FORERUNNERS OF THE GRACCHI *

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The tribunate of the plebs, according to a statement that Marcus Cicero puts into the mouth of his brother Quintus, was an office born in sedition and destined to create sedition (‘in seditione et ad seditionem nata,’ Leg. iii. 19). There were two major periods of sedition. The first, the time of strife between patricians and plebeians, lasted from the birth of the tribunate in the early fifth century to the Lex Hortensia of 287 B.C. The second is usually dated from the tribunate of Tiberius Gracchus in 133 to the dictatorship of Caesar, a time when the tribunate was repeatedly an instrument of revolution, now accompanied by violence. The general view is that in the century-and-a-half between these two periods the tribunes, except in the time of Gaius Flaminius, were in accord with the Senate and were indeed agents of senatorial rule. But Quintus Cicero mentions an incident in this period that was definitely seditious, the act of tribunes of 138 B.C. who put the consuls in bonds and threw them into prison. The occasion was strife over the levy of soldiers for the war in Spain. The statement of Quintus that the act was without precedent (‘quod ante factum non erat,’ Leg. iii. 20) is incorrect, for thirteen years earlier in 151, after the first three years of the Spanish revolts, tribunes, also in opposition to the levy, had imprisoned the consuls. This was a revolutionary act, and it inaugurated a period of defiance of the will of Senate and magistrates by tribunes who may properly be described as forerunners of the Gracchi.1

The revolutionary character of the tribune’s forcible interference with the draft, though recognized by Cicero and, to judge from the evidence of the Periochae, also by Livy,2 has not, in general, impressed modern historians.3 According to Jochen Bleicken in a useful recent study of the tribunate, the incidents, though in themselves shocking, were derived from unimportant causes without political implications.4 But the men who appealed to the tribunes were citizens and voters, voters, moreover, who, as members of the classes in the centuriate assembly, elected the consuls and praetors. Any member of the American House of Representatives would recognize the political importance of appeals from voters on the army lists. At Rome the appeal naturally went to the officials whose prime function was the exercise of the ius auxillii, the right to aid citizens in distress.5 The relationship between tribunes and men on the list for the levy went back by tradition to the institution of the office after the plebs, hard pressed by debt, avoided the levy by seceding to the Sacred Mount. Later, tribunes are repeatedly represented as obstructing the levy in order to force the patricians to yield to demands for food, for land, for protection against the imperium of the consuls, for the right of intermarriage with patricians, for the opening of the consulship to plebeians.6 But before 151 the interference never, as far as we know, resulted in the seizure of the consuls by force.7

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1 For list of sources on the tribunes under each year, see Broughton, MRR; for almost complete quotation of sources, see G. Niccolini, I Fatti dei tribuni della plebe (Milan, 1934).

2 Per. xlviii and lv for 151 and 138. The Oxyrhynchus summaries are almost entirely lost for the former year, but include the event under 138, adding the fact that the consuls were released at the request of the people. In the general account of the tribunate in Zonaras vii. 15, the imprisonment of a consul is described as an unnatural act (ἐναρμόνως). See also Cicero’s comment on the imprisonment of the consul Metellus in 60, ‘consule in carcere incluso, saepe item seditione commota’ (ad Att. ii. 1, 8). Cf. Plut. Ti. Grach. 15. 3.

3 Notable exceptions are U. Kahrstedt, ‘Die Grundlagen und Voraussetzungen der römischen Revolution’, Neue Wege zur Antike iv (1926), 97–118 (see p. 107) and M. Gelzer, Philol. lxxxvi (1931), 285 f. See also A. Schulten’s discussion of the effect of the Spanish revolts on internal conditions in Rome, CAH viii (1930), 322 f. On the imprisonment of the consuls, see the curious statement of R. E. Smith, The Failure of the Roman Republic (Cambridge, 1955), 177, that the tribunes ‘acted in a constitutional and proper way.’

4 Das Tribunat der klassischen Republik, Zetemata, Heft 13, Munich, 1955. See especially 102–05, with statement on p. 102, ‘sehr unerhebliche und politisch unwichtige Anlässe.’

5 Bleicken, while insisting rightly (chap. iv) that tribunes constantly referred appeals to the Senate and accepted the decision of the Senate, underestimates the importance of the ius auxillii in the third–second century. See W. Kunkel’s important review of Bleicken, Zeitschr. d. Sav. Stift., Roman. Abt. lxxvii (1960), 373–382, esp. 377 ff.

6 Livy ii. 43, 3 and 44, 1; iii. 10–11; 20; 30; iv, 1, 6; 2, 13; 53; v, 16, 5; vi, 27, 8; 31, 4; vii, 3, 9. See Liebenam P-W. s.v. Dilectus, col. 603. For levies carried out beyond the city limits to avoid tribunicial interference, see Dion. Hal. viii. 87. For an appeal to the college of tribunes against M., Curius Dentatus, who was conducting an emergency levy in 275, see Val. Max. vi, 3, 4.

7 Threats to imprison consuls (or military tribunes
The opening of the consulship to plebeians and the acceptance of plebeian legislation as binding on the state led to a marked decline in tribunical strife and gradually to an identity of interest between tribunes and the Senate in which they expected to be enrolled. There were still tribunes who, like Gaius Flaminius and his followers (232–216), set themselves against the majority of the Senate and secured the passage of their measures by the people, but the defeat at Cannae led to much greater harmony between tribunes and Senate, a harmony that in general still prevailed in 167 when Livy’s history comes to an end. Although tribunical legislation did not require the authority of the Senate, it was usually presented with that authority. Moreover consuls and praetors turned over much of their legislation to tribunes who were frequently requested, with the polite proviso, *st iis eideretur*, to submit measures to the people. Such requests from Senate and magistrates show that the tribunate had not lost its popular character and that the tribunes gave more than lip service to the fulfillment of their obligation to carry out the will of the people and to seek to divine their wishes.

The basis of the tribune’s popular character remained the *ius auxilii* out of which had developed the veto power and the right to propose laws and to bring to trial magistrates who had misused their offices. In exercising the *ius auxilii* the tribunes were required to pass their entire year of office in Rome, to leave their house doors open day and night, to be available to citizens both individually and sitting as a college on the benches (*subsellia*) of the tribunes in the Comitium. They were identified with the common man by their avoidance of the special insignia of magistrates—purple bordered toga, lictors, *fascis*, curule chair. At the same time in their inviolability they represented the majesty of the people. Of great significance was the inviolable right of the tribune to call a public meeting, a *contio*, in which he could address the people himself and could call upon others to speak or to answer questions of friendly or unfriendly nature in a manner that resembles the modern press conference. It was unlawful to call a *contio* away from a tribune. The father of the Gracchi who did so as censor was brought to trial on a capital charge.

The responsiveness of the tribunes to appeals and their steady contact with the people in public meetings contributed to their influence with the men on the lists for the levy and with the men in active service and the veterans, the groups with a weighted vote in the major Roman assembly. The tribunes could take returning generals directly to a public platform and interview them, thus giving them opportunity to acquire support in contests for office, for important military commands, and for triumphs. The tribunes had great influence on the careers of both Scipios and of Marius.

In dealing with terms of military service in the years 216–167 the tribunes were either

*with consular power* which are said to have been made by earlier tribunes are reflections of the incident of 151 and later. See Dion. ix. 48; x. 34; Livy iv. 26, 9; v. 9, 4 and, for a threat against a censor, ix. 34, 24. See Mommsen, *Röm. Staatsrecht* i, 154, n. 1 and, for imprisonments or threats of imprisonment after 138, see n. 2. There were instances in 119, 91 and 69, with threats in 59 and 55, and, against a censor, in 109.

6 Enrollment of former tribunes in the Senate is first attested for 216, Livy xxiii. 23, 6. If A. E. Astin is right that the quaestorship was not an obligatory office before Sulla, membership in the Senate must have been valuable for ex-tribunes who sought higher office or desired to found a senatorial family. See The Lex Annalis before Sulla, *Collection Latomus* XXXIII, Brussels 1958.

5 See Bleicken’s discussion, Chap. ii, of the circle of C. Flaminius and C. Terentius Varro and of the change in attitude of the tribunes after Cannae. See also Bleicken’s analysis, 67–73, of the tribunical laws of 189–8 passed without the authority of the Senate by Scipio Africanus’ associates. For a similar interpretation, see my *Voting Districts of the Roman Republic* (Rome 1960), 306–8. Bills presented without the authority of the Senate were not unconstitutonal, and, in view of the diversity of opinion among tribunes and senators, were probably commoner than Bleicken believes.

10 Polyb. vi. 16, 5, *διέλυσεν δ’ αυτοίς οἱ δημαρχοί τὸ δικαίον τῷ δήμῳ καὶ μάλιστα στοιχεῖα τῆς τούτου βουλήσεως. I take *στοιχεῖα* in the meaning given under 11 in LSJ, ‘endeavour to make out, guess at.’ The passage, the only example of the word cited from Polybius, is listed under I, 2. I agree with Walbank that there is no reason to consider the passage an addition made after the Gracchi. The tribunes, even when giving strong support to the Senate, must always have tried to show that their action was consistent with the will or the welfare of the people. See Plutarch’s report on speeches of M. Livius Drusus, *tr. pl.* 122, C. Gracch. 9, 3.

11 Cic. *Sest.* 79. ‘Itaque fretus sanctitate tribunatus, cum se non modo contra vim et ferrum sed etiam contra verba atque interfationem legibus sacris atque armatum putaret.’

12 Livy xlIII, 16, listed by Bleicken, *o.c.* (n. 4), 102, with the records of imprisonment of the consuls. The action against the censor (which was dropped) arose from an insignificant incident.

13 On the role of tribunes in the elections, see Livy xxvii. 34; xxvii. 6, 3–5; xxxvii. 57–8; xxxix. 32, 12 and 39, 1–4. Q. Cicero advises Marcus (Comm. pet. 18) to seek the aid of magistrates in his candidacy, ‘maxime consules, deinde tribuni pl.’

14 On the Scipios, see Bleicken, *o.c.* (n. 4), 68 ff.; on Marius, see *Jug.* 73; Plut. *Mar.* 7, 4; 8, 5.
in accord with the Senate or reached a compromise. Far from interfering with the levy in the period of Hannibal's occupation of Italy, they even acceded to the request of the Senate and brought to the people an obviously unpopular bill for the enrollment in the legions of youths under seventeen (Livy xxv, 5). In later years, when there was no such danger to the state, there was some conflict with the Senate which claimed that appeals should be presented not to the tribunes but to the senators as a body. In 193 when tribunes were preparing to examine the cases of soldiers in the urban legions who asked for dismissal because of illness or length of service, the Senate took strong measures, declaring an emergency levy \textit{(tumultus)} because of a Ligurian invasion (Livy xxxiv, 56, 9–11). The tribunes yielded. In 191 when the maritime colonies appealed to the tribunes for exemption from fleet service, the tribunes themselves referred the question to the Senate, and concurred in the decision refusing exemption (Livy xxxvi, 3, 5). When in 184 two praetors of Spain wished to bring home with them the soldiers on long-term service in their provinces, the tribunes were divided, and, after mutual threats of a veto, the Senate, recognized as the ultimate authority, settled the question by a compromise (Livy xxxix, 38).

A more serious conflict between Senate and tribunes arose over the levy for the war with Macedon in 171, when veterans and old centurions up to the age of fifty were called up (Livy xlii, 31–5). The veterans were, in general, eager to go; for they hoped for riches such as men had previously brought back from Greek lands, but the centurions, who were not to have their old ranks in the new war, appealed to the tribunes. Two of the tribunes, men of noble families, both destined to rise to the consulship,\textsuperscript{15} held that the question should be settled by the consuls, but the other eight declared that they would consider the appeals and bring aid to any citizen who was wronged. Livy's account of the case, heard first before the benches of the tribunes and then transferred to a wider audience at the Rostra, is significant in revealing the character of a public hearing before tribunes. The case was settled in favour of the consuls by a patriotic speech of an old centurion who, recounting his long years of service in Spain and in the East, withdrew his appeal and persuaded the other centurions to follow his example, and leave their cases to the consuls and the Senate.

But the conditions which had led to compromise and ultimate agreement were changing.\textsuperscript{16} The census lists, from which we can estimate the citizen manpower, had recently shown a gradual increase, but after 164 a decline set in that reflects a lowered birthrate and the loss of farms as a result of the farmers' long absences from home. The decline persisted in spite of a diminution of the property qualification of the lowest class liable to service in the legions—a diminution which must have increased greatly the number of poor men on the list, with an attendant decrease of the well-to-do men in the first class who had a weighted vote in the centuriate assembly.\textsuperscript{17} This was a crisis in voters as well as in recruits, for the two groups were drawn from the same lists. The difficulty of finding recruits became apparent when in 154, after twenty-five years of peace, war again broke out in Spain. Men did not want to go to Spain. As the complaints of 184 had shown, it was too far away and service lasted too long. Moreover there was less chance of booty which lured volunteers in numbers when the Third Punic War broke out in 149 and also, it would seem, when large forces were needed for Macedon and Greece in the next three years. After three campaigns of fierce and often unsuccessful fighting against Lusitanians and two against Celtiberians, there occurred the crisis in the levy for 151. An ambitious consul, L. Licinius Lucullus, opposed to the peace with the Lusitanians made by his predecessor, M. Claudius Marcellus,\textsuperscript{18} and determined to reopen the war, was pursuing

\textsuperscript{15} They were M. Claudius Marcellus, \textit{cos.} 166, 155, 152 (an important figure in the strife over the levy in 151), and M. Fulvius Nobilior, \textit{cos.} 159.

\textsuperscript{16} Difficulties with the levy for the Macedonian War in 169 led to the otherwise unparalleled intervention of the censors. See Livy xliii, 14.

\textsuperscript{17} See Polyb. vi, 19, 2, with Walbank's note, and, for discussion of the census, E. Gabba. \textit{Athenaeum} xxxvii (1940), 173 ff. I agree with Gabba (see \textit{Athenaeum} xxx (1952), 161–173) that the census lists were composed of the \textit{assisdi} with omission of the \textit{proletarii}.

\textsuperscript{18} If, as seems likely, the law \textit{ne quis iterum consul fieret} was tribunical, there are signs of divisions among tribunes which reflect factions in the nobility; for, whereas the tribunes attacking Lucullus were probably favourable to the peace Marcellus had made, the law against repeated consulship was directed against Marcellus after he obtained a third consulship in 152. The law, supported by the aged Cato, dates between Marcellus' election and Cato's death in 149. See Malcovati, \textit{ORF} \textit{f.} 75 f.; Scullard, \textit{Roman Politics} (Oxford, 1951), 270 f.; Gelzer, P-W, s.v. Porcius, 9, col. 139.
the levy with great energy. The young men, both of the officer and of the common soldier class, were frightened by the reports which had come from the Spanish camps, and were resisting the levy. According to the Polybian tradition, the officers were encouraged to volunteer when the youthful Scipio Aemilianus presented himself, but the common soldiers continued to resist and some of them appealed to tribunes who, perhaps with the backing of Marcellus and his associates, insisted on exemption for their friends. When the consuls were unyielding, the tribunes seized them and put them in the Mamertine prison, thus establishing a precedent which was to be followed several times in the next century. The quarrel over the levy was settled by drawing lots, hardly the best way to get a good army. 19

This year of tribunicial intransigence follows a period of fifteen years (166–52) in which, with Livy’s history gone, except for the inadequate Periochae, there is only one dubious record of tribunicial activity in the scattered sources. In contrast, in the next eighteen years before the tribunate of Tiberius Gracchus, years of equally scattered sources for events in Rome, there are no less than twenty-three recorded episodes of the tribunate. It seems clear that there was a revival of the initiative and independence of the tribunes. These were years of strife, often associated with the levy, between tribunes and magistrates and tribunes and the senatorial majority; they were also years of tribunicial legislation, some of it certainly in conflict with the authority of the Senate.

Bills and laws which are surely of this type, the Lex Licinia de sacerdotiis of 145 which failed to pass and the two secret ballot laws of 139 and 137, are of later date, but earlier tribunicial legislation of the same sort is indicated by the passage about the middle of the second century of two laws, the Lex Aelia and the Lex Fufia 20 which put a curb on troublesome legislation. We know about these laws chiefly through a tribunicial law of Clodius in 58 which nullified some of their provisions. As for their date, they were passed before the Gracchi (Cic. Vat. 23) and had been in force for almost a hundred years before Clodius’ law (Cic. Pis. 10). In this period as ‘propugnacula murique tranquilitatis atque oti’ (Pis. 9) they had put a check on ‘perniciosae leges’ (Ascon. p. 8 C) and ‘tribunicii furores’ (Vat. 18; Post red. ad sen. 11).

The usual view of scholars who hold that these laws dealt both with legislation and with elections is that the laws are to be assigned to the year 153 when, because of the exigencies of the Spanish campaign, the opening of the magisterial year was advanced from 15th March to 1st January. 21 But I can find no evidence that the two laws regulated elections and I believe that, like Clodius’ law which revoked some of their provisions, they dealt with the ius et tempus legum rogandarum, 22 that is the conditions regulating the proposal of bills and the time when bills could be presented. In dating the laws about 150 I follow a suggestion of Tenney Frank to be quoted below (pp. 23 f.).

The regulation for the proposal of laws provided for obstruction by obnuntiatio, the announcement by a magistrate other than the one in charge of the assembly of an adverse omen which might invalidate action taken in the assembly. The magistrate could either report the omen or, according to the interpretation of Bibulus, acting against Caesar and Caesar’s tribune, he could let it be known that he was watching the heavens. The watcher was likely to see something bad, and there would be danger that the augurs would declare the legislation invalid. Now the Aelian and Fufian laws seem to have given regular magistrates a right not possessed before, the right to watch the heavens and obnuntiare when

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19 On the levies at this time, see Polyb. xxxv, 3–4; Appian, Iber, 49; for the only reference to the tribunes, Livy, Per. xlvi, ‘L. Licinius Lucullus A. Postumius Albinus consules cum dilectum severe agerent nec quemquam gratia dimitenter, ab tribunis plebis, qui pro amicis suis vacationem impetrare non poterant, in carcerem coniecti sunt.’ There follows the account of the difficulty of finding military tribunes and legates to go to Spain.

20 Cic. Har. resp. 58, ‘duas leges, Aeliam et Fufiam.’

21 This date was proposed by Ludwig Lange in his detailed discussion published in 1861 (reprinted in his Kleine Schriften (Göttingen, 1887), i, 274–341). See for a brief statement his Röm. Althistoriker i (Berlin, 1879), 476–9. Mommsen’s advice to the prudent scholar not to speculate on these laws (Statutsrecht 13, 111 f., n. 4) has been followed in Germany until recently, and Bleicken, Hermes lxxxiv (1957), 468–474, is unfamiliar with the files of JRS which demonstrate the disregard of the advice in England. See W. F. McDonald xix (1929), 164–179; S. Weinstock xxvii (1937), 215–222; J. P. V. D. Balsdon xlvi (1957), 21 f. I am particularly indebted to McDonald’s collection and analysis of the evidence.

22 See Cic. Sest. 56, ‘mittto eam legem quae omnia iura religionum, auspiciorum, postestatum, omnii leges quae sunt de iure et de tempore legum rogan darum, una rogatione deletur.’ See note 23 for reasons why the laws could not have dealt with the election of tribunes.
tribunes were legislating. They granted (or reaffirmed) to the tribunes a similar right when consuls and praetors were legislating, but this right was less significant since tribunes already had the power of vetoing laws.

As for the tempus legum rogandarum, the laws seem to have limited legislation to dies comitiales, a limitation removed by Clodius, who made dies fasti available for legislation. Moreover, the Aelian and Fufian laws excluded from the legislative schedule the dies comitiales before the elections, that is the period of twenty-four days between announcement of candidacy and the comitia. No bill could be presented to the people in this period. This provision of the two laws, known only from a Ciceronian scholiast, is confirmed by the fact that in the years 67–61 two consuls and a tribe were freed from the restrictions of these laws in order to enable them to propose in the pre-election period laws against bribery.

The restriction against proposing laws at this time checked legislative activity when Rome was crowded with people who came for the elections and when continual public meetings held by tribunes, who could not have their audiences taken away from them, would have disrupted the Forum and would have interfered with the processions of candidates who, with their retinues, occupied the Forum in this period. As far as we know, Clodius did not touch this feature of the laws.

An important factor in the effectiveness of the two laws was the composition of the board of augurs to whom the Senate would have referred questions that arose on the validity of obnuntiationes. Whereas in the consulship of Caesar the augurs may in the majority have belonged to the party of the Triumvirs, in the mid-second century, when the priests were chosen by co-optation, the college would have been composed of older and younger men belonging to families of the high nobility, a group determined to maintain their power against rash tribunical legislation. An unsuccessful effort was made by a tribe a few years later to change the composition of the college.

Although the laws affected consuls and praetors as well as tribunes, they were directed mainly against tribunicii furores, and it therefore seems unlikely that tribunes, however devoted they were to the nobility, would have proposed them. Since no Aelii or Fufii are known in the consulship of the general period to which the laws belong, I would attribute them to urban praetors, of two different years (with Aelius preceding Fufius), who, in the absence of the consuls in war and administration, would, with the authority of the Senate, have presented the bills to the comitia.

Tenney Frank’s dating of the two laws about 150, when the difficulties over the Spanish campaign had become acute, seems to me more likely than the usual dating in 153 which is based on the belief that the laws had some connection with the regulation of
elections. As a reason for the laws Frank, though conceding that there is no 'positive evidence' on the subject, suggests that 'some tribune had attempted to override the wishes of the senate.' 27

I suggest that one or more of the unknown laws of this period which led to an effort to check the fury of the tribunes concerned the terms of military service over which magistrates and Senate claimed control. For instance, the use of the lot in the levy in 151 may have been provided for under certain conditions in a law. It is also possible that limitation of overseas service to six years, of which we hear in the Spanish armies of 140, belongs to legislation of this time. 28 Another law which has, with some degree of probability, been attributed to the period of the Spanish wars, presumably the third Lex Porcia de provocatione, provided for the extension of the right of appeal to soldiers, but here the only sure indication of date is that it was passed before 134. 29

The proposal of Scipio Aemilianus' alter ego, C. Laelius, for an agrarian law, which anticipated the attempt of Tiberius Gracchus to restore the free manpower of Rome, may also belong to this period, but it was not voted on, and may not even have been formulated in a bill. 30 The proposal could be dated in Laelius' praetorship (145, a date for which Scullard makes a good case) or his consulship (140, favoured by Broughton), or in a hypothetical tribunate (Fraccaro, Tibiletti). The date of the tribunate might be any time from about 160 to 147. Tribunes were particularly interested in conditions for the levy, and, with traditions going back through Gaius Flaminius and Licinius and Sextius to the early Republic, they regarded the distribution of land under agrarian laws as their special function. I suggest that the tribunate of Laelius may date about 151 and that the agrarian proposal was connected with the concern for the levy which Scipio showed when he volunteered to go to Spain in that year. I would even suggest that the Aelian or the Fufian law may have led Scipio and Laelius to abandon a proposal which might have been listed among tribunicii furores.

In the years after 151 there was interest among the tribunes in the conduct of generals overseas, but it was intermittent interest. Thus as governor of Hither Spain Lucullus, whom the tribunes of 151 had imprisoned, was not prosecuted for his unprovoked attack on the Vaccaei (Appian, Iber. 60). Perhaps he was generous in his distribution of booty to soldiers. But such generosity did not characterize the praetor Servius Sulpicius Galba, who was sent to Further Spain in the same year. Galba's treacherous attack on the Lusitanians who had surrendered to him gave rise in 149 to a tribunical bill calling for a special investigation. The bill, supported by the aged Cato shortly before his death, was defeated through Galba's ability to sway the mob by creating pity for his children. 31

The scandal of the failure to investigate Galba's treachery, serious for the effect on relations with Spanish peoples, 32 contributed to the success with Senate and people of the statesmanlike law proposed in this year by the tribune L. Calpurnius Piso, a law which instituted, under a praetor with senatorial jurors, a permanent court to try magistrates accused of extortion from allies and subject peoples. The law reflected the high moral standards of Piso, 33 apparent in the fragments of his history of Rome. In it he dated Rome's

19 CAH viii (1930), 367. The law is also dated about 150 by Scullard, Roman Politics 28 and by Weinstock, o.c. (n. 21).
20 Appian, Iber. 78. See R. E. Smith, Service in the post-Marian Roman Army (Manchester, 1958), 7, with reference to the mistaken dates given by Liebenam and Kromayer-Weith and to the views of Last (CAH ix, 135) and Gabba (Ateneum 29 (1951) 176 f.)
21 Livy, Per. lvii, is the basis for dating the law before 134. See on it Pliny, NH xiv, 19; Plut. C. Gracchus 9; Sall. Jug. 69, 4. A. H. McDonald, JRS xxxiv (1944), 19-22 for the suggestion that the law should be dated 150-135, that conditions in the Spanish wars account for the law, and that it is to be associated with the provisions for the use of the lot in the levy and for the limitations of service to six years. I am grateful to W. K. Lacey and T. R. S. Broughton for calling my attention to this important article. I do not agree with Bleicken, P-W s.v. Provocatio, 23, 2A. col. 2448, 2450 (1961) in rejecting the evidence for provocatio of soldiers.
22 The only evidence for the proposal is Plutarch, Ti. Gracchus 8. For sources, bibliography, and discussion of the career of Aemilianus, H. H. Scullard, 'Scipio Aemilianus and Roman Politics,' JRS l (1960), 59-74. 31 Livy, Per. lxix; Cic. Brut. 80; Malcovati, ORF 79 f.
23 See De Sanctis, Storia dei Romani 4, 1 (Turin 1923), 483, 524 f.
24 The credit for this wise law is usually given to the Senate. See the suggestion W. S. Ferguson, JRS xi (1921), 94 ff., that the law was designed to give the Senate control, free from tribunical interference, over governors; it was also his view that at this time there was a plan to establish the provinces of Macedonia and Africa. But see Gelzer's criticisms, o.c. (n. 3), 286, n. 42. It seems to me likely that the architect of the measure was Piso himself rather than
decline from the years 154–3 (Pliny, *NH* xvii, 244), the period, incidentally, of the outbreak of the Spanish wars. Piso remained an active figure in the courts, where we can imagine him prosecuting malefactors under his law, and also in public meetings where he took a stand for and against pending legislation. The only specific information we have on this activity concerns his opposition to Gaius Gracchus' *lex frumentaria*. It has been assumed that he was also opposed to the agrarian law of Tiberius, presented when Piso as consul in 133 was absent in the Sicilian slave war, but, as D. C. Earl has lately argued, Piso, like his colleague, P. Mucius Scaevola, may have been at best benevolently neutral toward the moderate law for which Tiberius, before submitting it to the people, sought senatorial support. Of Piso's political affiliations before his opposition to Gaius Gracchus nothing is known, but we can be sure that he was not close to Scipio Aemilianus, in whose literary circle he is never included. The interval of fifteen years between Piso's tribunate and his consulship may mean that he lacked the support of the ruling nobility.

Scipio himself employed tribunes in subsequent years for his own ends, and seems usually to have been successful in securing senatorial authority for their proposals. Scipio came back to Rome from Africa, ostensibly to present himself for the aedileship for 147, but perhaps with the belief that his achievements in Spain and Africa, of which he had not failed to keep the people informed, deserved the consulship. In any case there was at once a popular move, aided by tribunes, to make him consul. Through the intervention of tribunes, the Senate, in opposition to the magistrate who presided over the elections, freed him from the laws governing the age of magistrates, and he was elected to the consulship. A tribune proposed that the choice of provinces should be made by the people, and through a tribunical law, again apparently with the endorsement of a reluctant Senate, he was given the command in Africa (Appian, *Pun.* 112).

In the dark background of tribunitia, through the next decade Scipio seems to be the dominant figure. Through Laelius, who had already, in my view, made an abortive effort to correct the conditions of the levy, Scipio in 145 set himself against the nobleman C. Licinius Crassus, the first tribune to court popular favour by turning on the Rostra, with his back to the small select group in the Comitium, and facing the mob in the Forum. Crassus had a bill to propose that was popular with the masses and most distasteful to the oligarchy, a bill to transfer to the people the election of the major priests who had hitherto been selected by co-optation. The purpose was, I believe, to secure a membership in the augurate which would interpret *obnuntiationes* in favour of the people. But Scipio, who was certainly a member of the college of augurs by this time (men of the high nobility were often early in life), and Laelius, who was probably already a member, were opposed, and Laelius as praetor made a famous speech against Crassus' bill, which was defeated. I would suggest that Scipio, with a different plan for securing a board of augurs who were disposed to favour popular measures, used his influence subsequently to obtain the co-optation of men who were not unbending oligarchs. The membership in the next few years included Scipio's brother-in-law Tiberius Gracchus and Laelius' two sons-in-law Q. Mucius Scaevola and C. Fannius.

The composition of the college of augurs may explain why *obnuntiationes* did not prevail against two tribunitial laws opposed by the oligarchy and, in the second case at least, supported by Scipio. They were the two laws providing for a secret ballot, the first,
the Lex Gabinia of 139, in elections, the second, the Lex Cassia of 137, in judicial assemblies. These laws cut deeply into the power of the nobles who, under oral voting, had been able to call their clients to account for their votes. The freedom in voting was the more important if the voters, especially in the upper classes of the centuriate assembly, had diminished in numbers. Scipio, who had been absent when the earlier ballot law was passed, was in Rome in 137 and is credited with having dissuaded a tribune from exercising a veto. That is perhaps the explanation for the fact that he was later called a popularis (Cic. Ac. Pr. ii. 13).

Most of the other records of the tribunate in the years from 145 to 134 are concerned with the long-drawn-out Spanish wars in which Scipio, whose relatives and close associates were among the commanders, maintained continuous interest. The records concern strife over the levy, punishment of a deserter, and attacks on commanders for cowardice and inefficiency and for treaties of peace that were considered dishonourable. The use of raw recruits instead of trained soldiers in these wars reflects the difficulty with the levies. Scipio's brother, Q. Fabius Maximus Aemilianus, consul 145, deliberately chose his army from young men to avoid calling on the men who had served at Carthage and Corinth (Appian, Iber. 65). Another associate of Scipio, Q. Pompeius, consul of 144, had to fill up his legions with untrained men when the experienced soldiers went home after six years of service (Iber. 78). It may have been trouble with the levy which led a tribune to try to prevent the departure of a consul for Spain in 140. In the great crisis of 138 two tribunes, one of them described by Cicero as the lowest and foulest of all mankind (Leg. iii. 29), demanded from the consuls release from service for ten men each. When the consuls—one of them was the Pontifex Maximus Scipio Nasica, arch-enemy of Tiberius Gracchus—rejected the demand, the tribunes, following the example of their predecessors in 151, put them in bonds and led them off to prison, but eventually released them in response to pleas from the people.

Tribunes presumably participated in the punishment of C. Hostilius Mancinus whom the Senate, after invalidating the treaty made under duress, delivered to the Numantines of Spain. When Mancinus returned to Rome, having been rejected by the Numantines, a tribune prevented him from entering the Senate, declaring that he had forfeited his citizenship (Cic. de Or. i. 181). Mancinus' colleague was brought to trial for an unprovoked attack on a Spanish people and was condemned.

After the Lusitanian war ended, tribunes seem to have had a share in freeing Scipio Aemilianus from the law against a second consulship and in securing for him, after election, the command in Hither Spain, with the task of settling the Numantine War. Scipio did not make fresh levies but, like the elder Africanus, depended on volunteers, and also on troops supplied by eastern princes. But the slave war which broke out that year in Sicily demanded troops, and at the same time raised fears of similar revolts in Italy where slaves had replaced free men in farming and grazing. The Senate meanwhile was deeply divided. These were the conditions under which Tiberius Gracchus, in alliance with a strong senatorial minority, was elected to the tribunate of 133, and presented the agrarian law designed to restore the free manpower of Rome.

The tribune's unprecedented imprisonment of the consuls in strife over the levy in 151 was an infringement of the power of magistrates to make the levy and of the right of the Senate to serve as a board of appeal. The act of the tribunes was more serious in its revolutionary implications than was the proposal of bills without the authority of the

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39 On the significance of these ballot laws, see the statement \( \Rightarrow \) J. A. O. Larsen, CPb 49 (1954), 10, quoted by Scullard, o.c. (n. 30), 70. For the effect of these laws in liberating the votes of freedmen, see Last, CAH IX, 38, 103 and my Voting Districts, 141.

40 Of interest for Scipio's personal relations with tribunes are two men concerned with his censorship in 142; one of them was Lælius' son-in-law, C. Fannius, who functioned as tribune 'arbitrio et auctoritate P. Africani' (Cic. Brut. 100). The other T. Claudius Asellus, tribune of 140, brought Scipio to trial for having as censor taken away Asellus' public horse (Gell. III. 11, 1).

41 Livy, Per. Oxyr. Liv. The tribune was Claudius Asellus. If the fragmentary and corrupt text means that the consul Q. Servilius Caepio resisted the tribune with a lictor and the sword, the sacrosanctity of the tribune was violated.

42 Cic. Leg. III. 20; Livy Per. Lyv, with added detail in Per. Oxyr. The tribune C. Curatius, who gave Scipio Nasica the nickname Serapio, proved on other occasions to be an effective agitator. See MRR for the evidence.

43 Val. Max. viii, 1, dann. 7; Appian, Iber. 83. See Mommsen, Staatsrecht n° 120, n. 3.

44 Livy, Per. Lyv.; Appian, Iber. 84 (where there is confusion with the circumstances of the first consulship); Plut. Mar. 12.
Senate, for such bills were not unconstitutional. There seems to have been legislation of a radical nature at the same time, legislation which perhaps dealt with the terms of military service, and it was, I believe, to curb such legislation that the leaders of the state passed the Aelian and the Fufian laws.

The defiance of the authority of the Senate, especially in military matters, was a sign of the decay of the Roman mixed constitution, whose endurance under the conflicting powers of magistrates and Senate and of the people, represented by the tribunes, had aroused the just admiration of Polybius. C. O. Brink and F. W. Walbank have argued cogently that Polybius' account of the constitution in the sixth book was published, without subsequent revision, about the year 150, and I should like to date the completion of the book before 151 when Polybius seems to have gone to Spain with Scipio.

With the exception of Piso in 149 and perhaps of Crassus in 145, the tribunes who served from 155 to 134 were not men of stature. Lacking the comprehensive programmes of the Gracchi, they seem, in reflection of the growing factionalism in the ruling classes, to have carried out the designs of others. Many of them, including the men who imprisoned the consuls in 151 and most of the tribunes in the service of Scipio, are nameless. Their acts, except in the two imprisonments of the consuls, were not directly revolutionary, but their continued interference in affairs of state and particularly in the levies, the army, and the relations with subject people marked them out as forerunners of the Gracchi and also of the tribunes who served the rival leaders of the Age of Revolution.

According to Plutarch (Tiberius Gracchus), the catastrophe of Tiberius would not have occurred if Scipio had been in Rome. Whatever the differences between the two men, they shared the realization that something had to be done to stop the decline of the small farmers who manned the legions and elected the consuls and praetors, the commanders of the troops. But Tiberius, unlike Scipio, was unwilling to compromise. That unwillingness, according to the often persuasive arguments of R. E. Smith in his interesting book, The Failure of the Roman Republic, was the direct cause of the Roman Revolution. But I do not agree with Smith that the Roman state was on the whole in balance in 133 B.C., and in support of my view I would cite the admirable introductory chapter of his subsequent book, Service in the post-Marian Roman Army. A decline, the result of the enrichment of the leaders and the impoverishment of the men who had won Rome's great empire, had set in, a decline that, as Schulten has pointed out, was hastened by the terrible strain of the Spanish wars. It was a decline that Piso Frugi saw and tried to check in his tribunate and probably in his subsequent speeches, a decline that Polybius eventually realized. The transformation of the tribunate into an instrument of revolution was a symptom, not a cause of the decline.

\[ CQ \text{ iv (1954), 97–122; see Walbank, Commentary on Polybius 1, 636.}\]

\[ 46 \text{Gaius Gracchus' law on military service (MRR 1, 514) is well attested but the statements of Plutarch (Ti. Gracchus 16, 1) and Dio (frg. 83) that Tiberius planned a law shortening the period of service is (I think, wrongly) usually rejected.}\]