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THE *PLEBISCITUM ATINIUM* ONCE MORE

Praefectum urbi Latinarum causa relictum senatum habere posse Iunius negat, quoniam ne senator quidem sit neque ius habeat sententiae dicendae, cum ex ea aetate praefectus fiat quae non sit senatoria. M. autem Varro in quarto Epistolicarum Quaestiones et Ateius Capito in Coniectaneorum VIII, ius esse praefecto senatus habendi dicunt; deque ea re ad sensum esse Capito Varronem Tuberoni contra sententiam Iunii refert: *Nam et tribunis, inquit, plebis senatus habendi ius erat, quamquam senatores non essent ante Atinium plebiscitum* (Gellius 14.8.1–2).

Junius insists that the prefect appointed to supervise the city because of the Latin Festival lacks the capacity to conduct a meeting of the senate because he is neither a senator nor is he a possessor of the *ius sententiae dicendi*, which is the case because he is made prefect at an age when he is ineligible to be in the senate. M. Varro, however, in the fourth book of his *Epistolary Inquiries*, and Ateius Capito in the ninth book of his *Miscellanies*, assert that the prefect does possess the right to convene the senate, and Capito observes that in this matter Varro agrees with Tubero, against the opinion of Junius. *For, says Capito, tribunes of the people possessed the right to convene the senate, although before the Atinian plebiscite they were not senators.*

Before the passage of the *plebiscitum Atinium*, so we are informed by Gellius (citing an earlier pronouncement by the imperial jurist C. Ateius Capito), tribunes were not senators. Unfortunately this concise datum is delivered *en passant* (the real subject of Capito's argument is the constitutional competence of the *praefectus urbi*, about which there existed a longstanding and apparently irresolvable controversy), but it constitutes an inviting if obscure trace of what will have been an important development in the history of the tribunate, corresponding, it would seem, to what Zonaras (epitomizing Cassius Dio) and Mommsen (adapting Zonaras) depict as the third stage of the tribunes' absorption by the senatorial establishment¹. Naturally the matter has stimulated extensive discussion and inevitable controversy, and so it is unsurprising that theories pertaining to the measure's content and date continue to proliferate, each of them necessarily predicated on

¹ Zon. 7.15.8; T. Mommsen, *Römisches Staatsrecht (StR)*, Bd III, 862, cf. *Ibidem*, 316; Idem, *Römische Forschungen (RF)*, Bd I, 231. The four stages are: (i) tribunes stationed at the entrance of the curia, (ii) tribunes invited inside the curia, (iii) ex-tribunes become members of the senate, (iv) the tribunate becomes a normal part of a (plebeian) senator's career.

evidence that can only be described as indirect and problematic. Never the less, I believe that the essential (if minimal) facts of this plebiscite were uncovered long ago, by Pierre Willems in his still indispensable handbook². What remains is to eliminate certain inaccuracies recurring in modern discussions of the law and to address the claims of some recent contributions to the study of the relationship between the tribunate and the senate.

(I)

Let us begin, however, by clarifying our terms. What exactly did the Romans mean when they deployed the expression *senator*? Whatever the realities of the monarchy or the early republic, from the late fourth century a Roman became a senator when he was enrolled in the album of the senate by the censors, and he retained his senatorial status so long as his name remained in the album, or, put differently, so long as he was not ejected from the senate in any subsequent censorial revision of the senatorial album. This recurring procedure, known as the *lectio senatus*, was rendered a censorial responsibility by the *lex Ovina*, the passage of which preceded 312, the year of the first censorial *lectio* (the results of which were rejected by the consuls of that year)³. Characteristically, the specifics of this measure are lost to us, but what was at the very least the spirit of the law is preserved for us in an entry in Festus:

Praeteriti senatores quondam in opprobrio non erant, quod, ut reges sibi legebant, sublegebantque, quos in consilio publico haberent, ita post exactos eos consules quoque et tribuni militum consulari potestate coniunctissimos sibi quosque patriciorum, et deinde plebeiorum legebant; *donec Ovinia tribunicia intervenit, qua sanctum est, ut censores ex omni ordine optimum quemque ꝑcuriati in senatum legerent.* Quo factum est, ut qui praeteriti essent et loco moti, haberentur ignominiosi (Festus 290L).

Passed-over senators: in the past there was no opprobrium associated with this expression, because just as it was the custom for the kings to choose for themselves their public counselors – and to choose their replacements – so, after the expulsion of the kings, the consuls and the military tribunes with consular power used to choose as their public counsellors those men of the patrician order with whom they had the closest ties. Later they included those members of the plebeian order with whom they had the closest ties. This practice continued until the Ovinian plebiscite supervened, by means of which it was made the law that censors enrol in the senate the best men from each order. Consequently, whenever men were passed over and removed from their position, they were disgraced.

² P. Willems, *Le senate de la république romaine*, vol. I, Louvain 1878, 227–32.

³ Sources for Lex Ovinia: *MRR*, 1, 158–9.

Although scholars have been detained by disagreement over how best to understand the expression *ex omni ordine optimum quemque*, it is inescapable that this measure was designed to ensure the integrity of the body by exposing it to the glare of censorial *regimen morum*, hence the law's insistence that only an *optimus* is eligible for membership in the senate⁴.

The determination of who was or was not *optimus* rested with the censors and cannot have been automatic, however uniform the censors' decisions tended to be in actual practice⁵. This is confirmed in Livy's account of the exceptional *lectio* of 216, when elite losses in the early and disastrous years of the Hannibalic War required the appointment of a dictator, M. Fabius Buteo, to restore the ranks of the senate:

Is [viz. M. Fabius Buteo] ubi cum lictoribus in rostra escendit, neque duos dictatores tempore uno, quod numquam antea factum esset, probare se dixit, neque dictatorem sine magistro equitum, nec censoriam vim uni permissam et eidem iterum, nec dictatori, nisi rei gerendae causa creato, in sex menses datum imperium. Quae inmoderata forsitan tempus ac necessitas fecerit, iis se modum impositurum: nam neque senatu quemquam moturum ex iis quos C. Flaminius L. Aemilius censores in senatum legissent; transcribi tantum recitarique eos iussurum, ne penes unum hominem iudicium arbitriumque de fama et moribus senatoris fuerit; et ita in demortuorum locum sublecturum ut ordo ordini, non homo homini praelatus videretur.

When he mounted the rostra with his lictors, he announced that he did not approve of two men serving as dictator at the same time – which had never occurred before – nor of a dictator serving without a master of the horse, nor of conferring the powers of a censor on one man – and on the same man for a second time – nor of granting imperium for six months to a dictator who was not created for conducting public affairs. He would impose limits on these potential enormities, which had been occasioned by dire circumstances. He would not, therefore, remove from the senate anyone whom Gaius Flaminius and Lucius Aemilius had chosen when they were censors. Instead, he would order their list to be copied and read out, in order that no senator's reputation

⁴ A. E. Astin, *Regimen morum*, JRS, 78, 1988, 14–34 (with further references). As Mommsen rightly observed (*StR*, II, 420 n.2), even if the word *optimus* was not in the legislation's original language, it represents the spirit in which the measure was subsequently understood.

⁵ Interpreting the Lex Ovinia: F. de Martino, *Storia della costituzione romana*, vol. II, Napoli 1973, 185–89; cf. Astin, *op. cit.*, 19–26: the measure granted censors unfettered discretion even if in practice preference was given to ex-curule magistrates. Other views obtain. A sampling: Willem's, *op. cit.*, 159–61: the censors have discretion amongst all ex-magistrates, which is essentially the same view as T. P. Wiseman, *New men in the Roman senate 139 BC – 14 AD*, Oxford 1971, 95–97; L. Lange, *Römische Alterthümer*, Bd II, Berlin 1879, 355–60: the censors must choose amongst ex-magistrates possessing the *ius sententiae dicendi* (on which see below); cf. Mommsen, *StR*, II, 420; K. J. Hölkeskamp, *Die Entstehung der Nobilität: Studien zur sozialen und politischen Geschichte der Römischen Republik im 4. Jhd. v. Chr.*, Stuttgart 1987, 144–45: the law allowed censors no discretion where curule magistrates were concerned, only where non-curule magistrates were concerned (though he concedes this may have been the effect of custom and not of legislation).

Recitato vetere senatu, inde primos in demortuorum locum legit qui post L. Aemilium C. Flaminium censores curulem magistratum cepissent necdum in senatum lecti essent, ut quisque eorum primus creatus erat; tum legit, qui aediles, tribuni plebes, quaestoresve fuerant; tum ex iis qui magistratus non cepissent, qui spolia ex hoste fixa domi haberent aut civicam coronam accepissent (Liv. XXIII 23,1–6).

and character be left to the judgment and decision of a single man. Furthermore, replacements for the dead would be selected in such a way that it was plain that rank was being preferred to rank, not one man to another. After the old list of senators was read, he chose as replacements for the dead those who, since the censorship of Lucius Aemilius and Gaius Flaminius, had held a curule magistracy but had not yet been chosen for the senate. In each instance he selected these men in the order of their election to office. Then he chose men who had been aedile, tribune of the people, or quaestor. Then, of those men who had not yet held office, he chose men who had enemy spoils affixed to their houses or who had earned a civic crown.

The singular nature of this *lectio*, stressed throughout Livy's report of it, prompted Buteo to eschew making incontestable judgments about individual character and to base his enrolment solely on the past offices held by the men he adlected (Liv. XXIII 23,4–5: *ut ordo ordini non homo homini praelatus videretur*). Even after he had exhausted former magistrates, he continued to look for *formal* tokens of virtue and avoided awarding senatorial status on the basis of lineage or his personal assessment of anyone's character. Buteo's mechanical *adlectio* is necessary, he makes clear, owing to exceptional circumstances: he has no colleague to temper or restrain his personal estimations. It is the plain implication of this passage, then, that such considerations were proper in a normal *lectio*, when the censors would not fill positions exclusively on the basis of previously held offices. In normal practice, of course, censors adlected men who had held curule magistracies – the holding of which was beyond question the best evidence of excellence – but it was in their gift to enrol suitably distinguished men regardless of whether they had or had not held curule office, and it was their responsibility to exclude anyone who fell into disgrace (a collapse which almost never befell ex-consuls or ex-praetors). Their collective judgement, however constrained in actual practice by the expectations of custom (as Astin has noted, we very rarely hear of praetors or consuls having been ejected from the senate), was none the less in principle unfettered⁶.

As always in Rome, however, constitutional matters are less than entirely tidy. We are informed by later sources that meetings of the senate were attended by *senatores quibusque in senatu sententiam dicere licet* (Festus 454L; Gell. III 8). Such is the language of our later (and academic) sources.

⁶ Ex-praetors and ex-consuls rarely ejected or passed over: Astin, *op. cit.*, 29 (accumulating sources and statistics).

et nunc [viz. in contrast with the time of Romulus] cum senatores adesse iubentur, *quibusque in senatu[m] sententiam dicere licet*; quia hi, qui post lustrum conditum ex iunioribus magistratum ceperunt, et in senatu sententiam dicunt, et non vocantur senatores ante quam in senioribus sunt censi (Festus 454 L.).

and now, whenever the senators are summoned into session, [the expression is added] *and those who are permitted to give their opinion in the senate*; this is because these men were enrolled in junior centuries when the last census was completed, but subsequently obtained a magistracy and give their opinions in the senate and are not called senators until they are enrolled in senior centuries.

M. autem Varro in Satira Menippea, quae Hippokyon inscripta est, equites quosdam dicit peditarios appellatos, videreturque eos significare qui, nondum a censoribus in senatum lecti, senatores quidem non erant, sed quia honoribus populi usi erant, in senatum veniebant et sententiae ius habebant. Nam et curulibus magistratibus functi, si nondum a censoribus in senatum lecti erant, senatores non erant et, quia in postremis scripti erant, non rogabantur sententias sed, quas principes dixerant, in eas discedebant. Hoc significabat edictum, quo nunc quoque consules, cum senatores in curiam vocant, servandae consuetudines causa tralaticio utuntur. Verba edicti haec sunt: *senatores quibusque in senatu sententiam dicere licet* (Gel. III 18,5–8).

M. Varro, however, in his *Menippean Satire* entitled *Hippokyon*, says that some *equites* are called *pedarii*. He seems to indicate that these men, who have not yet been enrolled in the senate by censors, are in fact not senators, but, because they have been elected to office by the people, they enter the senate and possess the *ius sententiae dicendi*. For men who had held curule office, if they had not yet been enrolled in the senate by censors, were not senators and, because their names were inscribed at the end, they were not asked their opinions. Instead, they voted in favour or against the opinions of the leading figures. This is what lies behind the edict, employed for the sake of tradition, which even today consuls use when summoning senators into the curia: *senators and those who are permitted to give their opinion in the senate*.

In (post-Sullan) epigraphical texts we find a different formulation: *quei senator est erit queiue in senatu sententiam deixerit* – language that also recurs in Cicero’s paraphrase of the *Lex Cornelia de sicariis et veneficiis* (Cic., *Clu.* 148)⁷. This latter group consisted of men who, although they had held a magistracy, had not yet been enrolled in the senate by the censors. These men never the less possessed what we may denominate as *ius sententiae dicendae*, which meant that in principle (if not in practice) they could speak their views in the senate and that in any case they could cast a vote on any *relatio* put to a vote by the presiding officer⁸. Now it is generally agreed that former holders of curule magistracies enjoyed this right, though

⁷ Lex Lat. Bant. = RS 1.7.22: [*quei senator est erit queiue in senatu sententi]am deixerit post hanc legem*; cf. Lex Tarentina = RS 1.15.26: *quei decurio municipi Tarentinei est erit queiue in municipio Tarenti[no in]//senatu sententiam deixerit*. Cic., *Clu.* 148: *qui magistratum habuerit in senatu sententiam dixerit*.

⁸ F. X. Ryan, *The origin of the phrase ius sententiae dicendae*, „Hermes”, 121, 1993, 206–10, argues that this expression is imperial in origin and consequently an anachronism.

Festus offers us no particulars and our other primary source for this, Gellius, is something of a muddle. His exposition, it has been observed, represents *his own* inference from Varro's use of *pedarii* (the explication of which term is the focus of the passage)⁹. Varro's satire, it is almost needless to say, did not lapse into a lesson in constitutional history. Instead, we have Gellius's view of the matter. Still, that was plainly informed by scholarship not unlike the body of work consulted by the sources that lie behind the entry in Festus: it is obvious that Gellius (and his sources) believed that former curule magistrates possessed the *ius sententiae dicendi*.

These men were not senators in the strictest sense of the term. However, Roman usage was not invariably exact in this matter. After all, the gap between *senatores* and *quibus in senatu sententiam dicere licet* is exaggerated by Gellius, as we can tell by the treatment of Cicero in the official letter of the consuls of 73 to the city of Oropos (*RDGE* 23.11–12)¹⁰. There the former *quaestor* of 75 is included in the consuls' senatorial *consilium* without any explicit differentiation – although the next *lectio senatus* would not take place until 70. Now for all the difficulties of the evidence delivered to us by Gellius and Festus, the existence of the transitional category *quibus in senatu sententiam dicere licet* can be regarded as certain – and in the present state of our knowledge this category should be assumed to be limited to former curule magistrates in the pre-Sullan and pre-Atinian senate, though, as we shall see, at some point past plebeian aediles appear to have acquired the *ius sententiae dicendi* (this becomes clear in the text of the *Lex Acilia*: see below). *Senator*, then, is not an immediately and unfailingly unambiguous term.

(II)

How precisely Capito employed the expression *senator* in his analogy concerning the *praefectus urbi* must remain uncertain. The most natural construction of his remark must be that he has used the term *stricto sensu* and, furthermore, that the *plebiscitum Atinium* regulated the conditions necessary for eligibility for election to the tribunate (this is the most obvious sense of *quamquam senatores non essent*)¹¹. It was presumably this logic that led Robert Develin to conclude that, before the passage of the *plebiscitum Atinium*, all senators (plebeian as well as patrician) were

⁹ Willems, *op. cit.*, 138.

¹⁰ Senators and possessors of *ius sententiae dicendi* more or less indistinguishable: this essential point was made long ago by Mommsen, *StR*, III, 858–859. As he observes (859 n.1), expressions like *dum ne minus senatoribus C adsunt* (deployed more than once in the SC de Bacchanalibus of 186 = *ILLRP* 511 = *ILS* 18) will surely include *quibus in senatu sententiam dicere licet* in their reckoning.

¹¹ Correctly observed by F. Hoffman, *Der römische Senat zur Zeit der Republik*, Berlin 1847, 150, 158–65.

barred from holding the tribunate, a disqualification introduced in order to avoid the likely conflict of interest arising whenever a plebeian senator found himself tribune. The *plebiscitum Atinium*, however, eliminated that disqualification¹².

If so, the *terminus ante quem* for the *plebiscitum Atinium* must be 358, when C. Poetilius, cos. I 360, was tribune¹³. The imposition of this restriction, however, goes unrecorded even in the fulsome accounts of the Conflict of the Orders that come down to us. Nor does its motive seem entirely plausible: patrician senators should have welcomed such a conflict of interest, and it is unlikely that in its early days the plebeian assembly would have passed any plebiscite limiting the political ambitions of its leading members¹⁴. Now it is possible that there was early confusion over the barriers obtaining between *patres* and the tribunate that required legal clarification, but postulating early legalism on this magnitude smacks of desperation¹⁵. And in any case Develin's thesis seems to be a misreading of the analogy that subtends Capito's argument, the plain point of which is that it is a mistake to try to deduce the powers of a magistracy from the status of its legitimate holder. The situation implicit in Capito's comparison is that a holder of the pre-Atinian tribunate was not necessarily a senator when elected to the post and did not enter the senate thereafter on account of his tenure of the tribunate, just as the prefect of the city was not necessarily a senator (we do not know that it was impossible for a senator to be prefect during the republic) before holding the office and did not by virtue of holding the office enter the senate when his term expired. In some instances the reason prefects and tribunes will not have been senators will have been the same: each was too young¹⁶.

The strongest argument against Develin's proposal, however, is that it will not fit our evidence, fragmentary as it is. Capito's argument, unless it is the product of a hopeless muddle, requires a state of affairs in which tribunes possess the right to summon and to preside over the senate (*senatus habendi ius* or *ius referendi cum senatu*) although they are not yet senators, that is, at a time when, according to Develin, they could not be senators when they were elected to the office. Now C. Poetilius, consul for the first time in 360, was tribune in 358, by which time he must have been adlected into the senate (presumably he was praetor before he was consul). In any case, this was a time when tribunes had not yet acquired the

¹² R. Develin, *The Atinian Plebiscite, Tribunes, and the Senate*, CQ, 28, 1978, 141–44; cf. Idem, *The Integration of Plebeians into the Political Order After 366 B.C.*, [in] *Social Struggles in Archaic Rome: New Perspectives on the Conflict of the Orders* ed. K. A. Raaflaub, Berkely 1986, 341.

¹³ *MRR*, I, 120, 122. Develin, *The Atinian plebiscite...*, 143, rejects this identification. Note also the (unlikely) tradition that the consuls of 454 were co-opted as tribunes in 448 (Liv. III 65, 3–4).

¹⁴ R. Feig Vishnia, *Lex Atinia de tribunis plebis in senatum legendis*, MH, 46, 1989, 165–67.

¹⁵ Liv. II 33,1–2; IV 25,11; cf. R. E. Mitchell, *Patricians and Plebeians: the Origin of the Roman State*, Ithaca 1990, 211. This will be simply a case of Livian sloppiness.

¹⁶ Wiseman, *op. cit.*, 99; Mitchell, *op. cit.*, 210.

ius referendi cum senatu. The first we hear of any tribune exercising this right is in a passage in Livy set in 216, the historicity of which episode even Livy distrusted, and the first indubitable instance of a tribune presiding over the senate comes in 210¹⁷. Even if we agree with Mommsen that tribunes were furnished with this right soon after the passage of the *lex Hortensia* in 287, the conditions required by Capito's argument to do not obtain¹⁸. Admittedly it is solely by chance that we know about Poetilius (the identities of very few tribunes before the second century have been transmitted by our sources), and early traditions in Rome must always be regarded as fragile. But unless we reject the datum, and I see no obvious reason to do so, we must reject Develin's reconstruction of the effect of the *plebiscitum Atinium*.

Nor, I think, need we extend ourselves in argument against its ancient alternative, that the Atinian law made senatorial status obligatory for anyone wishing to stand for the office (this is the theory of F. Hoffman). Even in the post-Sullan constitution that was plainly not obligatory, and the general pattern for senatorial adlection, as we have seen in our discussion of the *lex Ovinia*, excludes such a possibility altogether¹⁹. Which means that our measure had nothing at all to do with the actual condition of man at the time of his election to the tribunate. Instead, the measure must have affected the status of ex-tribunes in some way pertaining to their membership in the senate.

(III)

It was long ago suggested by Pierre Willems that the Atinian law extended the *ius sententiae dicendi* to ex-tribunes. To be sure, this conclusion entails the assumption that Capito did not employ the term *senator* in the same sense as the source consulted by Festus and Gellius, but that discrepancy need not detain us. As we have seen, *senator* can be used expansively to include possessors of the *ius sententiae dicendi*. In addition to this right, each ex-tribune could reasonably expect, unless he was somehow deficient in character or conduct (*viz.* not an *optimus*), to be formally enrolled at the time of the next *lectio* (so Willems).

If this is the correct recovery of the measure's contents, then we can be confident of its *terminus post quem*, which is indicated by the stipulations of the epigraphically preserved *lex repetundarum*, routinely (though not certainly)

¹⁷ Tribunes in 216: Liv. XXII 61,7. Tribunes in 210: Liv. XXVII 4,14; cf. E. Badian, *Tribuni Plebis and Res Publica*, [in] *Imperium Sine Fine: T. Robert S. Broughton and the Roman Republic*, ed. J. Linderski, Stuttgart 1996, 207–08; T. C. Brennan, *The Praetorship in the Roman Republic*, Oxford 2000, 113–14.

¹⁸ Mommsen, *StR*, I, 211; II, 313–17.

¹⁹ Hoffman, *op. cit.*, 146–49. Rejection of Hoffman's theory: Willems, *op. cit.*, 228; Mommsen, *StR*, III, 862 n.1. Examples of post-Sullan tribunes elected without standing for the quaestorship include M. Caelius Rufus (tr. pl. 57) and C. Asinius Pollio (tr. pl. 47); cf. Wiseman, *op. cit.*, 99.

identified with the *Lex Acilia* of 123/122²⁰. Lines 12 through 18 of this inscription lay out the principles on the basis of which jurors will be selected for trials *de repetundis*. It was important to the legislator that all current and former senators be excluded from the jury pool. At the same time, other figures associated with the government of Rome or in a career path with a senatorial trajectory were also excluded, thereby assuring that the jurors selected would be (in theory at least) impartial equestrians. Hence the legislator excludes

Quei tr(ibunus) pl(ebis), q(uaestor), IIIvir cap(italis), tr(ibunus) mil(itum) l(egionibus)
III/I primis aliqua earum, trium vir(um) a(gris) d(andis) a(dsignandis) siet fueritue, quei
in senatu siet fueritue (*lex rep.* 16)

language that reprises the same stricture in lines 12–13, which are less well preserved.

The legislator excludes past and present senators as well as past and present holders of a list of minor magistracies and posts. Presumably the two categories are distinct and not merely a relic of a previous measure that has to some degree been subsumed in this one. In which case we must conclude that the legislator did not anticipate that a tribune, or a former tribune, would automatically fall into the set of senators past or present.

Now admittedly, as we have seen, such a man could in theory be adlected into the senate by censors performing the *lectio senatus*. In principle, after all, nothing precluded an ex-tribune from being an *optimus*. But that that was by no means that natural or anticipated state of affairs is clear from the language of the legislator, who says nothing about aediles or ex-aediles or praetors or ex-praetors. Yet he must have known that, until adlected by the censors, an ex-aedile or ex-praetor was not a senator in the strict sense of being a man whose name was inscribed in the *album senatorum*. Their condition must have been different from that of an ex-tribune, and must have been familiar enough not to require specification or elaboration in this law. Now, again as we have seen, whether by law or by custom, ex-aediles (at least ex-curule-aediles, though the legislator of this law does not draw a distinction between them here) and ex-praetors could expect to be formally enrolled in the senate on the occasion of the census subsequent to their term in office (unless, of course, disgraceful and disqualifying conduct supervened). And we have seen how these men spent the interval between office and enrolment: as holders of the *ius sententiae dicendi*. In other words, the legislator employs the expression *quei in senatu siet fueritue* to mean past and present *senatores quibusque in senatu*

²⁰ A. Lintott, *Judicial Reform and Land Reform in the Roman Republic*, Cambridge 1992, 10–33; *RS*, 1, 65–112.

sententiam dicere licet (itself the plural of *quei senator est erit queiue in senatu sententiam deixerit*)²¹.

Admittedly, many ex-aediles and ex-tribunes will have held one of the offices enumerated by the legislator. Still, although the quaestorship was customarily an antecedent to an aedileship or praetorship, it was not an essential step in the pre-Sullan *cursus*²². And in any case it is difficult to understand why the legislator fails to mention former aediles or praetors (it would surely be an odd device to exclude ex-aediles by subsuming them in the category of ex-quaestors) – unless it was normally assumed that these men fell into the category of *quei in senatu siet fueritue*. Consequently, and always bearing in mind that censors enjoyed extensive latitude in carrying out the *lectio senatus*, we must conclude that, although ex-aediles like ex-praetors had a place in the senate by 123, ex-tribunes did not. And so our measure, if, as Willems has argued, it extended the *ius sententiae dicendi* to past tribunes, must have been passed afterwards²³.

(IV)

But, it has been objected (originally by Emilio Gabba and more recently by Rachel Feig Vishnia), tribunes possessed the *ius sententiae dicendi* well before the passage of the *Lex Acilia* – as did quaestors – and the proper significance of that document's lists (and of the expression *quei in senatu siet fueritue*) has been misunderstood by Willems and much subsequent scholarship²⁴. Now this matter is pertinent not to Willems' reconstruction of the Atinian plebiscite but instead to the question of its date if his reconstruction is correct. Put differently, it is the view

²¹ This conclusion is widely accepted. However, G. Tibiletti, *Le leggi de iudiciis repetundarum fino alla guerra sociale*, „Athenaeum”, 31, 1953, 68, and E. Gabba, *Note Appianee*, „Athenaeum”, 33, 1955, 220–21, insist that *quei in senatu siet fueritue* = *senatores* (full stop): in order to include possessors of the *ius sententiae dicendi* the legislator should have employed the fulsome formulation of the *Lex Lat. Bant.* (= *RS*, 1,7,22; cf. above, n.7). But this fails to appreciate how the context and purpose of the Acilian law differs from the *Lex Lat. Bant.*, on which point consult *RS*, 1, 99; 207.

²² A. E. Astin, *The Lex Annalis before Sulla*, Brussels 1958, 28–30; H. Beck, *Karriere und Hierarchie: die römische Aristokratie und die Anfang des cursus honorum in der mittleren Republik*, Berlin 2005, 57–58.

²³ Crawford, *RS*, 1, 99, rejects this conclusion on the grounds that the *plebiscitum Atinium* may have permitted, rather than ordered, that ex-tribunes should be enrolled, the apparent assumption being that ex-tribunes were prohibited from adlection before the Atinian measure. T. Hantos, *Res Publica Constituta: die Verfassung des Dictators Sulla*, Stuttgart 1988, 21–24 offers a similar take on the Atinian law: the plebiscite was a collective appeal to the censors (Willenskundgebung der Plebs) to take ex-tribunes into consideration during the *lectio*.

²⁴ Gabba, *op. cit.*, 218–30; Feig Vishnia, *op. cit.*, 167–72; cf. W. V. Harris, *The Development of the Quaestorship, 267–81 BC*, CQ, 26, 1976, 105, who assumes (without argument) that it was normal for ex-quaestors to be admitted into the pre-Sullan senate. Concise criticism of Gabba: Wiseman, *op. cit.*, 97 n.3.

that the *Lex Acilia* demonstrates that tribunes lacked the *ius sententiae dicendi* by 123 that is at stake in the controversy.

Now most of the evidence adduced by Gabba is entirely inconclusive and is often vitiated by the common confusion between the *lectio senatus* and the operations of the census proper (a confusion revisited later in this paper). Other elements in the argument, however, derive from dubious interpretations of problematic sources. For instance, the following anecdote from Valerius Maximus (Val. Max. II 2,1A) is deemed proof that ex-quaestors possessed the *ius sententiae dicendi*:

Adeo autem magna caritate patriae tenebantur ut arcana consilia patrum conscriptorum multis saeculis nemo senator enuntiaverit. Q. Fabius Maximus tantummodo, et is ipse per imprudentiam, de tertio Punico bello indicendo quod secreto in curia erat auctum P. Crasso rus petens domum revertenti in itinere narravit, memor eum triennio ante quaestorem factum, ignarus nondum a censoribus in ordinem senatorium allectum, quo uno modo etiam iis qui iam honores gesserant aditus in curiam dabatur. sed quamvis honestus error Fabii esset, vehementer tamen a consulibus obiurgatus est.

So great a love of country possessed them that for many centuries no senator divulged the secret counsels of the Conscript Fathers. Only Q. Fabius Maximus, and he through inadvertence, told P. Crassus on the road (Crassus was returning home as Fabius was on his way to the country) what had passed secretly in the senate about declaring the Third Punic War. He remembered that Crassus had been elected Quaestor three years earlier and did not know that the Censors had not yet enrolled him in the senatorial order, that being the only way by which even those who had already held office were given access to the senate house. But although it was an honest mistake on Fabius' part, he was severely reprimanded by the Consuls. *Transl. by Shackleton Bailey.*

But in fact, to the degree this passage is at all probative, it demonstrates the opposite point²⁵. It is the clear premise of this story that an ex-quaestor had no right whatsoever to be informed of the *arcana consilia* of the senate: hence the consuls' reprimand of Fabius. After all, if as an ex-quaestor Crassus possessed the *ius sententiae dicendi*, then he enjoyed the right to play a part in all the deliberations of the senate (in which case Fabius will have committed no blunder). To be sure, the anecdote also suggests that a noble of Crassus's stature could expect, after his quaestorship, early adlection into the senate. But that is a wholly different matter. The value of this passage as evidence is questionable in any case: Valerius explicitly states that only individuals enrolled in the senate by censorial *lectio* may enter the senate, a state of affairs, as we have seen, that was never the case.

More useful to Gabba are reports of individuals excluded from the senate before having attained a curule magistracy. But here, unfortunately, clarity eludes. Consider the example of Cn. Tremellius (tr. pl. 168), who, according to Livy, in

²⁵ Hoffman, *op. cit.*, 39; 45; Willems, *op. cit.*, 232–34.

168 exercised his tribunician veto against the extension of the censors' tenure *quia lectus non erat in senatum* (Liv. XLV 15,9). That this is evidence of Tremellius' frustrated expectations is undeniable. But it does not tell us on what grounds his expectations were based. It is of course not impossible to infer from this text that Tremellius was an ex-quaestor who possessed the *ius sententiae dicendi* and hence was outraged by his exclusion from the senate. Still, that seems a bit of a stretch. This episode seems at least as likely to reflect the exaggerated ambitions of this representative of a (stalled) praetorian family and nothing more. Tremellius' actual veto, however motivated, was in the event unexceptionable – and there is no indication in the text that Tremellius had been unfairly treated by the censors. We learn only of his resentment at his exclusion – not the basis for that resentment.

The vocabulary deployed in describing senatorial exclusions is, unfortunately, unhelpful for our purposes. Terms like *eiocere*, *emovere* and *praetire* (and their cognates) recur repeatedly, but without evident distinctions in meaning. Livy uses the expressions indiscriminately. Even if any of these formulations was originally technical or specific, their usage no longer reflects it, a state of affairs that renders it difficult to diagnose the precise constitutional circumstances of any recorded episode²⁶. All of which is by way of preface to the most important episode introduced by Gabba, the case of C. Atinius Labeo in 131. Three sources inform us that this tribune was not enrolled in the *lectio* of that year:

Cic., <i>Dom.</i> 123:	<i>ex senatu censor eiecerit</i>
Liv., <i>Per.</i> 59:	<i>in senatu legendo praeteritus erat</i>
Plin., <i>NH</i> 7.143:	<i>a senatu censor eiecerat.</i>

Now Gabba takes this as evidence that ex-quaestors possessed *ius sententiae dicendi* – or how else could Atinius have been ejected or passed over? But if we can agree that these expressions are nothing more than variants of *lectus non erat in senatum*, then it is more likely that we have to do with a recurrence of the circumstances of Cn. Termellius: the perhaps excessive ambitions of a praetorian family have been dashed, thereby stimulating aristocratic *dolor*. Again, it is not a matter of total certainty: the evidence is too intractable for that.

Feig Vishnia adds to Gabba's accumulation of cases by adducing Gell. III 18,5–8, cited above, which, she maintains, implies that magistrates other than ex-curule

²⁶ No real distinctions in meaning in the vocabulary of senatorial exclusion: Mommsen, *StR*, II 421 n.3. Livy plainly does not distinguish *praeteritus* from *eiectus*, nor does he give either a specific meaning (apart from simple exclusion from the revised album senatorum): Liv. IX 30,2; XXVII 11,12; XXXVIII 28,2; XLIII 15,7–10. Contra: Willems, *op. cit.*, 243–44; Feig Vishnia, *op. cit.*, 165 n.15.

magistrates possessed the *ius sententiae dicendi*²⁷. Her argument depends entirely on understanding in the expression *nam et curulibus magistratibus functi, si nondum a censoribus in senatum lecti erant, senatores non erant* a claim that former curule magistrates – just like their non-curule brethren – fell under the heading *quibus in senatu sententiam dicere licet*. But that is not the obvious sense of this sentence or of its larger context. Gellius' point is instead that, notwithstanding the dignity of having held a curule magistracy, no one is ever an actual senator until he is formally enrolled in the album of the senate²⁸. To be fair, it is not absolutely impossible that Gellius and his sources have in mind the circumstances of the post-Sullan senate, by which time past quaestors and tribunes most certainly did possess the *ius sententiae dicendi*, although that context is not immediately apparent. The entire passage is at best problematic in any case: as Willems pointed out long ago, Gellius' comprehensive treatment is incoherent²⁹. After observing that mere possessors of the *ius sententiae dicendi* are not senators owing to the fact that they have not been registered by censors he goes on to suggest that they have been listed in the album of the senate none the less, if that is the right construction of *quia in postremis scripti erant*. Still, there is nothing here that obviously advances the claim that ex-quaestors and ex-tribunes enjoyed the *ius sententiae dicendi* earlier than the date of the *Lex Acilia*. Naturally it is a different question whether or not the Atinian law altered that state of affairs.

(V)

In his recent examination of the Atinian plebiscite, Ernst Badian has proposed that the measure simply required the censors to include tribunes and ex-tribunes in the *album senatorum* unless there was good cause not to do so³⁰. That the people could so order their censors is undeniable. But such an instruction would be singular, creating a new category of former magistrate. For, in Badian's view, ex-tribunes were not by the terms of the Atinian law granted the *ius sententiae dicendi* but were instead held in reserve for proper senatorial membership in the subsequent *lectio*, at which time and only at which time did they enter the body in any sense. This anomaly is hardly impossible, and admittedly it is beside the point that no conspicuous trace of it subsists, but it cannot be denied that innova-

²⁷ Feig Vishnia, *op. cit.*, 167–68.

²⁸ Curule magistracies emphasized: *nam et* expressing emphasis: *TLL*, V 1,911. In every other instance of the expression's occurrence in Gellius, *nam et* signals emphasis: Gellius II 22,22; IV 2,12; X 29,2; XIV 1,13.

²⁹ Willems, *op. cit.*, 138–40.

³⁰ Badian, *op. cit.*, 202–208; the same proposition is advanced by Wiseman, *op. cit.*, 97–98, but merely as a logical possibility and not for the reasons suggested in Badian's treatment. Badian's argument is endorsed by T. C. Brennan, *The Praetorship in the Roman Republic*, Oxford 2000, 113–14.

tion along these lines can only be described as far more striking (and perhaps less characteristic of Roman practice) than simply extending an existing pattern of senatorial absorption (which, in Willems' view, is what the Atinian measure in essence legislated).

Badian is averse to the idea of ex-tribunes receiving the *ius sententiae dicendi* at least in part because he believes he has detected evidence for a significant alteration in the relationship between tribunes and the senate from the second century. Now because Badian accepts that the evidence of the *lex Acilia* proves that *tribunes, whether in office or after holding office, are not senators* by 123, an Atinian law carried in the second century cannot simply have granted ex-tribunes the *ius sententiae dicendi*: it must, then, have installed ex-tribunes in the senate by other means³¹. Badian's conclusions about the effect of the Atinian plebiscite, then, depend on his argument for its second century dating.

Badian observes that, in our extant corpus of correspondence between the government in Rome and the communities of the Greek east, there are no fewer than three examples (*RDGE* 34, 38, 39), all from the early second century, that are introduced by the formula: *name-of-magistrate* (consul or praetor) followed by *tribunes-of-the-plebs* followed by the *senate*. For instance (*RDGE* 38.1–2):

[Γάιος Λίβιος Μάρκου στρατηγὸς ὑπ[α]τος Ῥ[ω]μ[αίων καὶ δῆ] / [μ]αρχοὶ
καὶ [ἡ σύγκλη]ητος Δελφῶν ἄρ[χο]υσι καὶ τῆ πό[λει χ]αίρειν]

Gaius Livius, son of Marcus, consul of the Romans and the tribunes and the senate to the magistrates and the city of Delphi, greetings.

This pattern must have been widespread. By the 140s, however, we find correspondence with the east originating with a magistrate but without reference either to the tribunes or to the senate (*RDGE* 4, 7, 8). As Badian puts it: *the Roman People now presents a unified face*³². Something has changed: the tribunes apparently no longer require separate and special reference, and this transformation Badian correlates with the tribunes' elevation to senatorial status (along the lines delineated above).

Now this represents a fresh approach to the Atinian law. But there are difficulties. Badian himself observes the anomaly of *RDGE* 1A, dated to 189, a letter in which a praetor, Spurius Postumus, in writing to Delphi, eschews reference either to the tribunes or to the senate (*RDGE* 1B is an identical letter addressed to Amphyctyonic League). Spurius merely reports the result of senatorial action by summarizing a senatorial decree. This letter, Badian explains, correctly in

³¹ Evidence of the Lex Acilia: Badian, *op. cit.*, 203.

³² *Ibidem*, 205. Dating of *RDGE* 4, 7 and 8: H. B. Mattingly, *Notes on Some Roman Moneyers*, NC, 9, 1969, 103–4.

my view, was *a communication from the praetor, issued on his own responsibility*, personal initiative that is made explicit at the letter's conclusion (ὅπως]/[οὖν εἰδῆτε, ἔκρ]κινον ὑμῖν γρά[ψαι περὶ τούτων]).³³ What he fails to observe, however, is that the three inscriptions from the 140s adduced by him are instantiations of the same thing.

In *RDGE* 4 and 7, we find a praetor emphasizing his personal role in a matter pertinent to the addressee (*RDGE* 8 is very poorly preserved but the same pattern appears to obtain: note ὑμῖν ἐγὼ in line 5). In each instance, the praetor attaches or includes (within the body of his letter), for the consumption of his addressee, the relevant decree of the senate, which constitutes the authoritative document in each communication. This is essentially the same phenomenon one finds in *RDGE* 1 (although there is no citation of a senatorial decree in that letter, it is the senatorial decree summarized by the praetor – which may have accompanied the letter – that constitutes the authoritative document: the praetor does not issue commands on the basis of his own authority). By contrast, the openings of *RDGE* 34, 38 and 39, as Badian observes, display the full panoply of the Roman constitution: magistrate, tribunes and senate – in sum, SPQR. In each of these communications, the letter is *itself* the authoritative document. The attitude and intentions – and the instructions – of the *res publica* are indicated to the recipient: e.g. this excerpt from *RDGE* 34: διὸ... κρίνομεν... εἶναι τὴν πόλιν καὶ τὴν χώραν ἱερὰν, καθὼς καὶ νῦν ἐστίν, καὶ ἄσυλον καὶ ἀφορο/λόγητον ἀπὸ τοῦ Ῥωμαίων... (*consequently... we decide that your city and its territory are holy, as is now the case, and inviolable and immune from taxation by the Roman People*). Senatorial decisions may be summarized, but no decree is repeated or attached. There was no need: the letter is itself the authorizing document.

And so what we have to do with is not a historical development in Rome's self-representation to foreign peoples, nor is it a reflex of an alteration in the role or status of the college of tribunes. Instead, we are dealing with two distinct species of communication. Which means that there is no compelling reason to attempt to date the Atinian plebiscite and its effect on ex-tribunes to the second century – which then of course removes any need to create a unique category of former magistrate bound for membership in the senate.

(VI)

Which brings us to the last of our alternatives to Willems. Rachel Feig Vishnia proposes that the Atinian law stipulated that tribunes become senators – in the strict sense – without having to wait for the next censorial *lectio*, a precedent, on

³³ Badian, *op. cit.*, 205.

her view, for Sulla's subsequent legislation. Thus unfettered from the chronological restrictions of the *Lex Acilia* (it will on her view still be necessary for the legislator to specify the ineligibility of *quei tr(ibunus) pl(ebis)... siet*), and following the prosopographical arguments of Alan Astin, she assigns the measure to the tribune of 131, whom we have met already. Feig Vishnia, like Gabba before her, maintains that past quaestors and tribunes possessed the *ius sententiae dicendi* early on, and so the Atinian plebiscite must have carried greater heft than that. Hence her solution³⁴.

Now the first observation one must make is that Feig Vishnia's thesis still sits uncomfortably with the language of the *Lex Acilia*. It is by no means obvious why the legislator should, on her terms, exclude from his juries anyone who *tr(ibuns) pl(ebis)... siet fueritue*: after all, anyone who was a tribune in the past would fall under the category *quei in senatu siet fueritue*. Although this objection is far from footling, it is perhaps not decisive. It should also be noted that there is no good basis – apart from the mere occurrence of the name *Atinius* – to associate the Atinian plebiscite with the tribune of 131. Such a move constitutes, as Badian rightly insists, a prosopographical misapplication of Occam's razor³⁵. Again, however, not a decisive criticism.

More important is her positing a novel constitutional creature: the senator not enrolled in the *album senatorum*. So far as we can tell, and the evidence is convincing in my view, even after Sulla's legislation the significance of the *lectio* persisted, and participants in the senate who were not enrolled continued to be in the senate but as possessors of the *ius sententiae dicendi*. This category of senatorial membership remains explicit in the *Lex Cornelia de sicariis et veneficiis*³⁶. Even in the empire it was necessary for a new senator to be enrolled in the senatorial album, a stipulation of the *Lex Iulia de senatu habendo* of 9 BC: thereafter the imperial list was revised annually, thereby eliminating the category of men *quibus in senatu sententiam dicere licet*. Inscription in the album remained none the less essential³⁷. In sum, then, there is nothing in our evidence to advance Feig Vishnia's thesis – and quite a lot that seems to stand against it. Her proposition cannot be preferred to Willems' on the present state of our evidence.

³⁴ Feig Vishnia, *op. cit.*, 163–76; cf. A. E. Astin, *The Atinii*, [in] *Hommages à Marcel Renard*, vol. 2, ed. J. Bibauw, Brussels 1969, 34–39.

³⁵ Prosopography, Occam's Razor, and the Atinii: Badian, *op. cit.*, 204.

³⁶ *Lectio senatus* after Sulla: E. Gabba, *Il ceto equestre e il senato di Silla*, „Athenaeum”, 34, 1956, 124–38; cf. Ryan, *op. cit.*; A. Lintott, *Political History, 146–95 BC*, [in] *CAH*, vol. 9, 2nd ed., Cambridge 1994, 69.

³⁷ *Lex Iulia de senatu habendo* of 9 BC: R. J. A. Talbert, *The senate of imperial Rome*, Princeton 1984, 16–17 (with further discussion).

(VII)

Thus it is Willems' explanation of the Atinian plebiscite that continues to offer the most successful interpretation of the totality of our evidence. There remains, however, one particular of his reconstruction that I wish to revise. Willems recognized that *terminus post quem* for the Atinian legislation must be 123, his *ante quem* is 102, the year in which, it is generally agreed, the censor Q. Metellus Numidicus attempted to expel L. Appuleius Saturninus from the senate³⁸. Now Saturninus was quaestor in 104 and was tribune for the first time in 103. The *lectio* previous to 102 was conducted in 108. Consequently, in Willems' view, for Saturninus to be excluded from the senate in the *lectio* of 102, he must at that time have possessed the *ius sententiae dicendi*, which he will have enjoyed on account of the stipulations of the Atinian plebiscite.

Our evidence for this episode consists of two passages: a brief remark in Cicero and an only slightly more extensive account in Appian. Neither of them obviously refers to the *lectio senatus*.

Cic., *Sest.* 101

...aut qualis Q. Metellus, patruus matris tuae, qui cum florentem hominem in populari ratione, L. Saturninum, censor notasset cumque insitivum Gracchum contra vim multitudinis incitatae censu prohibuisset...

...or like Q. Metellus, your mother's uncle [Cicero is addressing the praetor M. Aemilius Scaurus], who, when censor, stigmatised L. Saturninus, although that man was a powerful *popularis*, and refused to enrol the false Gracchus in the [equestrian] census, in despite of the mob's violence...

App., *BC I* 126

τιμητῆς δὲ Κόιντος Καικίλιος Μέτελλος Γλαυκίαν τε βουλευτόντα καὶ Ἀπουλήιον Σατορνίνον δεδημαρχηκότα ἤδη τῆς ἀξιώσεως παρέλυνεν, αἰσχρῶς βιοῦντας, οὐ μὴν ἐδυνήθη. ὁ γὰρ οἱ συνάρχων οὐ συνέθετο.

The censor, Quintus Caecilius Metellus, attempted to degrade Glaucia, a senator, and Apuleius Saturninus, who had already been a tribune, on account of their disgraceful lifestyles. He was not able to do so, because his colleague would not agree to it.

Now the procedures of the *lectio senatus* and moral supervision associated with the census proper were not dissimilar, and the terminology of the two procedures

³⁸ Saturninus (nearly) expelled from the senate by Metellus in 102: Willems, *op. cit.*, 232: cf. Mommsen, *StR*, III, 862 n.2; E. Klebs, *L. Appuleius Saturninus* (29), [in] *RE*, II 1, 264; E. Gabba, *Appiani Bellorum Civilium Liber Primus*, Florence 1958, 98–99; Lintott, *Political history...*, 96; F. Cavaggioni, *L. Apuleio Saturnino: Tribuno Plebis Seditiosus*, Venice 1998, 69–71.

overlapped as well. In both undertakings, censors could deploy the *nota* and, if they wished, the *subscriptio censoria*. And expressions like *senatu movere* echo *tribu movere*. Never the less, these activities were wholly separate³⁹. The *lectio*, though carried out by censors, was not an integral part of the census proper: it remained independent and was usually completed before the census itself was begun. The revision of the *album senatorum* was conducted in private by the censors and only the results were announced in public – at least until the passage of the *Lex Clodia de censoria notione* in 58⁴⁰.

It is worth noting that, according to Cicero, Metellus' action against Saturninus, in which he was foiled by his colleague, consisted in applying the *nota*. The term *notare*, as we have seen, is not out of place in the context of the *lectio senatus*. But the verb is far more commonly used to describe the degradation that was available as a sanction in the censorial *regimen morum*, when the status of a miscreant was somehow diminished, by, say, depriving him of a public horse, reducing him to the condition of an *aerarius*, or removing him to an even lower social class. On its own, surely the most natural construction of Cicero's remark in *Pro Sestio* is that it refers to the moral supervision (and attendant reclassifications) of the census proper. Cicero goes on, after all, to mention Metellus's unpopular refusal to enrol L. Equitius as an equestrian (cf. also Val. Max. IX 7,1) – an action that had nothing whatsoever to do with the *lectio senatus*.

Similarly, the fuller account provided by Appian is more reasonably viewed as a description of the consequences of Metellus' censorial *cura morum* than as anything to do with the *lectio senatus*. The expression ἀξιώσεως παρέλθεν – used by Appian only here – fits that context well. If Metellus were actually endeavouring to remove Glauca and Saturninus from the senate, we should expect, on the basis of Appian's normal usage, greater specificity in making the point. As it is, the ἀξιώσις of which Metellus hoped to deprive his enemies is routinely and frequently used by Appian to indicate personal status and prestige: at no point is the word ever used on its own to denote senatorial status in the narrow sense. It is perhaps worth mentioning that Dio's use of the word is similar⁴¹.

³⁹ *Lectio* separate from census proper: Mommsen, *StR*, II, 419–20; Willems, *op. cit.*, 153; J. W. Tatum, *The Lex Clodia de Censoria Notione*, CPh, 85, 1990, 36–38. *Notare* in reports of censorial actions: instances of censorial sanctions catalogued in Mommsen, *StR*, II, 377–82; A. H. J. Greenidge, *Roman public life*, London 1901, 226–28; J. Suolahti, *The Roman Censors: A Study in Social Structure*, Helsinki 1963, 51–51; C. Nicolet, *The World of the Citizen in Republican Rome*, London 1980, 73–81.

⁴⁰ *Lex Clodia de censoria notione*: W. J. Tatum, *The Patrician Tribune: Publius Clodius Pulcher*, Chapel Hill 1999, 133–35 (with further references).

⁴¹ ἀξιώσεως παραλύειν in Appian: παραλύειν + specific offices in the genitive case: App., *Ibidem* 358; *Syr.* 269; *BC* II 5; III 2; 5. Dio follows this pattern and also employs παραλύειν + abstracts (e.g. *exousia* or *dynamis*) in the genitive case (e.g. Cass. Dio V 49,12; IX 76,2). ἀξιώσις in Appian, *BC*

The *regimen morum* of the census proper was very public – objections raised against anyone’s character by one censor required public compliance or disagreement on the part of his colleague, which is why censorial punishments tend to be attributed to one censor rather than the pair. The *lectio*, by contrast, was entirely private – and there was no regular publication of any negotiations between censors. The usual procedure was simply to read in public the revised *album senatorum*. Which is why purges of the senate tend to be ascribed to the pair of censors. In light of all this, it strikes me as far more probable that Metellus’s famous stigmatisation of Saturninus occurred during the census proper – and not the *lectio*. In which case this event is irrelevant to the dating of the Atinian law.

A more likely, though far from certain, *ante quem* is 97. In that year, the censors excluded M. Duronius from the senate because during his tribunate he had abrogated a sumptuary law. Duronius’s tribunate was assigned to 97 by Niccolini (and is recorded under that year by Broughton) only because it was the latest possible year in which he could have held the office. However, as Broughton realized, Duronius’s tribunate is in actuality undated, and could have taken place anytime after the *lectio senatus* of 102⁴². Here I think we have good evidence for an ex-tribune possessing the *ius sententiae dicendi*. Hence his excludability in 97. The Atinium plebiscite, then, appears to have been passed by an otherwise unknown tribune operating in a highly turbulent period notorious for the activities of Saturninus, who is one of the very few tribunes known to us for the years 102–97. An extension of the tribunes’ status by way of popular and popularising legislation does not seem out of place in this period.

(VIII)

It is time to conclude. Although the *plebiscitum Atinium* continues to invite learned discussion, Willems’ account of it remains the best explanation of the full constellation of our evidence, such as it is. The measure extended the privilege of *ius sententiae dicendi* to ex-tribunes. In so doing, it advanced their claim to be

I 16;22 (prestige of senate and of people); I 33; 79 (Sulla demands the return of his status, property and priesthood); II 3; 13 (prestige of equites); 67 (men possessing high status, in this instance all or certainly most of whom are senators); 37 (Cato defers to the superior anxiosis of republican consulars); 52 (prestige of magistrates and senators); IV 10; 12; 16 (prestige of the triumvirs); 36; 52 (prestige of cities); V 49 (prestige of Perusia); 128 (prestige of local magistrates in Italy). ἀξιῶσις in Dio: M.-L. Freyburger-Galland, *Aspects du vocabulaire politique et institutionnel de Dion Cassius*, Paris 1997, 60.

⁴² Tribunate of M. Duronius: *MRR*, II, 7; cf. G. Niccolini, *I fasti dei tribuni della plebe*, Milano 1934, 210. His expulsion: *M. autem Antonius et L. Flaccus censores Duronium senatu moverunt quod legem de coercendis conviviorum sumptibus latam tribunes plebi abrogaverat* (Val. Max. II 9,5 – note that both censors are implicated in this action, suggesting that we have to do with the *lectio* and not the census proper).

enrolled in the senate by the censors. Willems was right to observe the importance of the *Lex Acilia*, and, in fact, this legal text must be the controlling text for other evidence from historical, oratorical and antiquarian sources. Which means that the Atinian plebiscite cannot have been carried before 123/122. In only one particular does Willems appear in serious error, his belief that in 102 Metellus Numidicus attempted to eject Saturninus from the senate, which results from a confusion of the *lectio senatus* with the moral sanctions of the census proper. The events of 102 do not affect our dating of the *plebiscitum Atinium*, whose likeliest *terminus ante quem* is the tribunate of Duronius (which should be dated between 102 and 97). Contrary to the standard view, then, election to the tribunate seems not to have propelled Saturninus into the senate, or, if it did, Metellus made no recorded effort to remove him from that body. Which is a pity: the fate of the Roman republic could only have been different had Saturninus been removed from the scene early on – and without violence.*

* I am grateful to Jerzy Linderski for reading a draft of this paper and I am honoured to make this modest contribution in memory of a scholar who was kind enough to share with me his publications and ideas and whose work on the tribunate in the late republic very much influenced my own.