

candidates were praetorians of long standing, the censors of 209. In 203 Servilius Geminus got his chance.

Given all this, the best explanation of the peculiar events of 207 would seem to be that Livius was made dictator in order to elevate Caecilius, who had not held a praetorship at the time, and thus make him a more respectable candidate for the consulship.

Robert Develin

COMITIA TRIBUTA AGAIN

In « Athenaeum » LIII (1975), 302 ff., I argued that the only tribal assembly in Rome was that of the *plebs*; patricians never participated. That I still believe to have been the case. However, I have since found reason to amend the subsidiary conclusion that no curule magistrate ever presided over the tribal assembly in regular circumstances.

The evidence comes from the election of curule aediles and texts assembled by Mommsen⁽¹⁾. These show that curule aediles were elected by the tribal assembly. Since from the late third century B.C. the first class of the centuriate assembly was aligned with the tribes⁽²⁾, some of these texts could have been seen as having reference to that fact, but that is not the obvious conclusion and it is hardly allowed by such as Varro RR III.17.1: « latis tabulis sortitio fit tribuum ac coepti sunt a praecone recini, quem quaeque tribus fecerit aedilem »; also Livy XV.2.7: « ad suffragium ferendum in tribus discursum est »⁽³⁾. But beyond this, at Varro RR III.2.2 and Cicero *pro Plancio* 20.49⁽⁴⁾ we find the consul presiding over the election of these aediles.

An irregular incident in 357 saw a consul hold a tribal vote in the camp and I have remarked that strictly one could say that a magistrate of the *populus* held power over the whole of that body and that included the *plebs*, so that he might in theory preside over a plebeian vote⁽⁵⁾. It was indeed a dictator who proclaimed the first curule aediles⁽⁶⁾. This occasion, however, was unusual and we need not assume an imperial magistrate always or normally held the election. More likely was it that one of the outgoing aediles would hold it, as may have been the case in the election for 304, although the text of Piso (fr. 27 Peter), quoted by Gellius (NA VII.9.2), is problematic. I saw nothing remarkable in quaestors being elected by the plebeian assembly, even though patricians would be candidates⁽⁷⁾. Equally, even though curule aediles were more elevated officials, I find nothing odd in having the plebeian assembly elect them, at least when plebeians were allowed to hold the office in alternate years, which state

⁽¹⁾ Röm. Staatsr. II³. 483 n. 2.

⁽²⁾ Develin, The Third Century Reform of the Comitia Centuriata, « Athenaeum » LV (1977).

⁽³⁾ See also Cic. *pro Planc.* 20.49; 22.53; Piso fr. 27 Peter.

⁽⁴⁾ This text was wrongly explained in Ath. 1975, 335, fortunately without detriment to the argument as a whole. The point is that the whole people at the abandoned first election voted for Plancius, which vote Cicero represents as prerogative to the second *comitia*.

⁽⁵⁾ Ath. 1975, 326 f. and n. 114.

⁽⁶⁾ Livy VI.42.14.

⁽⁷⁾ Ath. 1975, 317.

of affairs was reached almost immediately after the office was introduced. Given the circumstances in which the curule aediles were instituted for 366, one could imagine a centuriate election, but a subsequent transferal to the expedient tribal assembly would make sense.

With the rediscovery of the dictatorship by Sulla we find a clear possibility of an imperial magistrate consulting the tribes. The law on the quaestors is ascribed to Sulla by Tacitus (Ann. XI.22) and the text at CIL I².2.587 shows that it was passed by the tribes. I suggested⁽⁸⁾ that either Sulla had the law put by a tribune or that irregular conditions saw Sulla himself propose it. Now, we have noted that consuls could hold aedilician elections and for 9 B.C. we have another example of tribal voting under consular presidency, which I supposed was a sign of the times⁽⁹⁾. Sulla, as dictator, could justify his use of the plebeian assembly by reference to his total authority. If there is no parallel instance until 9 B.C.⁽¹⁰⁾, it should be assumed that in the legislative field Sulla's precedent was not followed until the Republic was no longer the controlling force and under Augustus procedure could be adapted.

However, I wish to propose that Sulla may have himself altered procedure in one respect which could have shown the direction towards further developments. It was part of Sulla's aim to curb the tribunate and he certainly wanted at one stage to have all legislation carried through the centuriate assembly⁽¹¹⁾. Lily Ross Taylor⁽¹²⁾ also suggested plausibly that when the tribunate became an office from which progress could not be made to higher office, the plebeian aedileship was equated with the curule office, as being an office now to be sought by ambitious men. In the context of all this one can see how the election of the curule aediles might be put under consular presidency. This was still the higher aedileship, part of the statutory *cursus* and subordinate in the *cursus* only to the praetorship and consulate. Sulla may have wished to emphasize the stature of the curule aedileship by having the highest officer of state oversee election to it. The desire to have all curule officers elected under the presidency of and proclaimed by a magistrate with *imperium* and *auspicium maximum* may have come naturally to Sulla.

It is not necessary to assume that patricians were allowed to vote in these elections; there were fewer than ever and their votes would hardly count for much. Nonetheless it is a possibility and such a provision would accord with Sulla's thinking as I have imagined it; he was himself a patrician. Some might rather think that the curule aediles were all along elected by *comitia tributa populi*, but it is hardly likely that such were instituted to elect the first curule aediles and there is no evidence for the existence of such an assembly prior to 366. It remains true that there is no direct attestation at all of *comitia tributa* involving more than the *plebs*. If this assembly was always plebeian, it may never have occurred to Sulla that the patricians take part.

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⁽⁸⁾ Ath. 1975, 336.

⁽⁹⁾ Ath. 1975, 315.

⁽¹⁰⁾ It might now be felt that such a parallel can be found at Caesar BC III.1: « praetoribus tribunicisque plebis rogationes ad populum ferentibus, nonnullos ambitus Pompeia lege damnatos... in integrum restituit. » The explanation given at Ath. 1975, 335, that the praetor consulted the centuries, may still hold. I would here, however, suggest the possibility that the praetors actually passed legislation in the *curiate* assembly enabling the return of the exiles (the consuls of 49, of course, were elsewhere); we have the example of Camillus' return in earlier days (Livy V.46.10 f.), when this very assembly was used to enable his recall.

⁽¹¹⁾ Appian BC I.59.266 as interpreted at Ath. 1977,

⁽¹²⁾ Cicero's Aedileship, « AJPh » LX (1939), 194 ff.