Miscellanea senatoria II

A cura di Annarosa Gallo,
Sebastian Lohsse e Pierangelo Buongiorno

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Herausgegeben von Pierangelo Buongiorno
und Sebastian Lohsse

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Premessa

Con la pubblicazione di questo secondo volume di *Miscellanea Senatoria* si intende dare continuità alla diffusione dei risultati dell'attività seminariale e di ricerca sviluppata in margine al progetto PAROS e ad iniziative di ricerca ad esso interconnesse.

Nelle pagine che seguono sono raccolti scritti di varia natura, in alcuni casi relativi a segmenti di percorsi di ricerca ancora in atto, ma tutti tesi a valorizzare aspetti e problemi della ricerca sul senato di epoca repubblicana e imperiale. Ma allo stesso tempo non è trascurata la riflessione sul metodo, sempre necessaria per un approccio maturo ai testi antichi.

Come già nel precedente volume (apparso in questa collana con il numero B.4), le pagine che seguono sono articolate in due sezioni, *Forme e tecniche* e *Fonti e contenuti*.

La prima sezione accoglie due scritti. Il primo, di Carlo Pelloso, riconsidera il lento percorso verso l'*exaequatio* dei *plebiscita* alle *leges* mediante un riesame dello strumento della *auctoritas patrum*. Aldo Petrucci esamina invece il ruolo del senato nelle procedure di conferimento del trionfo in epoca repubblicana, evidenziando la funzione di «filtro istituzionale» svolta dall'assemblea senatoria.

Nella seconda sezione sono accolti invece quattro saggi che, prendendo le mosse da fonti di tradizione manoscritta, ricostruiscono il portato di alcune delibere senatorie.

Prendendo le mosse da Plin. *nat.* 8.64, Annarosa Gallo esamina una serie di testimonianze liviane relative all'evoluzione della normativa (editti pontificali, delibere senatorie e il plebiscito Aufidio) in materia di importazione e impiego nei *ludi* di belve africane, anche alla luce del dibattito politico del primo quarto di II secolo a. C.

Francesca Pulitanò esamina un celebre brano di Tacito (*ann.* 4.62), ricostruendo un senatoconsulto del 27 d. C. in materia di anfiteatri, la cui approvazione è narrata strumentalmente da Tacito per criticare la condotta di Tiberio. Si tratta dunque di una interessante *Fallstudie* della tecnica di lavoro dello storico senatorio e dell'uso in chiave argomentativa degli *acta senatus* e dei deliberati senatori.

I saggi di Macarena Guerrero e Immacolata Eramo colmano invece una lacuna dei volumi, precedentemente pubblicati in questa collana (B.3 e B.6), relativi alla rappresentazione e uso dei senatoconsulti nelle fonti letterarie. Permettono infatti di esaminare l'uso dei senatoconsulti rispettivamente nel *De aquaeductu* (con particolare riguardo a un caso specifico) e negli *Stratagemata* del poliedrico senatore di età flavia e della prima età antonina Sesto Giulio Frontino.

Orazio Licandro riconsidera infine un passaggio dell'anonima opera Περὶ πολιτικῆς ἐπιστήμης, contenuta nel manoscritto *Vat. gr.* 1298 (Anon. *de scient. pol.* 5.63–64), alla luce del quale riflette sul ruolo dei senatori nella *forma rei publicae* elaborata da Cicerone nel *De re publica*. Mette infatti a sistema il testo dell'Anonimo con testimonianze relative alla prima età imperiale sul lavoro del senato in commissione evidenziando così come le riforme augustee, costituissero un anello di congiunzione tra l'organizzazione dei poteri pubblici teorizzata da Cicerone e la speculazione in tema da parte dei giustinianei.

Questo volume è stato consegnato alle stampe in tempi difficili, nel pieno di una pandemia che mette a rischio le vite di molti e rende più complesso il quotidiano di tutti. Piccolo segno tangibile del maggior vigore dello studio rispetto alle contingenze umane.

Münster, agosto 2020 A. G., S. L., P. B.

Forme e tecniche

CARLO PELLOSO

Along the Path Towards *Exaequatio*

Auctoritas Patrum and *Plebisscita* in the Republican Age

I. Introduction

Roman jurists of the 1st and 2nd century AD provided numerous, yet similar, definitions of *plebisscitum*, depicting a legal reality that – it has been assumed – was current from the beginning of the 3rd century BC[1].

On the one hand, Capito and Gaius – who shared ideas that are implicitly represented in the works of Laelius Felix – focus on the existing differences between the Roman people, as a whole, and plebeian society as a part of this whole. Consequently, these jurists are inclined to further emphasise in their definitions of *plebisscitum* the composition of the tribal assemblies of the *plebs*, as opposed to the popular assemblies: if *lex est quod populus iubet atque constituit*, so *plebisscitum est quod plebs iubet atque constituit*[2]. In other words, the noted resolution of the *plebs* refers to a bill (*rogatio*) brought before the *plebs* (i. e. an *aliqua pars* included in the

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1 Gell. 10.20.5 (*'Plebisscitum' … est … lex, quam plebes, non populus, accipit* [Ateius Capito]); Gell. 15.27.4 (*ita ne 'leges' quidem proprie sed 'plebisscita' appellantur quae tribunis plebis ferentibus accepta sunt. plebes autem ea dicatur in qua gentes patriciae non insunt* [Laelius Felix]); Gai. 1.3 (*lex est quod populus iubet atque constituit. Plebisscitum est quod plebs iubet atque constituit. plebs autem a populo eo distat, quod populi appellatione universi cives significantur, connumeratis etiam patriciis; plebis autem appellatione sine patriciis ceteri cives significantur*); Pomp. *l. s. ench.* D. 1.2.2.12 (*ita in civitate nostra … plebi scitum, quod sine auctoritate patrum est constitutum*). Cf. Fest. s. v. *scita plebei* (Lindsay 293: *scita plebei appellantur ea, quae plebs suo suffragio sine patribus iussit, plebeio magistratu rogante*).

2 This definition implies a clear-cut distinction between *plebs* and *populus* (see De Martino, *Storia della costituzione romana* I 1972², 371); on the contrary, in the literary sources, there is no consistency in the use of these two denominations, which often appear to be interchangeable (see Maddox, *The binding plebiscite* 1984, 88; Biscardi, *'Auctoritas patrum'* 1987, 99 f.; Sandberg, *The concilium plebis* 1993, 78).

totum), voted for, and finally accepted: the patricians thus remained debarred from participation in such 'fractional assemblies', which were accordingly labelled as *concilia* and not as *comitia*[3].

On the other hand, the jurist Verrius Flaccus uses as a source for his entry on *scita plebis*, like Laelius Felix, introduces a further proviso. The process aimed at passing plebiscites, in fact, was initiated by the proposal of a tribune, and was carried out under the presidency of the same plebeian magistrate, that is, an officer who was not entitled to summon the patricians to vote on such matters[4].

As such, Pomponius, listing the 'formants' of the Roman legal system in the 2nd century BC – so long as one does not conceive of the term *auctoritas* as a synonym for *iussus* (that is 'final vote', 'final resolution', 'approval of *rogatio*'), which seems rather unpersuasive – appears to add an interesting element to this process: Pomponius records that plebeian statutes would come into force – as the jurist wants to make it clear – without the authorisation (*auctoritas*) of the patrician senators (*patres*)[5].

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3 Gell. 15.27.4. Indeed, Cicero and Livy do not use these two terms (*comitia* and *concilia*) in accordance with the idea expressed by the imperial jurist, as already demonstrated by Botsford, *The Roman Assemblies* 1968, 119 ff., and Farrell, *The Distinction between Comitia and Concilium* 1986, 407 ff. Thus, either we must suppose that there was a tradition which preserved the strict distinction between *comitia* and *concilium*, as mirrored in Laelius Felix's definition, or agree that this jurist makes a mistake, at least, as the quotation stands (see Taylor, *Roman Voting Assemblies* 1966, 60 ff. and 138, nt. 5; Develin, *Comitia tributa plebis* 1975, 306 ff.; Sandberg, *The concilium plebis* 1993, 78 ff.; Pelloso, *Ricerche sulle assemblee quiritarie* 2018, 329 ff.).

4 Such nuance implies that assemblies were not autonomous actors in Rome, but totally dependent on those who were given *ius agendi*. The people and the *plebs* could accomplish their (judicial, legislative, electoral) tasks only on the initiative of a curule magistrate or, respectively, of an officer of the *plebs*. Accordingly, even if law-making was formally a popular or plebeian prerogative, in practice it substantially consisted in a magisterial and tribunician activity, since assemblies could neither initiate, nor could they answer the *rogationes* other than by providing a 'yes or no' answer (see Mommsen, *Römisches Staatsrecht* III.1 1887, 303 f.)

5 In these terms, see Biscardi, *'Auctoritas patrum'* 1987, 101 f. (but see also p. 238); against this reading, see the persuasive remarks of Guarino, *L'"exaequatio legibus' dei 'plebisscita'* 1951, 460: "l'interpretazione è troppo azzardata. Se anche ad essa non si rifiuta il termine *auctoritas*, isolatamente preso, vi si ribella, considerata nel suo complesso, la locuzione *auctoritas patrum*, che è, sino a prova contraria, squisitamente tecnica". Even if the passage from Pomponius' Enchiridion, as it stands, is deeply interpolated and, at some point, even syntactically incorrect (cf. *Index interpolationum* ad h. l.), much of the information can be considered authentically classic and part of a consistent narrative (see Bretone, *Tecniche* 1982, 226 ff., even if this author agrees with Biscardi and states that "la frase *quod sine auctoritate patrum est constitutum* significa che il *plebisscitum* 'è stato creato', come fonte di produzione giuridica, senza il consenso dei patrizi, non che la procedura necessaria per porlo in essere prescinda dall'intervento senatorio").

However, most of these sources, while covering the current legal status of the *plebisscita* from different perspectives, fail – at least as they stand – to include in their definitions any reference to a particular feature which diachronically played a fundamental role in the history of the struggle of the orders and, thus, in the subsequent political relationship of the *patricii* and *plebei* during the 5th, 4th, and 3rd centuries BC. I refer, of course, to the problem of the extent of the binding force of the rules which were enacted solely by the plebeians. If the *plebs* flourished and stood as a distinct civic group (*ordo*) within the republic, it is natural to assume that, initially, *plebisscita* were binding only to those who accepted the rules as proposed by the bill at stake. However, this does not appear to have been the legal status, as implied by the jurists: any enactment by the *plebs* – as can be gathered from context, as opposed to the legal definitions of *plebisscitum* provided during the era of the Principate – was binding for the Roman community at large.

As far as the issue of plebiscitarian validity is concerned, general consensus – albeit articulated into varying degrees – seems to exist among modern scholars only with regard to the last step on the path which led to the final *exaequatio*: ever since the dictator Q. Hortensius forced the centuriate assembly to pass his famous *rogatio de plebisscitis*, the resolutions of the *plebs* were given *per se* a legal status which they continued to enjoy in the later Republic and the early Empire[6], with the exception of the period in which Sulla's reform was valid[7]. It was only in 287 BC that the tribal councils of the plebeians, gathered and presided over by their chiefs, obtained the power to introduce measures without conditions, which had automatic general validity and, accordingly, endowed a binding force among the *universus populus*. In other words, due to the acceptance of Hortensius' reform by the entire *populus Romanus*[8], the resolutions of the *plebs* had the same standing as the *leges populi Romani*. As Gaius himself maintains, when describing the events that led up to that which occurred in 287 BC, prior to the enactment of the *lex Hortensia,* the *patricii* could refuse to recognise the *plebisscita "quae sine auctoritate eorum facta essent"* ('which were passed without their approval'). However, as a result of the *exaequatio* introduced by law, from 287 BC they could no longer challenge

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6 See Gell. 15.27.4 (*quibus rogationibus ante patricii non tenebantur, donec Q. Hortensius dictator eam legem tulit, ut eo iure, quod plebs statuisset, omnes Quirites tenerentur* [Laelius Felix]); Gai. 1.3 (*unde olim patricii dicebant plebisscitis se non teneri, quae sine auctoritate eorum facta essent; sed postea lex Hortensia lata est qua cautum est ut plebisscita universum populum tenerent: itaque eo modo legibus exaequata sunt*); Pomp. *l. s. ench*. D. 1.2.2.8 (*mox cum revocata est plebs, quia multae discordiae nascebantur de his plebis scitis, pro legibus placuit et ea observari lege Hortensia: et ita factum est, ut inter plebis scita et legem species constituendi interesset, potestas autem eadem esset*); see, moreover, Liv. *perioch*. 11; Plin. *nat*. 16.37; *Inst*. 1.2.4.

7 See App. *bell. civ.* 1.266.

8 See Vassalli, *La plebe romana nella funzione legislativa* 1906, 131.

the general validity of what the *plebs "iussit atque constituit"* ('had approved and decided')[9].

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9 Gai. 1.3. According to Mommsen's interpretation of this passage (who reads *quia*, instead of *quae*), the patricians refused to recognise any *plebisscitum*, because such enactments were not eligible for a grant of *auctoritas patrum* (i. e. the formal approval of the patrician senators): Mommsen, *Römische Forschungen* I 1964, 157; Id., *Römisches Staatsrecht* III.1 1887, 155, nt. 3; cf. Rotondi, *Leges publicae populi Romani* 1912, 43; Botsford, *The Roman Assemblies* 1968, 280; Magdelain, *De l'auctoritas patrum* 1990, 397; see, moreover, Biscardi, *'Auctoritas patrum'* 1987, 238. Differently, Staveley, *Tribal Legislation before the lex Hortensia* 1955, 21, believes that Gaius proves just what Mommsen thought him to deny, i. e. the grant of patrician sanction as a *condicio sine qua non* of the validity of a *plebisscitum*: "whether or not we read the alternative *quae* for *quia*, Gaius can be taken to mean something very different, namely that the patricians in the years immediately preceding the *lex Hortensia* had refused to recognize certain unsavoury *plebisscita* on the ground that they had not afforded them the required *auctoritas*". Also, Develin, *Comitia tributa plebis* 1975, 321, considers it more reasonable "to assume that before 287 there was a distinction between plebiscites with and without the *auctoritas*, since the phrase *plebisscitis … quae sine auctoritate eorum facta essent* must be given the meaning "such plebiscites as were made without *patrum auctoritas*": this author shares the idea that the reading *quae* – in Gai. 1.3 used to introduce a restrictive clause, rather than a non-restrictive or parenthetical clause – gives more natural Latin than *quia* (see Beseler, *Beiträge* 1920, 109; David, Nelson, *Gai Institutionum Commentarii* 1954, 13; Amirante, *Plebiscito e legge* 1984, 2035; Sandberg, *Magistrates and Assemblies* 2001, 134; cf. Mannino, *L'"auctoritas patrum'* 1979, 97 f., who reaches the same conclusions, even if he opts for the reading *quia*). According to Biscardi, *'Auctoritas patrum'* 1987, 85 and nt. 253, as well as to Guarino, *L'"exaequatio legibus' dei 'plebisscita'* 1951, 464 and nt. 37, Gaius used the term *auctoritas* improperly to mean something like 'participation (in the assembly)': in other words, the passage would suggest that once the patricians would say that they were bound by no *plebisscita*, since such enactments by the plebeians only, i. e. without their participation and acceptance (*iussus*), but once the *lex Hortensia* was passed, *plebisscita* were made equal to *leges* since it was stipulated that *plebisscita* should be bestowed with general validity for the whole *populus*. Once again, both authors conceive of the causal clause *quia sine auctoritate eorum facta essent* as non-restrictive, alluding to all *plebisscita*, as Mommsen did. Against this view, I remind the reader that, firstly, the particle *quia* regularly introduces a fact and rarely takes the subjunctive (i. e. the mode which expresses a reason given to the authority of someone different from the writer), and, secondly, that *facta essent* shows that Gaius is referring to a limited number of plebiscites which had been voted before 287 BC., whether *auctoritas* here hints at the 'approval by the patrician Senate', or more generally at any form of patrician 'approval'. To conclude: maintaining that the choice between *quia* and *quae* is irrelevant (see Siber, *Plebs* 1951, 67; Humbert, *La normativité des plebiscites* 1998, 211, nt. 1) is not persuasive, since the former would better fit the allusion to all *plebisscita* in general, while the latter would introduce a restrictive clause; the use of the pluperfect subjunctive and, thus, the implicit reference to a limited number of plebiscites, rules out the view that gives *auctoritas* the vague and general meaning of 'patrician participation' (since this aspect is already implied in the definition and since no plebiscite can be voted with the participation of patricians); the pronoun *quae* must be preferred to the particle *quia*.

The crucial point here, however, is that Livy, alongside Dionysius, attests to two statutes enacted prior to 287 BC: both appear to be identical in content and in form with the *lex Hortensia*, and to include measures which sought the same goal, that is, to make *plebisscita* binding for the entire community. The former was a *lex Valeria Horatia,* passed in 449 BC before the centuriate assembly *"ut quod plebs tributim iussisset populum teneret"*[10]; the latter was a *lex Publilia Philonis* proposed by the dictator *Publilius* in 339 BC before an unspecified assembly *"ut plebis scita omnes Quirites tenerent"* (Liv. 8.12.15–16).

Taking into consideration the period after the *lex Valeria Horatia* (449 BC) and prior to the *lex Hortensia* (287 BC), a question arises which is twofold: what was the legal status enjoyed by plebiscites? And what was the role played by the Senate regarding the general validity bestowed upon such plebeian resolutions?

II.1 'Rejecting the past': a view which only credits the *lex Hortensia*

The most radical approach rejects these two earlier laws as unauthentic, consequently supposing that no reliable change was effected in the legal standing of the plebeian resolutions prior to 287 BC[11].

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10 Liv. 3.55.3: *Omnium primum, cum velut in controverso iure esset tenerenturne patres plebi scitis, legem centuriatis comitiis tulere 'ut, quod tributim plebes iussisset, populum teneret': qua lege tribuniciis rogationibus telum acerrimum datum est.*

11 Meyer, *Untersuchungen über Diodor's Römische Geschichte* 1882, 610 ff.; Id., *Der Ursprung des Tribunats* 1895, 1 ff.; Binder, *Die Plebs* 1909, 371, 476, 485; Baviera, *Il valore dell''exaequatio legibus' dei 'plebisscita'* 1910, 369; Beloch, *Römische Geschichte* 1926, 350, 477 f.; Siber, *Die plebejischen Magistraturen* 1936, 39 ff.; de Francisci, *Storia del diritto romano* I 1943, 303 ff. (but see also Id., *Storia del diritto romano* I 1943, 94); von Fritz, *The Reorganisation of the Roman Government* 1960, 18 ff.; Id., *Plebs* 1951, 61 ff.; Bleicken *Das Volkstribunat der klassischen Republik* 1955, 13 ff.; Id., *Lex Publica* 1975, 85 f., 95; Orestano, *I fatti di normazione* 1967, 266, nt. 3; Ridley, *Livy and the concilium plebis* 1980, 337 ff.; Maddox, *The binding plebiscite* 1984, 85 ff.; Hölkeskamp, *Die Entstehung der Nobilität* 1987, 163 ff.; Drummond, *Rome in the Fifth Century* 1989, 223; Magdelain, *De l''auctoritas patrum'* 1990, 385 ff.; Humbert, *La normativité des plébiscites* 1998, 211 ff.; Id., *I plebiscita* 2012, 307 ff.; Lanfranchi, *Les Tribuns de la Plèbe* 2015, 232 ff. The following authors consider the *lex Hortensia* the only historical measure that changed the status bestowed on plebiscites and gave them equal status to the *leges*, professing a sceptic *non liquet* with regard to the first two statutes (449, 339 BC): see Rotondi, *Leges publicae populi Romani* 1912, 65; Vassalli, *La plebe romana nella funzione legislativa* 1906, 111 ff.; Grosso, *Storia del diritto romano* 1965, 110 f.; Capogrossi Colognesi, *Diritto e potere* 2007, 148. See, also, Herzog, *Geschichte und System der römischen Staatsverfassung* I 1884, 190 ff., 193, nt. 1, 254, nt. 3, who accepts the tradition, but fails to distinguish between the measures of 339 and 287 BC.

According to Siber[12], whose work further advanced the theory presented by Meyer, the two earlier *leges* did not make the plebeian resolutions applicable to the general populace, and must be considered as mere inventions, i. e. unhistorical attempts to explain, in general terms, the extraordinary *erga omnes* validity bestowed on certain *plebisscita,* that were voted on prior to the *lex Hortensia*. Due to such general and ideologically rooted premises, the author at issue seeks to demonstrate that every *scitum* passed by the plebeian tribes before 287 BC was ratified by a vote of the *comitia centuriata*, so as to affect the whole people. In other words, to acquire general validity, the measures stated by a given *plebisscitum* were converted

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12 Siber, *Die plebejischen Magistraturen* 1936, 39 ff., 44 ff.; Id., *Plebs* 1951, 61 ff.; Meyer, *Römischer Staat und Staatsgedanke* 1964, 69; cf. Hennes, *Das dritte valerisch-horatische Gesetz send seine Wiederholungen* 1880, 5 ff., who gives the *lex Valeria Horatia de plebisscitis* the same effect Siber supposes existed prior to the *lex Hortensia*: according to this scholar it was under the *lex* passed in 449 BC that plebiscites were bestowed general validity, only on the condition that they were converted into statutes. Likewise, see Guarino, *L'"exaequatio legibus' dei 'plebisscita'* 1951, 458 ff.; Id., *'Novissima de patrum auctoritate'*, 117 ff., who considers as unhistorical the *lex Valeria Horatia*. This author focuses on a difficult passage of Appian (*bell. civ.* 1.59.266: εἰσηγοῦντό τε μηδὲν ἔτι ἀπροβούλευτον ἐς τὸν δῆμον ἐσφέρεσθαι, νενομισμένον μὲν οὕτω καὶ πάλαι, παραλελυμένον δ' ἐκ πολλοῦ, καὶ τὰς χειροτονίας μὴ κατὰ φυλάς, ἀλλὰ κατὰ λόχους, ὡς Τύλλιος βασιλεὺς ἔταξε, γίνεσθαι, νομίσαντες διὰ δυοῖν τοῖνδε οὔτε νόμον οὐδένα πρὸ τῆς βουλῆς ἐς τὸ πλῆθος ἐσφερόμενον οὔτε τὰς χειροτονίας ἐν τοῖς πένησι καὶ θρασυτάτοις ἀντὶ τῶν ἐν περιουσίᾳ καὶ εὐβουλίᾳ γιγνομένας δώσειν ἔτι στάσεων ἀφορμάς), and reads it in the following sense. In 88 BC "i consoli Cornelio [Silla] e Pompeo [Rufo] proposero probabilmente ai comizi di ripristinare sotto la veste moderna di un *consultum* di tutto il *senatus* (organismo nobiliare di loro piena fiducia) l'*auctoritas patrum* preventiva per le *leges centuriatae*", so re-enacting the system supposedly laid down by the *leges Publiliae Philonis*; such provisions, passed in 339 BC and in force up to 287 BC, provided that "il popolo tutto era vincolato in definitiva, *patribus auctoribus*, solo dalle *leges centuriatae*" and that "i magistrati titolari del *ius agendi cum populo* furono tenuti, su richiesta dei *tribuni plebis,* a convertire i *pebiscita* in proprie *rogationes* ed a sottoporli, previo parere favorevole dei *patres* e con i propri auspici, ai *comitia centuriata*" (see, likewise, Lanfranchi, *Les Tribuns de la Plèbe* 2015, 35: "si la loi de 339 eut une certaine réalité, ce ne put être, au maximum, que celle que lui confère A. Guarino: une loi stipulant que les magistrats devaient soumettre aux comices les plébiscites dont les tribuns réclamaient l'application, comme s'il s'agissait de leurs propres *rogationes*. Rien de plus"). Yet, neither Livy, nor Appian seem to confirm Guarino's hypothesis: there is no case of such a conversion attested after 339 BC; no mention of such conversion is made in the short text of the *lex Publilia Philonis de plebisscitis* quoted by Livy; Sulla's law, as paraphrased by Appian seems to affect the resolutions of the *plebs* only, as one can infer from the word πλῆθος (mass) used to specify the meaning of δῆμος (people), and above all from the mention, made by the historian, of a rule providing the previous consent of the Senate that, first repealed or abrogated, was then re-established by Sulla and his colleague (which, clearly, only makes complete sense if one excludes any reference to the *leges centuriatae* since, as everybody knows, these provisions even prior to 88 BC never ceased to be *ex lege* previously authorised by the *patres*): see, on this topic, Biscardi, *'Auctoritas patrum'* 1987, 83 f., 150 ff., and ntt. 490–491, 237 ff.; De Martino, *Storia della costituzione romana* III 1973², 70.

into a *lex centuriata*: conversely, within the framework of the *civitas*, any plebeian enactment would merely represent a political wish, a non-binding programme, even for those who had passed it[13].

Despite approaching this problem from a radically different perspective, Mommsen *grosso modo* achieved similar results, at least as concerns the impact finally produced by the *lex Hortensia* on the previously existing *status quo*[14]. First, he believes that the so-called *comitia populi tributa* carried out legislation as early as the second half of the 5th century BC, and that such a fundamental reform could not be overlooked by the Roman annalists in their records[15]. Consequently, he maintains that the Valerio-Horatian law, and the Publilian law alike, were not

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13 In other words, in the period prior to 287 BC the *plebisscita* were resolutions "die öfters zur Erwirkung von Komitialgesetzen und zu anderen Regierungsmaßnahmen … führten, die aber als solche für niemanden, auch nicht für die *Plebs* verbindlich waren" (Siber, *Plebs* 1951, 67; cf., in similar terms, Bleicken *Das Volkstribunat der klassischen Republik* 1955, 15 f.). See also Lanfranchi, *Les Tribuns de la Plèbe* 2015, 239: "à l'exception des plébiscites concernant la plèbe, s'il n'y avait pas intervention des consuls ou du Sénat, tout plébiscite – en particulier ceux qui souhaitaient modifier l'architecture institutionnelle de la cité – ne pouvait rester qu'un 'vœu'. Ils n'étaient porteurs d'aucune valeur normative hors de la plèbe et ne pouvaient, en théorie, modifier les structures fondamentales de Rome. C'était un appel, un moyen de pression".

14 Mommsen, *Römische Forschungen* I 1864, 163 ff.; Id., *Römisches Staatsrecht* III.1 1887, 157, nt. 1, 159 f.; cf., moreover, Cuq, *Institutions Juridiques des Romains* I 1891, 458; Krüger *Geschichte der Quellen* 1912, 17 ff.

15 The idea of two distinct tribal assemblies dates back to Mommsen, *Römische Forschungen* I 1864, 151 ff. (who also assumes that patricians were debarred from the assemblies summoned by plebeian tribunes in the later years of the Republic). It then gains a general support among scholars. See, for the view supporting the existence of two distinct assemblies based on a common tribal system that coexisted in the early Republic (as of 471 or 449 BC) and that, after the supposed *exaequatio*, tended to coalesce into one single body, Liebenam, *Comitia* 1900, 700 f.; Ogilvie, *Commentary on Livy's Books 1–5* 1965, 381; Taylor, *Roman Voting Assemblies* 1966, 6 ff., 60 ff.; Botsford, *The Roman Assemblies* 1968, 474. Others believe that the emergence of the patricio-plebeian tribal assembly dates after the enactment of the *lex Hortensia* (287 BC), when plebiscites were made directly binding on all *Quirites*, and accordingly the patricians started to participate in the voting process of the plebeians: see De Martino, *Storia della costituzione romana* I 1972², 330 e *Storia della costituzione romana* II 1973², 154 ff. (mainly at p. 182: where the scholar argues that after the "parificazione dei plebisciti alle leggi", it would be "assurdo pensare che i patrizi potessero continuare ad essere esclusi dalle assemblee, nelle quali ora si adottavano deliberazioni di interesse generale"). *Contra*, as supporters of the theory that inclines to deny that patricians had ever a vote in any form of tribal assembly, see Ihne, *Die Entwicklung der römischen Tributcomitien* 1873, 353 ff.; Kahrstedt, *Die Patrizier und die Tributkomitien* 1917–1918, 258 ff.; see also Develin, *Comitia tributa plebis* 1975, 302 ff.; Id., *Comitia tributa again* 1977, 425 ff.; Sandberg, *The concilium plebis* 1993, 74 ff.; from a different perspective, cf. Mitchell, *Patricians and Plebeians* 1990, 221 ff., who shares the view that there was only one tribal and tribunician assembly, even if he fails to regard it as an exclusively plebeian body.

concerned directly with the problem of plebiscites *per se*: the former concerning the legislative activity of any tribal assembly in general[16]; the latter introducing the power of the *praetor* to summon the Roman people as tribes[17]. Secondly, he claims that the grant of the *auctoritas patrum*, being a requirement of the *leges publicae populi* and affecting the comitial processes only (i. e. being "das Complement des Comitialbeschlusses"), was neither used to enact laws passed by a purely plebeian body (*concilium tributum*)[18], nor was it exactly overlapping with the *senatus consultum* that was required to precede any popular vote ("Vorgängige Zustimmung des Senat")[19]. At the same time, Mommsen acknowledges the existence of a legal principle, established at some point prior to the XII Tables (451–450 BC), which, remaining untouched by the 449 and 339 BC reforms, allowed plebiscites to take general force, provided that the "Vorbeschluss des Senats" had taken place[20], until the *lex Hortensia* was enacted. Such *lex*, Mommsen maintains, would finally have removed the ancient 'vestige' of the senatorial grant, so appearing to have operated along similar lines to the reform concerning the anticipation of *auctoritas patrum* with respect to the *centuriae*'s vote, which took place around 50 years earlier[21].

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16 Mommsen, *Römische Forschungen* I 1864, 154 ff.; Staveley, *Tribal Legislation before the lex Hortensia* 1955, 12, tends to support this view. *Contra* see: Ihne, *Die Entwicklung der römischen Tributcomitien* 1873, 370 ff.; Lange *Römische Altertümer* II 1876, 573 f.; Soltau, *Die Gültigkeit der Plebiszite* 1885, 8, 113 ff.; Roos, *Comitia tributa – concilium plebis, leges – plebiscita* 1940, 22 ff.

17 *Contra*, see Staveley, *Tribal Legislation before the lex Hortensia* 1955, 12: "Mommsen's view … that the law concerned the right of the praetor to summon the *populus* by tribes is quite unsubstantiated".

18 See Mommsen, *Römische Forschungen* I 1864, 157, 233 ff.; Id., *Römisches Staatsrecht* III.1 1887, 155, nt. 3, 159; Id., *Römisches Staatsrecht* III.2 1888, 1037 ff.; see, moreover, Madvig, *Verfassung und Verhaltung des römischen Staates* I 1881, 233; de Francisci, *Storia del diritto romano* I 1943, 271; De Martino, *Storia della costituzione romana* I 1972², 270 ff.; cf. Rotondi, *Leges publicae populi Romani* 1912, 43; Botsford, *The Roman Assemblies* 1968, 280. *Contra*, see, among others, Soltau, *Die Gültigkeit der Plebiszite* 1885, 79; Staveley, *Tribal Legislation before the lex Hortensia* 1955, 20 f.

19 Mommsen, *Römische Forschungen* I 1864, 241 ff.; Id., *Römisches Staatsrecht* III.1 1887, 156 ff.; cf. De Martino, *Storia della costituzione romana* II 1973², 152.

20 Mommsen, *Römische Forschungen* I 1864, 215. See, on the *lex Cornelia* of 88 BC, which revived such pre-Hortensian rule, Id., *Römische Forschungen*, I, 206 f.; Id., *Römisches Staatsrecht*, III.1 1887, 158, 160.

21 Mommsen, *Römisches Staatsrecht* III.1 1887, 159 f. To be more precise, even if Mommsen believes that after the *lex Publilia Philonis de patrum auctoritate* "Praktische Bedeutung aber kommt der antizipierten Bestätigung gar nicht", he denies that the change introduced in 339 BC was itself the reason for such decadence: "nicht weil die Anticipirung diese Befugnis denaturierte, was keineswegs der Fall ist, sondern weil dieselbe, als beschränkt auf den patricischen Theil des Senats, wohl geeignet war die patricischen Reservatrechte zu schützen, aber ihre Bedeutung verlor, seit es solche effektiv nicht mehr gab und an die Stelle des Patriciats die patricisch-plebejische Nobilität getreten war" (Mommsen, *Römisches Staatsrecht* III.2 1888, 1043). In other words, it was under this law (but not due to this law), that the 'previous *auctoritas*' became purely a formality within the legislative process before

More recently, however, Humbert has reconstructed the Republican history of Rome, in the belief that the data found in the sources are an artificial representation of the facts, and expressions of "inévitables déformations infligées par l'annalistique": which would deny "credit aux deux lois de 449 et de 339, posant par anticipation une *exaequatio* qui ne trouve sa place qu'en 287"[22]. However, this scholar does not go so far as to radically deny a large part of the normative acts prior to 287, as others, following Siber, have tended to[23]. According to Humbert, as for the period prior to 339 BC, "contraint de refuser à des programmes de revendication l'efficacité normative que les sources démentaient, mais à laquelle le conduisait un préjugé initial, Tite-Live a dû supprimer les plébiscites, mettre en doute leur existence, les bloquer au niveau de projets immatures et inermes"[24]. As for the period following this, "tout se passe comme si le plébiscite avait acquis valeur normative, car, en général, les preuves d'une tension entre la plèbe et le Sénat ont disparu"; yet "c'est un leurre", since "la source de la norme se trouve, juridiquement, dans la décision sénatoriale de réformer la constitution et d'appliquer la réforme que la

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the *centuriae*, whereas, almost fifty years later, the *lex Hortensia* abolished the 'previous *senatus consultum*' required to bring proposals before the *plebs*. In general terms, the following authors support the view that, as far as the legislative and electoral processes are concerned, the *auctoritas patrum*, to be granted before the vote and not afterwards, amounted to a formality: Humbert, *Auctoritas patrum* 1877, 546 f.; Rotondi, *Leges publicae populi Romani* 1912, 115; de Francisci, *Storia del diritto romano* I 1943, 271 and Id., *Sintesi storica* 1968, 126; Scherillo, Dell'Oro, *Manuale di storia del diritto romano* 1950, 92; Arangio-Ruiz, *Storia del diritto romano* 1957, 41; Tondo, *Profilo di storia costituzionale romana* I 1981, 237; for a rather different approach, see also De Martino, *Storia del diritto romano* II 1973², 151 ff.

22 Humbert, *La normativité des plébiscites* 1998, 237.

23 See Bleicken, whose view proves to be one of the more extreme: according to this author, "das Plebisscit erzeugte daher kein geltendes Recht; es stand außerhalb der Rechtssphäre, es war politisches Programm" (Bleicken, *Lex Publica* 1975, 77); yet, he dismisses almost all information provided by the annalists with regard to the period prior to 287 BC, rejecting "mindestens 22 Plebiscite … Übertragungen später politischer Gedanken auf die Frühzeit", and finally considering authentic only the following seven *leges* on the one hundred and forty-two quoted by Rotondi (Bleicken, *Lex Publica* 1975, 77): *lex de clavo pangendo* (509), XII Tables, *lex Valeria militaris* (342), *lex Publilia Philonis de patrum auctoritate* (339), *lex Publilia Philonis de censore plebeio creando* (339), la *lex Maenia de die instauraticio* (338), *lex Valeria de provocatione* (300), *lex Hortensia* (287). Here, suffice it to say that "tribunician legislative initiative is so well documented in so many areas that it is surprising that modern scholars discount, qualify, or declare unreliable or illegal *plebisscita* passed before the *lex Hortensia* of 287 rather than develop an alternative historical explanation" (Mitchell, *Patricians and Plebeians* 1990, 190; see, moreover, Lanfranchi, *Les Tribuns de la Plèbe* 2015, 230: "si les prémisses de J. Bleicken sont correctes, la façon dont il évacue la quasi totalité de la législation antérieure à 287 ne peut qu'appeler de vives reserves").

24 Id., *La normativité des plébiscites* 1998, 237.

plèbe a simplement souhaitée, acceptée, formulée"[25]. Finally he notes, "a partir de 287, la plèbe devient la source formelle de la norme – et le Sénat adopte le rôle à la fois plus discret et plus significatif d'inspirateur"[26].

In other words, Humbert suggests that according to the general (and historically false) scheme built up by the Roman annalists, either the plebiscite, once voted on, had to be considered immediately valid and, thus, binding for the whole community, or the tribunician proposal was described as incapable of reaching the final stage of voting and approval by the tribes. This 'historiographic' artifice was intended to conceal both the true ('political', and not legal) nature of the *plebisscitum* (i. e. "un vœu, adressé aux organes de la cité – en particulier au Sénat – une injonction"), and the (once again 'political') determination to rewrite the earliest *monumenta* of the Roman tradition, i. e. "faire croire que la plèbe fut intégrée dans la cité et récupérée par le droit au terme de concessions et de reconnaissances, toutes aussi apocryphes les unes que les autres"[27].

II.2 Some critical remarks

In my opinion, such different branches of the same scholarly course share a number of common flaws.

First of all, it is undeniable that Livy's account of the plebeian activity, carried out in the period between 449 and 287 BC, lends no direct support to the above-mentioned interpretations. The tradition preserved in the sources is no doubt afflicted with numerous anachronisms, yet it certainly presents data of high value, so that systematically interpreting the course of events as always at odds with an admittedly consistent tradition sounds, in general terms, quite unpalata-

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25 Id., *La normativité des plébiscites* 1998, 237, who continues in these words: "la résolution de la plèbe ne crée pas une règle contraignante. La source de la norme se trouve, juridiquement, dans la décision sénatoriale de réformer la constitution et d'appliquer la réforme que la plèbe a simplement souhaitée, acceptée, formulée". Supporting this assumption would require us to either rewrite the data emerging from some sources or propose a completely partisan reading of others. For instance, as far as the so-called *lex Ogulnia* (Liv. 10.6.1–6; 10.7.1, 10.9.1–2) is concerned, claiming "que le projet ait été voté par la plèbe, n'y a pas de doute" (Id., *La normativité des plébiscites* 1998, 230) means going beyond Livy's text, in which the only mention of a *promulgatio* is made. Moreover, with regard to Liv. 10.22.9, claiming that the phrase *ex senatus consulto et scito plebis* implies that "la décision relève du Sénat; la plèbe n'apporte qu'une confirmation" (Id., *La normativité des plebiscites* 1998, 233) means not reading the sources to discover their meaning, but reading them to attribute a pre-established meaning.

26 Id., *La normativité des plébiscites* 1998, 237.

27 Id., *La normativité des plébiscites* 1998, 238. Cf., also, Bleicken, *Lex Publica* 1975, 85: the *plebisscitum* is "ein politisches Programm".

ble. It, in fact, involves systematically rephrasing, or worse, totally dismissing, all opposing sources, as being conceived of as unreliable, mistaken, or forgeries.

Many claim that to be binding for the *populus Romanus* as a whole, every plebeian resolution passed in the period prior to the *lex Hortensia* had to be endorsed by a vote of the people, gathered as *comitia* by *centuriae,* and yet, it is clear from our sources that there were several *plebisscita* which were applicable to the general populace without mention of any further recourse to a popular assembly. As such, so as not to weaken, or completely undermine this widely held scholarly interpretation outlined above, these relevant testimonia are usually dismissed by such scholars as being unhistorical, re-read as simple recommendations to the magistrates, or taken as examples of erratic exceptions to the general rule. Let us suppose, for a moment, that all the sources which attest to plebiscites with general applicability are immaterial or untrustworthy. How then, do we explain that, among all our sources, there is evidence for only one possible (and indeed questionable) case of transformation of a 'plebiscite' into a 'centuriate law'?[28] This clearly indicates that those who champion this approach have not adequately considered the extant body of evidence and, above all, have failed to discharge their burden of proof.

There remain concerns with the view that – even despite the data provided by the annalistic tradition – plebiscites before 287 BC were never granted immediate validity *per se*, unless the entailed provisions only affected the plebeian organisation[29]. The following list of doubts shall attempt to further deconstruct against the stance advocated by those scholars who give credits the *lex Hortensia* only.

(1) Why should it be considered absurd or unthinkable for a tribunician *rogatio* to not lead to a specific outcome, as our sources often attest? If one admits that, for instance, even within the plebeian order there would have existed different opinions and interests, as well as a variety of objections and mutual misunderstandings, then it is no longer necessary to consider that all reports pertaining to the multiple failed attempts of *rogationes agrariae* placed between 441 and 386 BC were wholesale unreliable[30].

(2) Why should the historiographic accounts that highlight, through a variety of frameworks, the contrast between patricians and plebeians in the phase imme-

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28 Cf. Liv. 3.53–55 (Id., *La normativité des plébiscites* 1998, 212, nt. 9; Rotondi, *Leges publicae populi Romani* 1912, 203).

29 This approach shares the distinction between 'internal' and 'external' plebiscites advocated by Soltau, *Die Gültigkeit der Plebiszite* 1885, 132 ff. and Siber, *Plebs* 1951, 67: yet our sources concerning plebiscites do not support it. For instance, any resolution regulating the tribunate itself (e. g., the manner of election; the increase of number; their major power) closely, even if indirectly, affects the patrician order; similarly, statutes passed by the *plebs* on land distribution and interest rates, although fundamental to the *plebeii* and their estates, strikes the core of patrician economy.

30 See Table n. 3.

diately before the vote of the *plebs*, be seen as unreliable? If one believes that the patrician order wished to portray the *plebs* as divided among themselves, and to obstruct the very foundation of its political regime, then there is nothing to prevent us from accepting both the extremely intricate course of events in which the *rogationes Terentiliae* (461–454 BC) were placed by the annalists[31], and the non-linear context of the *rogatio Canuleia* (445 BC)[32].

(3) If the main purpose of Roman annalists was to rewrite history, by creating forgeries which confirmed that after 449 BC no plebiscite was granted general validity in the absence of patrician approval, why then did the Roman historians not simply describe the *rogationes,* which were voted for by the *plebs* but not approved by the patrician *civitas,* in terms of proposals which were not implemented through the *auctoritas*? Tribunician vetoes, wars, mutual menaces, opportunistic synergies, represent, as is the case with the *rogationes Terentiliae*, the background to the *rogationes Liciniae Sextiae* (367 BC). Without denying that some annalistic exaggerations necessarily exist, accepting such a complicated and controversial picture seems to be a more plausible option than considering this episode an annalistic creation, which sought to establish fictitious facts in order to shape an erroneous historiographical model[33].

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31 See Table n. 3. See Cascione, *Il contesto storico* 2018, 2, nt. 14.

32 Liv. 4.1.1–4.6.3; Cic. *rep*. 2.63; Flor. 1.17; Ampel. 25.3. At the beginning of the year Canuleius promulgated a *rogatio* on intermarriage, but levies were ordered for war. As a result, the tribune proclaimed that he would obstruct the military operations until the *plebs* approved his proposal, and accordingly called a *contio.* At which point, despite the fact the Senate had seriously threatened him, he spoke at length to the *plebs* to support his proposal; the consuls also intervened, but their speeches antagonised the challenging order. Finally, since the *patres* were *victi* (due to the fact either that the patricians ended up supporting the intermarriage, or that the plebeians posed too serious a threat), the Canuleian measure was voted on. Suffice it to say, that even Guarino, *La rivoluzione della plebe* 1975, 217, admits that "la tradizione relativa a questo provvedimento è troppo piena di particolari per poter essere radicalmente contestata. È giusto credervi" (even if he immediately adds: "ma non sino al punto di ammettere con essa che il divieto di *connubium* fosse stato esplicitamente confermato [o addirittura odiosamente sancito *ex novo*] dalle Dodici tavole, in una delle due tavole 'inique' del secondo decemvirato, e nemmeno sino al punto di credere che il plebiscito Canuleio sia stato seguito dalla sanzione di una legge comiziale, votata cioè dai soliti improbabilissimi comizi centuriati").

33 See Table n. 3. Ten years of continuous conflicts preceded the passing of the *rogationes Liciniae Sextiae* in 367 BC, after a successful Gallic war (vetoes, obstruction of elections for curule magistrates, appointment of dictators, withdrawal of *auctoritas patrum*, deferral of vote due to Appius Claudius' speech). Yet, alongside the plebeian threats (a strategy that had not been successful enough to make the Senate accept the measures proposed by Licinius and Sextius), the sources describe some leading plebeians collaborating with their patrician counterparties for mutual benefit (as we know Fabius Ambustus, when military tribune, came out openly in support of the reforms): there is nothing to suggest that, after a

(4) Moreover, given the several cases of approval of tribunician *rogationes* concerning the organisation of the plebeian order, which at the same time produced undeniable effects on the patrician order, how can these be explained in line with the supposed annalistic scheme?[34] An authentic "nucleo essenziale della tradizione"[35] cannot be dismissed and replaced with 'metaphysical' notions that either silence the ancient authors, or anachronistically give them modern voices.

(5) If, by means of the *lex Hortensia* (which is conceived of as a statute that in the 3rd century BC expressly renewed the *iter plebisciti*), the senatorial approval was abandoned with regard to the plebiscitarian processes only, how can one explain the connection, clearly emerging from the sources, between this reform and the *exaequatio*? In other words, why do classical jurists not present the *lex Hortensia* as the statute that changed the method of bringing forward plebiscitarian proposals, by removing a requirement that, on the contrary, still remained for the *leges publicae populi*?

III.1 Relying on the tradition: the view supporting a step-by-step *exaequatio*

Conversely, there is a course of thought which attempts to give a precise legal meaning to the three identical measures, recorded in the sources. By denying that the laws of 449 and 339 BC merely amounted to measures which anticipated the *lex Hortensia*, i. e. inventions by the annalistic tradition, or to actual measures but

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decade of a pointless struggle, the *rogationes* were not finally passed as a result of a responsible and forward-looking patricio-plebeian cooperation.

34 Liv. 2.56.1, 2.57.1, 2.57.4, Dion. Hal. 9.43.4 (in 471 BC V. Publilius brought in his law to the effect that henceforth, the plebeian tribunes should be elected by the *tributa* assemblies; initially the *rogatio* was opposed by the *patres* until Ap. Claudius conceded); Livy 3.30.5; Dion. Hal. 10.30.2 (in 457 BC, a plebiscite to the effect that the number of *tribuni plebis* increased was passed since the *patres* eventually approved); Liv. 3.65.1–4 (in 448 BC, L. Trebonius brought before the *plebs* a *rogatio* to prohibit the co-optation of the *tribuni plebis*); Liv. 7.16.8 (in 357 BC a *plebisscitum*, or rather a *lex sacrata, de populo non sevocando* passed). All of these cases should be presented in a radically different way, to be consistent with the supposed annalistic scheme indeed, the plebiscites at issue should be approved without any intervention by the Senate (if conceived of as vested with particular validity, as Humbert himself is erroneously persuaded), or be described as failed attempts (if conceived of as having universal validity, since according to Humbert, *I plebiscita* 2012, 310, "tutti i plebisciti il cui ricordo è stato conservato dagli annalisti …, tutti i plebisicti che portano un nome e che hanno tentato di introdurre una riforma conforme all'ideologia plebea: tutti questi plebisicti sono falliti, sono stati abortiti, sono nati morti"). Sources do not attest to this at all.

35 de Francisci, *Storia del diritto romano* I 1943, 228; cf. Wieacker, *Römische Rechtsgeschichte* I 1988, 289.

not ones which were concerned with the status of *plebisscita*, the historical development that led to the legislative plebeian enactments obtaining equal status to those enjoyed by the universally binding popular *leges,* is explained in terms of a 'step-by-step emendation'[36].

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36 See Cornell, *The Beginnings of Rome* 1995, 278: "the law of 449 conceded the general principle that the plebeian assembly could enact legislation, but in some way restricted its freedom to do so unilaterally, for instance by making plebiscites subject to the *auctoritas patrum* or to a subsequent vote of the *comitia populi,* or indeed to both … On this view the supposed restrictions on plebeian legislation would have been partly removed by the law of 339, and completely abolished by that of 287. This explanation, that the laws of 339 and 287 did not replicate that of 449, but re-enacted it while introducing specific modifications, is the only one that fits the facts as we know them". Other scholars, primarily in the past, considered reliable the Livian tradition *en bloc*: cf., e. g., Séran de la Tour, *Histoire du tribunat à Rome* I 1774, 14 f., 103, 261; Hoffmann, *Der römische Senat* 1847, 132; Ihne, *Die Entwicklung der römischen Tributcomitien* 1873, 353; Nocera, *Il potere dei comizi* 1940, 284 f. Yet, being unable to distinguish between the three measures (of 449, 339 and 287 BC), they believed that the last two laws were mere 'repetitions' of the first, even if this had not been repealed or had not been made obsolete (see, more recently, Develin, *The Practice of Politics* 1985, 22). Accordingly, each enactment deserved a political explanation. See, moreover, Mitchell, *Patricians and Plebeians* 1990, 186 ff., 229 ff., who finds unconvincing any attempt "to create a plebeian assembly", and considers the struggle of the orders to be a fiction which should be dismissed as a forgery. Accordingly, he assumes that: only one tribal assembly (considered an element of the original system of Rome) existed; only one form of legislation was known, i. e. the *plebisscitum*; tribunes of the *plebs* (considered officials of the Republic from its beginning) presided over legislative activity carried out *tributim*; there was no actual distinction between *comitia* and *concilium*; plebiscites were granted universal validity, from the establishment of the tribunate. Against such a backdrop, as far as the measures enacted in 449 and 339 BC are concerned, he claims that "the *formulae* in all these laws are suspiciously similar in phrasing to the *lex Hortensia*, but it is unlikely that an inventive annalist created them to demonstrate an ancestor at work or to prove plebeians always had what they were struggling to obtain"; in Mitchell's opinion, "the solution to the problem is contained in the *formula* itself and in another Livian passage in which a Twelve Table law was recited by the *interrex* of 355 B. C., M. Fabius Ambustus", that is "*ut quodcumque postremum populus iussisset, id ius ratumque esset; iussum populi et suffragia esse*". All in all, "all the passages in question are versions of the rule that, for any law, the most recent enactment, creation, or change … was the last pronouncement on the subject and therefore current law". It is not necessary to take a position on the author's subversive view concerning the original binding force of plebiscites. As for the ingenious hypothesis concerning the aim pursued by the measures enacted in 449, 339 and 287 BC, leaving aside the fact that Mitchell does not explain the different wording existing between the principle laid out in the XII Tables (*ut quodcumque postremum populus iussisset, id ius ratumque esset*) and the subsequent statutory rules *de plebisscitis* (*ut quod tributim plebs iussisset populum teneret*; *plebisscita omnes Qurites tenerent*; *quod plebs iussisset omnes Quirites teneret*), this reconstruction cannot be shared, to the extent that it fails to properly explain which supposed conflict between laws the *leges Valeria Horatia*, *Publilia Philonis* and *Hortensia* would respectively resolve (cf. Cic. *Att.* 3.23.2; Liv. 9.34; Tituli