for five days each could hardly have looked after the state for one year, let alone five.” But, if there were no wars, what vital public business really needed to be conducted that was not the tribunes’ responsibility?

¹⁴⁷ Von Fritz (1950) 9.
different. This conflict was between patricians and plebeians. The tribunes were the elected representatives of the plebeians, chosen ‘to defend them against the encroachments of the patrician magistrates.’ It would be strange, therefore, if the patricians were able to find among the plebeian tribunes men willing to intercede against bills proposed for the benefit of the plebeians.

There is no reason to defend the account of the five year ‘anarchy’. The problems of fourth-century chronology and ancient annalists’ attempt at solving it are well known and need not concern us in an analysis of Livy’s text.\textsuperscript{148} The question of the nature of the \textit{patrum auctoritas} as an institution in this period is a difficult historical issue, but for my purposes it is necessary only to state that Livy is not contradicting himself here. Whatever the actual status of the \textit{patrum auctoritas} as an institution in the fourth century, it will become clear that Livy did not believe that it was necessary for the \textit{patres} to be \textit{auctores} in order for this bill to become law.\textsuperscript{149} Only a misreading of Livy’s text leads to that conclusion. But what about the problem of plebeian tribunes being manipulated by the patricians? This is getting away from Livy, introducing scholarly consensus to call the narrative into question. For Livy, this was standard practice for the \textit{patres} and nowhere contradicts himself on the matter.\textsuperscript{150}

But if intercession were the patricians’ only recourse, von Fritz argues, it does not make sense that the \textit{plebs} would every year return Licinius and Sextius as tribunes and also persist in electing tribunes who were hostile to the laws, since, if Livy is right and

\begin{footnotesize}
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\item[148] Oakley (1997) 647-8 (with reference back to 104-6) provides a succinct explanation.
\item[149] Nor does he ever insist or imply that \textit{patrum auctoritas} was necessary to ratify any business conducted in the \textit{comitia tributa}.
\item[150] Livy regards the patrician strategy of exercising influence over the tribunes as a discovery of Appius Claudius in 480 (2.44.2-6).
\end{itemize}
\end{footnotesize}
the struggle over the rogations lasted for ten years, it would seem that each year the patricians were able to find friendly tribunes willing to issue their veto.\textsuperscript{151} This does offer a difficulty that is not easily solved. However, rejecting this element of the narrative as an incongruity in Livy’s portrayal of events fails to acknowledge the subtlety and complexity with which Livy has treated the plebeian class throughout his account of this episode and his entire history of the early centuries of the Republic. It is clear from the fact that Licinius and Sextius need to include the laws regarding debt and land in exchange for the support of the \textit{plebs} that Livy presents the plebeian ‘movement’ as an uneasy coalition. We shall see momentarily just how uneasy Livy perceives it to be. In Livy’s understanding, the consulship law was unpopular with the majority of plebeians simply because it did not please them to have to elect a plebeian consul every year. Divisions over policies such as this one could easily account for divisions amongst the tribunes, and there is no reason why Livy could not have conceived of the \textit{plebs} in these terms, so that it is not very difficult to account for the repeated election in the narrative of tribunes hostile to any one or more of the rogations.

Next, von Fritz says that ‘[i]n 368, according to Livy, there were no tribunes left who were willing to intercede against the Licinian proposals.’ Consequently, Camillus was appointed dictator. Camillus, however, did not use his emergency powers to veto the proposals. Instead, ‘for some mysterious reason that is nowhere explained’, there are again tribunes who would intercede against the proposals. Then, when Licinius and Sextius tried to push forward the vote in spite of the veto of some of their colleagues,

\footnote{Von Fritz (1950) 9-10.}

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Camillus stepped in and defended the tribunician veto against the would-be reformers.\textsuperscript{152} Let us look more closely at Livy’s language here. In suggesting that first there were no tribunes left who were interested in vetoing the rogations, von Fritz apparently reads \textit{et cum tribus uocarentur nec intercessio collegarum latoribus obstaret}\textsuperscript{153} as if Livy meant ‘and when the tribes were called and there was no intercession from their colleagues to stand in the way of the proposers…’ But this is not Livy’s meaning. We should read the passage as: ‘and when the tribes were called and the intercession of their colleagues did not thwart the proposers…’ Both readings are possible, but the latter makes sense of the passage, while the other creates confusion. I suggest that that is sufficient reason to accept the latter reading.\textsuperscript{154} The patricians appointed Camillus as dictator when Licinius and Sextius refused to be thwarted by their colleagues’ veto. The misreading of Livy’s text has caused blatant and shocking incompetence to be read into the account where none is present.

Thereupon followed the mysterious abdication of Camillus, the appointment of Manlius, and the subsequent cooptation of a plebeian \textit{magister equitum}. But, says von Fritz, Livy’s account even in this respect is riddled with incongruities.\textsuperscript{155} Livy, he says, has the vote put before the \textit{plebs}, a vote taken, and the passage of the agrarian and debt

\textsuperscript{152} Ibid., 10.
\textsuperscript{153} 6.38.3.
\textsuperscript{154} Cf. the translation of B. Radice, \textit{Livy: Rome and Italy} (London, 1982), 87: ‘When the tribes were summoned to vote and the proposers of the laws would not accept their colleagues’ veto…’ I believe that this reading captures Livy’s meaning.
\textsuperscript{155} We need take no note of the “minor inconsistency” that Manlius was appointed dictator, according to Livy, “immediately” after the abdication of Camillus and yet somehow the tribunes have held a \textit{concilium plebis} in the interval between the two dictatorships. Livy’s account here is truncated, and it would be unnecessary to insist that Livy’s \textit{extemplo} meant that Manlius was appointed dictator at the very moment of Camillus’ abdication.
laws, while the consulship law fails. Von Fritz says in a footnote that Livy’s language
(6.39.2: nam de faenore atque agro rogationes iubebant, de plebeio consule antiquabant)
‘says in the clearest possible terms that an official vote on all three bills was actually
taken.’156 The fact that the plebs would reject the consulship law is ‘strange considering
everything that is supposed to have preceded.’

But, while von Fritz insists that Livy describes ‘in the clearest possible terms’ the
plebs as having voted on all three bills, reading the imperfects iubebant and antiquabnt
as reflecting a completed action is implausible. Another interpretation is that Livy meant
that votes were in process, or were on the point of being taken, but were not
completed.157 Consequently, von Fritz’s concerns over how the reformers could insist
that the plebs vote on the three bills as a lex satura when the vote had already taken place
are unnecessary.158 One need not wonder what was missing from these bills’ becoming
law—the voting was never completed. Von Fritz imagines that Licinius and Sextius were
able to do this, because the laws had not yet been ratified by the patrum auctoritas.159

156 Von Fritz (1950) 11, n. 17.
158 Von Fritz (1950) 11: “But what follows is still more incongruous. For, according to Livy, Licinius and
Sextius declared that the people must vote on all three laws together and could not accept some and reject
the others, and this after the people had already taken a separate vote on the three issues. We know, of
course, of so-called leges satarae, bills with riders, from ancient Rome...But if such a bill was introduced
and put to a vote in this form, there was, of course, no possibility for the voters to accept one part and reject
another...On the other hand, it is quite unheard of that three bills on different matters should first be voted
on separately—and this is what Livy says (de faenore atque agro rogationes iubebant, de plebeio consule
antiquabant)—and then be declared a lex satura, which cannot be accepted or rejected except as a whole.
Yet this, according to Livy, is exactly what Licinius and Sextius did.”
159 Von Fritz (1950) 13.
But conjecture about constitutional strictures is not necessary here. According to Livy, the vote was never allowed to be completed.

We must not get so caught up in the legal complexities of the *comitia tributa*—as if we could figure out the minutiae of such an institution’s procedure even in the better attested periods of Roman history—that we pass over the fact that the *plebs* for some reason has nearly sacrificed the opportunity to pass much needed (and desired) laws on debt and land in order to prevent the passage of a law which would require that one consulship every year be granted to a plebeian. These climactic moments serve to unravel and explain some of the problems apparently created in the earlier part of the narrative. Specifically, Livy explains here precisely why it was necessary for the tribunes to present the laws together—it was due to the opposition of the majority of plebeians to the consulship law. He then went on to explain, in the brilliant speech which he attributed to Ap. Claudius, just why they rejected the law.

While von Fritz passes over this dramatic moment with the dismissive assertion that it is ‘strange considering everything that is supposed to have preceded,’ One is left to wonder which part of what preceded makes this strange. In fact, suddenly much of what Livy has already said begins to make sense. It is clear now just why, in Livy’s telling, Licinius and Sextius must insist on passing all three laws together, even though that would be more difficult than passing the debt and land laws separately before pursuing the plebeian consulship. According to Livy, if they had done it that way, the

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160 And, as I will discuss below, Livy does not believe that this ratification was required for bills passed in the tribal assembly.
161 Von Fritz (1950) 11.
plebs would never have approved the consulship law, because they did not want it to pass.

At this point Livy injects the great speech of Ap. Claudius. Von Fritz dismisses the speech as irrelevant to the discussion ‘since the speeches in ancient historiography belong to a different category and cannot be considered on the same level with historical narrative.’ This assertion is absolutely correct, but that does not mean that speeches should be excluded from our interpretation of a narrative. Speeches in ancient historiography are a means for the author to lay out the issues at stake, and therefore should be considered as a vital piece of evidence for interpreting how an author understands his subject. Ap. Claudius’ speech serves precisely this purpose for us. Prior to the speech, we are left with the peculiar fact that plebeians do not want to pass a law that would require that one man from the plebs (supposedly their own ‘class’ and ‘movement’) be elected consul every year. We might think that they simply did not care whether plebeians were consuls, but that would not explain why they would reject the bill at the cost of losing the bills that they actually wanted to see passed. No, the plebeians were actively opposed to the law. Livy uses this speech to offer his explanation for this apparently strange behavior. Livy has Ap. Claudius, admittedly in the context of a heated political debate, call the possibility of seeing Licinius and Sextius as consuls a portentum in the eyes of the people, quod [plebs] indignaris, quod abominaris. The language is religious. Why would the election of plebeians to the consulship be an abomination in the eyes of the plebs? Claudius explains: because Roman tradition requires that every

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162 6.40.11; cf. 41.4-9.
matter, either military or domestic, undertaken by the Romans be undertaken only after the auspices have been taken, and the patricians control the auspices. To be sure, this speech is not one that was given by an historical figure in an historical situation in the year 368. This speech reflects Livy’s understanding of the events that he is describing—but that is the point here. Ap. Claudius is appealing to the religious sentiments of the *plebs*. This is the same religious sentiment that has compelled them to oppose a bill which would require that a member of the *plebs* hold the consulship every year. This sentiment explains, at least, how Livy would explain the rarity with which plebeians were returned as consular tribunes in the preceding years, and why, even after the law is passed, all-patrician colleges were sometimes elected.

This interpretation helps also to explain the passage of the law regarding *decemuiiri sacris faciundis*. The law replaced the old board of two men, and required that half of the ten be plebeian.\textsuperscript{163} According to Livy, it was regarded as a ‘path to the consulship’.\textsuperscript{164} The ratification of this law is no simple momentum changer in a protracted struggle—it is a fundamental prerequisite to convincing the majority of the *plebs* that it would be acceptable to allow their fellow plebeians admission to the consulship. Livy does not explain precisely how control of half of the board of ten men, which was responsible for consulting and interpreting the Sibylline Books in times of crisis, constituted a *uia ad consulatum*. At the very least, guaranteed access to an important religious office would have meant a great deal of distinction for certain plebeian families. But one can take interpretation further than that. The interpretation of

\textsuperscript{163} First introduced at 37.12.
\textsuperscript{164} 6.42.2.
the Sibylline Books was a means of determining the will of the gods in a moment of crisis for the Republic. The *decemuiri* played an influential role in discovering the divine will and, ultimately, shaping Rome’s response to the crisis (at least ostensibly\(^{165}\)) on the basis of what they found in the books.\(^{166}\) Certainly the duties were not the same as the *auspicia* of the consuls, but it could be argued that they were both very similar in nature (i.e., as receipt and interpretation of divine communication) and hardly less important. I suggest that, as Livy understood it, the plebeians’ gaining seats in this vital priesthood would have served as a strong influence on those plebeians who had been reluctant to guarantee one annual consulship for plebeians. If elite plebeians could serve as *decemuiri sacris faciundis*, a position vital for the survival of the Republic in times of crisis, then why, in the minds of plebeians, should they not be allowed to hold the consulship, whose primary obligation was to protect the state from foreign enemies?

To return to the narrative, while Camillus was again dictator in 367, the Licino-Sextian rogations were finally passed. Livy tells us that ‘the dictator and senate were defeated with the result that the tribunician rogations were adopted (*acciperentur*)\(^{167}\).

Sextius was then elected as the plebeian consul for the following year. Von Fritz insists that this is where we learn that what was missing from the legislation was the *patrum auctoritas*, for the *patres* refused to be *auctores*. He then proceeds to consider several permutations of the theory of the *patrum auctoritas* and how it might make sense in the

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\(^{165}\) Livy at 3.10.7 seems to suggest that the motivation for the interpretations offered by the *duumuiros* was not always religious: *libri per duumuiros sacrorum aditi; periculo a conuentu alienigenarum praedicta, ne qui in loca summum urbis impetus caedesque inde fierent; inter cetera monitum ut seditionbus abstineretur. id factum ad impediendam legem tribuni criminabantur, ingensque aderat certamen.*

\(^{166}\) Cf. Oakley (1997) 715.

\(^{167}\) Liv. 6.42.9: *dictator senatusque uictus ut rogationes tribuniciae acciperentur.*
context of Livy’s narrative. But none of these is necessary, or even desirable, because, as we have seen, there is no sense in the account of Livy that the *auctoritas* was necessary to ratify the laws. The proposals had already been adopted (such is certainly the better reading of 6.42.9 than that Livy said the dictator and senate had ‘accepted’ the bills, but then subsequently refused to ratify them). Instead the patricians insisted that they would not be *auctores* of the election of Sextius to the consulship. The consuls being elected in the *comitia centuriata*, there is no question that the *patres* had to be *auctores* of these elections. This reading becomes certain when one considers the fact that, while Livy has Ap. Claudius assert in his speech that both the centuriate and curiate assemblies required the *patrum auctoritas*, he never even suggests that such ratification is necessary for the tribal assembly.\(^{168}\) Again, there is no need to search for complexities, unstated, and, as it turns out, not even implied by Livy, of the Roman constitution of the fourth century.

Ultimately, von Fritz argues that the incongruities and inconsistencies which he believed plagued Livy’s account were the result of Livy or his sources attempting to squeeze a real kernel of historical truth into a narrative of struggle between patricians and plebeians. This ‘kernel of truth method’ is, I believe, a sound approach to the history of the early Republic, and has been widely adopted by specialists in the field.\(^{169}\) But this approach rests on finding truth in the inconsistency of our sources. I have attempted to show that Livy’s account is internally consistent, and helps to make sense of Livy’s general understanding of the social and political conflict of the early Republic. For the sake of clarity, I include here a brief recap of my reading of the episode.

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\(^{168}\) Liv. 6.41.10: nec centuriatis nec curiatis comitiis patres auctores fiant.

\(^{169}\) See the discussion of Oakley (1997) 649-.52.
A brief period of external peace during the early 370s was accompanied by an economic crisis, as there was increased poverty and indebtedness among the \textit{plebs}, and an increase in the power and cruelty of their patrician creditors. Even the most influential plebeians became so burdened that it was difficult for them to hold plebeian office, let alone the military tribunate. But this crisis paved the way for the ambitions of the plebeians Licinius and Sextius. Under the guidance of the patrician M. Fabius Ambustus, the tribunes proposed a law to relieve indebtedness, another to limit the excessive landholdings of the patricians, and a third to reserve one consulship each year for a plebeian. The tribunes were only interested in the third law, but proposed the first two laws in order to gain the support of the indebted and oppressed \textit{plebs}. This was necessary, since the majority preferred to preserve the \textit{de facto} patrician monopoly over the supreme magistracy. In the face of the veto of their colleagues, Licinius and Sextius prevented the election of any but plebeian magistrates for five years. This ‘anarchy’ ended due to a military threat, but the conflict continued. Gradually, though, support for the bills increased over the years, to the point that half of the tribunician college came out in support. In 368, though some tribunes still insisted upon imposing their veto, Licinius and Sextius brought their rogations up for a vote. Even Camillus as dictator, either because of a problem with his appointment or because of the threats of the tribunes, was unable to prevent the vote being taken.

But when the laws were finally presented to the \textit{plebs}, they were willing only to pass the laws regarding debt and land, and rejected the consulship law. After Licinius and Sextius harangued the \textit{plebs}, Ap. Claudius appealed to their religious sentiments,
reminding them of the dire consequences if plebeians were to hold the highest office.

Afterward, a law reserving half of the spots on the newly expanded board of ten *sacris faciundis* was passed, which provided the plebeians with a springboard for advancing to the consulship. Indeed, in the next year, the Licinio-Sextian rogations were put up for a vote once again and passed, in spite of senatorial opposition.

This reading has the advantage of making sense of the account. But it also serves to tie together Livy’s ideas about what modern scholars call the “struggle of the orders”. In spite of the fact that patricians and plebeians are often in conflict during these centuries, there is not a single extended conflict between *patres* and *plebs per se*. In Livy’s *Ab Urbe Condita*, the majority of plebeians seem to believe that the patricians play a vital and necessary role in the Roman state—their monopoly of *auspicia* provides them with a special claim to high office. This explains the fact that, while tribunes constantly strive for the passage of laws which would open up high office to themselves, such as Canuleius’ attempt to open the consulship to plebeians, or the ultimately successful proposals of Licinius and Sextius, they must justify themselves to the *plebs* in *contiones*, or offer supplementary laws favorable to the poor and indebted. Even when the tribunes were successful in creating the military tribunate and gaining access to it in 444, Livy believes that they failed in gaining election to the office for forty-four years. It is not self-evident to the majority of Romans why wealthy plebeians

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170 Nor did he believe that social struggle began with the death of Tarquin, or ended with the *lex Hortensia*: cf. Mitchell (1984) 179-99.

171 We should take very seriously the implications of Menenius Agrippa’s parable of the body and the limbs during the first secession of the *plebs* (2.32.8-12) for Livy’s conception of the relationship between *patres* and *plebs*.  

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should be allowed to hold the consulship. In fact, they are apt to believe that such a thing would be dangerous.

Livy’s account of the affairs of 376-367 is not incongruous or inconsistent. Although it may not reflect the historical realities of this period, it does reflect a coherent understanding on Livy’s part of the social struggles of the early Republic. For Livy, the interests of the poorest plebeians and the principes plebis are quite different, and they are aware of this. The plebs in Livy is not a unified movement, or “state within the state”, as is believed by many modern scholars. Instead, the plebs represents the great majority of citizens, and is only very rarely unified against the patricians. Even in those cases when they are brought together, such as in this episode, it is only when the tribunes are able to link the interests of various, and admittedly sometimes overlapping, groups (the indebted, the landless, and the wealthiest plebeians), and that unity is extremely tenuous. The patricians, on the other hand, are able to divide the plebeians by insisting on the importance of their control of the auspices—and this argument is effective precisely because many plebeians believed it to be true. In effect, Livy’s “struggle of the orders” is not a struggle between patres and plebs, but a debate between the patricians and the wealthiest plebeians to win the support of the plebs—and this is an argument which, for much of the history of the early Republic, the patricians were able to win.