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THE *TRANSITIO AD PLEBEM* OF C. SERVILIUS GEMINUS

aus: Zeitschrift für Papyrologie und Epigraphik 114 (1996) 289–298

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In 209, C. Servilius Geminus was elected plebeian aedile.¹ An objection was raised, however, on the grounds that both his aedileship and his election to the tribunate of the plebs a few years previously were illegal.² The reason was that his father, presumed dead for nine years, was discovered to have been living in captivity among the Boii.³ Livy does not specify the nature of the defect in Geminus' election to the plebeian magistracies, but evidently nothing was done to cut short his term of office.

The legal flaw is revealed only in 203 when Servilius was consul.⁴ In the course of his activities in Etruria, the province assigned to him, he advanced into Gaul and freed his father and his fellow-commissioner, Gaius Lutatius Catulus,⁵ who had been held prisoner since 218, and escorted them back to Rome. A bill was brought before the plebs stating that no charge was warranted against C. Servilius for contravening the law by serving both as tribune of the plebs and plebeian aedile while his father, who had occupied a curule chair, was alive (a fact then unknown to him). The bill became law and Servilius returned to his province.⁶

Apparently there was a law forbidding the son of anyone who had held a curule office to occupy plebeian positions during his father's lifetime. Unfortunately, Livy does not dwell on the nature of this otherwise unknown and bizarre restriction, leaving the field open for various interpretations.

I.

C. Servilius Geminus was undoubtedly plebeian. His younger brother Marcus was plebeian as well.⁷ However, their grandfather, P. Servilius Geminus, consul in 252 and 248, was patrician.⁸ Their uncle or cousin, Cn. Servilius Geminus, consul in 217, was patrician also.⁹ Since we know nothing about the early career of C. Servilius Geminus senior, and as he never reached the consulship, it is impossible to determine unequivocally whether it was the father or the sons who underwent *transitio ad plebem*.

Mommsen claimed that Livy misunderstood his sources, and doubted the existence of such an illogical law. In his view the problem was not that Servilius' father had held a curule office, but that he was a patrician and had not consented, since presumed dead, to his son's becoming a plebeian.¹⁰ That is, Servilius' *transitio ad plebem* had been carried out without *patrum auctoritas* and was therefore illegal.

* I am deeply indebted to Professor Z. Rubin for his advice and criticism. The responsibility, of course, remains mine. All dates are B.C.

¹ T. R. S. Broughton, *The Magistrates of the Roman Republic*, New York 1951–1952, 286 (hence *MRR*).

² Livy 27.21.10. The date of Servilius' tribunate is unknown. Cf. *MRR* I, 271–272 n. 5.

³ C. Servilius Geminus senior was praetor before 218. He was one of the *tresviri agris dandis adsignandis* appointed to assign land in Placentia and Cremona. The land commissioners were attacked by the Boii and presumed dead, *MRR* I, 240; 241–242 n. 12.

⁴ *MRR* I, 310–311.

⁵ On C. Lutatius Catulus: *MRR* I, 235 and n. 3 above.

⁶ Livy 30.19.9: *Latum ad populum est ne C. Servilio fraudi esset quod patre, qui sella curuli sedisset, vivo, cum id ignoraret, tribunus plebis atque aedilis plebis fuisset contra quam sanctum legibus erat.*

⁷ M. Servilius Pulex C. f. P. n Geminus, in view of his brother's difficulties, probably avoided plebeian magistracies. He was curule aedile in 204, *MRR* I, 307. When consul in 202 his colleague was the patrician Ti. Claudius Nero *MRR* I, 315. For the stemma of the Servilii Gemini see: E. Badian, 'The House of the Servilii Gemini', *PBSR* 52, 1984, 50.

⁸ *MRR* I, 212; 215. Cf. Ennius *apud* Gell. 12.4.

⁹ *MRR* I, 242.

¹⁰ Mommsen, *StR* I, 3rd ed., 487 n. 2.

Münzer disputed Mommsen's contention, claiming that it was Servilius the father, not the sons, who had become plebeian sometime before 218.¹¹ He conjectured that the legal difficulty may have arisen because the father's captivity had divested him of his rights as a citizen (*postliminium*).¹² Aymard agreed with Mommsen that Servilius senior was a patrician. Nonetheless, he claimed, there is nothing to prove that Servilius senior objected to his sons' *transitio ad plebem* before 218.¹³ Aymard also dismissed Münzer's conjecture that the legal difficulty arose because of Geminus' senior temporary loss of *civitas*. As a Roman who had been in captivity resumed all his civic rights immediately upon returning home (*postliminio*), there was no logic in absolving the son from a law supposedly overlooked when the father was held prisoner.¹⁴

Unlike Mommsen, Aymard accepted the Livian narrative. Moreover, he drew the attention to the fact that the law, as cited by Livy, did not dwell on the subject of patrician or non-patrician fathers, but rather on the nature of the office held by the man whose son aspired to a plebeian position during the father's lifetime. The focus of the law, therefore, was not the father's origin (patrician or plebeian), but rather his position in the magisterial hierarchy (whether or not he had held a curule office).¹⁵

Aymard assumed that the law was not mentioned before 203 because it was in force only for a short time, a fact that might shed light both on the law's aims and the period in which it was enacted. In his view, it was not an ancient law reflecting in some way the struggle between the orders, but rather a law passed during the years in which Caius Flaminius was a central figure in Roman political life. In that period the contemporary *populares* began to voice their hostility towards the patricio-plebeian nobility who, by controlling the magistracies, directly influenced the composition of the senate. These *populares* resorted to their usual tactic against the ruling oligarchy: exploiting the extraordinary powers of the tribunes of the plebs. But as this weapon, on account of the large number of tribunes, might prove to be a mixed blessing, it was decided to keep the sons of families suspected *a priori* of collaborating with the nobility from being elected to plebeian offices.¹⁶

Aymard reckoned that the law was no longer operative in 178 or 170 at the latest, when it can be proved that a son of a living curule magistrate was elected tribune.¹⁷ During and after the Second Punic War, when the senate was shown to be firmly in the ascendant, the tribunes began to cooperate with the senate, making the law unnecessary and even restrictive. At that time it was in the senate's interest for sons of living curule fathers to serve as tribunes, thus preventing the influx and activities of *homines novi*.¹⁸

Aymard's use of political terms prevalent in the first century B.C. is misleading. Moreover, his conclusions pose a few problems. We cannot conclude that the law was in force only for a short time merely because Livy mentions it only in 203. For one thing it may have appeared in one of Livy's lost books, but like many other laws, was not included in the appropriate abstract. On the other hand, as Livy did not document all the laws enacted in Rome, there is no guarantee that he had indeed mentioned the law. But for the Servilius affair, we might never have heard of it. Furthermore, Aymard did not explain how the plebeian aediles fit in the picture. Why did the law forbid the sons of living curule

¹¹ F. Münzer, *Römische Adelsparteien und Adelsfamilien*, Stuttgart 1920, 137–140.

¹² F. Münzer, *Servilius* no. 60 in *RE*, LII 1923, colls. 1792–1794.

¹³ A. Aymard, 'Liviana – A propos des Servilii Gemini', *REA* 45, 1943, 205–208.

¹⁴ *Ibid.* 208–210.

¹⁵ *Ibid.* 209.

¹⁶ *Ibid.* 217–223.

¹⁷ *Ibid.* 213. Aymard admitted that the two cases which he cites cannot be unequivocally proved. He claimed that Q. Aelius, tribune of the plebs 178 (actually 177 see *MRR* I, 398; 399 n. 4) may well be Q. Aelius Paetus cos. 167 (*MRR* I, 432), whose father died in 174 (*MRR* I, 405). He also thought it probable that T. Iuventius Thalna, praetor 194 (*MRR* I, 343), senatorial legate in 172 (*MRR* I, 413), was still alive when his son, M'. Iuventius Thalna, was tribune in 170 (*MRR* I, 420).

¹⁸ *Ibid.* 223–224.

fathers to serve as plebeian aediles as well? During the period when the law is presumed to have been operative, the plebeian aedileship was a completely independent magistracy, with well-defined powers, and was even considered superior to the tribunate in the *cursus honorum*.

According to Aymard's interpretation the law primarily injured the plebeian nobility or those patricians who became plebeians. However, it is unlikely that the plebeian *nobiles* would accept such a serious restriction, one that kept their sons out of precisely those positions through which their ancestors had attained parity with the patricians. It is, therefore, implausible that the plebeian nobility, many of whose sons held plebeian magistracies during the years Aymard believes the law to have been in force,¹⁹ would have supported such a damaging bill.

Develin adopts Aymard's basic premise that the law focused on the father's position rather than his origin, but takes issue with many of his conclusions. He disagrees with Aymard's contention, and rightly so, that it was a popular measure against the oligarchy, and seeks the solution in a wider context.²⁰ In his view the law was passed shortly after 366 to institutionalize an agreed conception of "qualitative distinction between curule and plebeian magistracies", since it was considered degrading for sons of families who were distinguished by a curule office to hold positions which not only lacked *auspicium* but were not even magistracies of the whole people. Develin wonders why there was a need for such a law and suggests that "it would fit well into the process of definition which those times saw in the relationship of patricians and plebeians to one another and to the offices".²¹ After the father had died, Develin continues, the sons were free to follow a career of their own choice.²² The law was not recorded by Livy, he maintains, because it was uncontested; patricians and plebeians, whether senators or not, all accepted the law. Servilius' case only reinforces the hypothesis that this astonishing restriction on a Roman's career was uncontroversial.²³ Having dealt with the substance of the law, Develin tries to establish the time-frame in which the law was operative. Unlike Aymard, Develin believes that the law was enacted shortly after 366, when the plebeians had begun to hold curule offices. Moreover, since the putative tribunes of 179 and 170 have not been incontrovertibly identified, he also rejects Aymard's dating for the abolition of the law. With the help of Broughton's work, which was not in existence when Aymard wrote his article, Develin produces additional examples, but for lack of sufficient evidence, they too fail to establish whether the plebeian magistrates in question had curule

¹⁹ The evidence for the years 232–170 is by no means extensive. Nevertheless, we can trace both plebeian tribunes and aediles who belonged to families that had held curule magistracies in the past. Only those whose fathers can be plausibly identified are cited below. It is practically impossible to establish whether their fathers were alive when they held office. The references can be easily found under the appropriate year and entry in *MRR* I:

M. Aurelius Cotta, pleb. aed. 216, may be the son of the consul in 252 and 248, censor in 241 and *mag. equit.* in 231; or nephew of the latter and brother of the consul in 200. M. Minucius, trib. pleb. 216. It is not totally impossible that he was the son of M. Minucius Rufus, consul in 221 and co-dictator in 217, who died at Cannae. If so, the son of a curule magistrate held a plebeian magistracy while his father was alive. M. Fundanius Fundulus, pleb. aed. 213, may be the son of the consul in 243. L.? Caecilius Metellus, trib. pleb. 213, may be the son of the consul in 251 and 247, who was *pontifex maximus* until his death in 221. L. Atilius, trib. pleb. 209, may be the grandson of the consul in 267 *cos. suffectus* in 217, nephew of M. Atilius Regulus consul in 227, *cos. suffectus* in 217, censor 214, and brother of M. Atilius Regulus praetor 213. Q. Caecilius Metellus, pleb. aed. 209, is the son of the consul in 251 and 247 who was *pontifex maximus* until his death in 221. M. Caecilius Metellus, pleb. aed. 207, brother of the latter. M. Pomponius Matho, pleb. aed. 207, may be the son of the consul in 233 who died in 211, or the son of the consul in 231 who died in 204; if so, the law was obviously disregarded. Q. Mamilius Turrinus, trib. pleb. 207, may be the son of the consul in 239. P. Aelius Paetus, pleb. aed. 204, may be the son of the *pontifex* who died in 216. M. Claudius Marcellus, trib. pleb. 204, his father died in 208. Ti. Sempronius Longus, trib. pleb. 200, his father, consul in 218 died in 210. C. Sempronius Tuditanus, aed. pleb. 198, probably son of the consul in 240, censor in 230 and brother of M. Sempronius Tuditanus, trib. pleb. 193. M. Fulvius, trib. pleb. 198 and Q. Fulvius trib. pleb. 197, could be the sons of the consul in 237, 224, 212, 209.

²⁰ R. Develin, 'A Peculiar Restriction on Candidacy for Plebeian Office', *Antichthon* 15, 1981, 112–113.

²¹ *Ibid.* 112; 114.

²² *Ibid.* 114.

²³ *Ibid.* 114–115. R. E. Mitchell's [*Patricians and Plebeians: The Origin of the Roman State*, Ithaca and London 1990, 214–218] interpretation does not greatly differ from Develin's.

fathers still living at the time they were in office. The only case that can be cited with any certainty as an exception to the law, according to Develin's interpretation, occurred in 49, when L. Marcius Philippus was tribune of the plebs while his father was still alive. From this incomplete and unsatisfactory evidence, and from the few cases where it can be proved that curule fathers of plebeian magistrates had already passed away by the time their sons took office, Develin concludes that the law was still in force up to the last days of the Republic.²⁴

Develin, like Aymard before him, establishes that the law was detrimental only to the plebeian nobility or to those patricians who had become plebians. He seems to suggest that the most eminent plebeian families willingly waived their sons' right to run for plebeian offices out of respect for a convention which held that these tarnished the family's honour and prestige.

The idea that the plebeian nobility regarded holding a plebeian office as dishonourable seems to me absolutely illogical; and apparently, the plebeian nobility did not hold by the code of honour Develin ascribes to it. The evidence we have regarding the identity of plebeian tribunes and aediles in the years 366–218 is very meagre. Yet, even the scanty lists of plebeian magistrates that have survived include the sons of important plebeian families.²⁵ Additional evidence further clarifies the picture. The data for the years 218–167 indicate that many plebeian *nobiles* held plebeian offices.²⁶ Evidence collected and analysed regarding the last generation of the Republic suggests that more than a third of each tribunician college was composed of the sons of curule families.²⁷ Can it be definitely established that all these men took office only after their fathers had died?

It is quite clear that holding the tribunate had become a tradition in certain plebeian noble families, one which their sons saw as a necessary step in a political career. Both the son and the grandson of M. Claudius Marcellus, hero of the Second Punic War, were plebeian tribunes,²⁸ and although we have no definite proof, the conqueror of Syracuse himself may have held the tribunate in the early stages of his career.²⁹ The father of the Gracchi was a tribune,³⁰ and many sons of other branches of the Sempronii held plebeian positions. The Fulvii too, had a long tradition of serving in the tribunate. Other families represented in the various tribunician and aedilician colleges are the Aurelii Cottae, the Caecilii Metelli,

²⁴ Develin, 'A Peculiar Restriction', (n. 20), 115–116.

²⁵ If we follow Develin's criteria, our inquiry should start around 330–320, a generation or so after the first plebeians had had a chance to become curule magistrates. Only cases in which the fathers can be plausibly identified are cited: L. Atilius, trib. pleb. 311, could be the son of the consul in 335 brother of the consul in 294 and grandfather of the consul in 267. C. Marcius (Rutilius Censorinus), trib. pleb. 311, son of C. Marcius Rutilius, who held four consulships and was the first plebeian dictator (356) and censor (351). L. Aelius Paetus, pleb. aed. 296, could be the son of the consul in 337 who was still alive in 300. C. Fulvius Curvus, pleb. aed. 296, could be the son of the consul in 322, *mag. equit.* 316 and brother of the *consul suffectus* in 305.

²⁶ See note 19 above.

²⁷ E. S. Gruen, *The Last Generation of the Roman Republic*, Berkeley 1974. On tribunes see: 514–517; 523; on aediles: 513–514; 523.

²⁸ The son was tribune in 204 (*MRR* I, 307); the grandson in 171 (*MRR* I, 417).

²⁹ The two slightly different versions of the story about the improper propositions made to Marcellus' son might clarify the issue. Valerius Maximus (6.1.7) claims that the propositions were made by Scantinius Capitolinus, a tribune of the plebs, when Marcellus was curule aedile. The accused sought refuge in his personal inviolability and afterwards turned to the *auxilium* of the *tribuni plebis*. Plutarch (*Marc.* 2.2–4) writes that Scantinius was Marcellus' colleague, *i.e.* curule aedile, and that he appealed to the tribunes. Both sources agree that Scantinius' pleas were rejected and that he was condemned. Broughton attempted to reconcile the two versions: The fact that the accused appealed to his personal inviolability indicates that he was indeed a plebeian magistrate. However, as he was turned down by all the tribunes, Broughton presumes that he was plebeian aedile, which conforms with Plutarch's evidence that the accused was Marcellus' colleague (*MRR* I, 230 n. 1). This interpretation, however, raises a few difficulties. Marcellus was undoubtedly curule aedile (*MRR* I, 229); therefore, Scantinius was not, strictly speaking, his colleague. The fact that Scantinius was opposed by all tribunes (*totum collegium tribunorum negavit*) does not necessarily mean that the entire tribunician college rejected the plebeian aedile. It is not improbable that all Scantinius' colleagues, the nine tribunes, turned down his appeal. Marcellus and Scantinius may have been fellow tribunes and the affair could have occurred when Marcellus was curule aedile elect.

³⁰ Tribune in 187 or 184, *MRR* I, 376; 378 n. 4. Their grandfather had been plebeian aedile in 246, *MRR* I, 216–217.

the Calpurnii Pisones, the Domitii Ahenobarbi, The Junii Bruti, the various branches of the Licinii, the Marcii and the Minucii.³¹ It is reasonable to assume that if our lists of plebeian magistrates had been more complete, they would have shown many more plebeian magistrates from curule families.

Develin's contention that the curule father's death released the son from his duty to the family honour is unfounded.³² In Rome a family's reputation and prestige were not established overnight; each generation felt an obligation to add to the glory of the family name by distinguishing itself in public life, as attested by the *imagines* and the *laudationes funebres*. Is it plausible to assume the Claudii Marcelli, the Gracchi and many other prominent plebeians would not have stood for the tribunate if their fathers had been alive? It seems much more likely that these tribunes reached the customary age for such an office after their fathers had died.³³

To have given up plebeian offices immediately after achieving entry to the consulate solely out of a wish to resemble the patricians, as Develin suggests, the plebeian leaders would have to have been politically blind. It is well known that there were more plebeian than patrician noble families; the former group grew gradually while the latter continued to dwindle over the years. At the same time, the number of offices open to patricians was not reduced. By giving up the tribunate and the plebeian aedileship (twelve posts each year), the plebeian curule families would have been placing themselves in an inferior position *vis-à-vis* the patricians. Such a move would have blocked the advancement of many of their young people to the top. The law as presented by both Aymard and Develin is virtually anti-plebeian and it is most improbable that the plebeian nobility would have accepted a restriction so critical that obeying it would have constituted a kind of self-destruction.

II.

The law was aimed not at the plebeian nobility and certainly not at the patricians. For whom, then, was this strange law intended? Both Aymard and Develin overlooked the fact that the person who had violated the law was not an ordinary plebeian, but a patrician who became a plebeian. I would suggest, therefore, that this implies that the law affected only patricians who had undergone the process of *transitio ad plebem*. If so, Mommsen was not completely wrong in his basic assumption. It does not follow, however, that Livy or his sources invented a law that had never existed. The very fact that a *rogatio de legibus solvendis* was needed,³⁴ indicates that Servilius did indeed break a certain law. When and why was such a law required?

We know very little about the process whereby patricians became plebeians, although it was clearly a recognized procedure in Rome.³⁵ This legal process may explain, at least partially, the phenomenon of

³¹ Details and references can be easily traced *via* Broughton's useful index of careers, *MRR* II, 524–635.

³² Develin, 'A Peculiar Restriction', [n. 20], 114: "When the father died, it was open to the sons to establish their own credentials."

³³ *Ibid.* 115. Develin attempts to prove his point by checking the cases in which it is quite clear that the curule fathers of plebeian magistrates were already dead when their sons were in office. But this approach cannot prove a thing since we know very little about the age at which a Roman noble got married or begot children. The average age he sets (R. Develin, *Patterns in Office Holding 366–49 B.C.*, Bruxelles 1979, 58), twenty, is rather low. A few known cases point at a later age. Fabius Maximus Cunctator, consul for the first time in 233, was an old man when his son was consul in 213 (Plut. *Fab.* 24; Cic. *Senec.* 10). Claudius Marcellus, who was consul for the first time in 222, was over sixty at the time of his death in 208 (Plut. *Marc.* 28.3), had a son who was around thirty in 204 (*MRR* I, 307). C. Flaminius consul in 187 (*MRR* I, 367–368) was probably born between his father's tribunate and praetorship (232–227). The father of the Gracchi married after his tribunate, Livy 38.57; see also n. 30 above. Cf. also R. Saller, 'Men's Age at Marriage and its Consequences in the Roman Family', *CPh* 82, 1987, 21–34.

³⁴ Livy 30.19.9.

³⁵ L. Holzapfel, *De Transitione ad Plebem*, Leipzig 1877. Th. Mommsen, *Römische Forschungen*, Berlin 1864–79, I, 123–127; 399–411; idem, *StR* III, 137. B. Kübler, *Transitio ad plebem*, in *RE* LX, 1937, colls. 2154–2157. R. E. A. Palmer, *The Archaic Community of the Romans*, Cambridge 1970, 249; 293.

identical *nomina gentilicia* in patrician and plebeian families, as well as the fact that a number of patrician *gentes* that had disappeared from the *fasti*, reappeared later as plebeian families.³⁶ Livy, unfortunately, scarcely refers to the procedure at all, and most of the details we have are either shrouded in the mists of Roman antiquity, or drawn from the Clodius affair and a few other cases that occurred in the stormy days of the late Republic.³⁷ In fact, Servilius Geminus may be the first absolutely certain case of a patrician who went over to the plebs.³⁸

A law is usually enacted to deal with some problem that cannot be overcome in any other way.³⁹ In other words, the fact that such a law was needed indicates not only that *transitio ad plebem* was not a marginal phenomenon, but also that it aroused opposition in certain quarters, and its opponents were obliged to turn to the legislature in order to fight it. We must ask, then, why young patricians wished to become plebeians, in what period the process was more common and who was interested in preventing it.

Something may be learnt from the fact that the law explicitly forbade the sons of curule fathers to serve not only as tribunes, but also as plebeian aediles. This suggests that the law was enacted during the period when the two offices were closely linked, the period of the struggle between the orders. In the years that followed, at least during the late Republic, young patricians became plebeians to stand not for the plebeian aedilate but rather, on the evidence of the ancient sources, for the tribunate.⁴⁰ Therefore, it is quite probable that Livy's description of the father's status (*cum sella curuli sedisset*) relates to the period when a curule position was synonymous with a non-plebeian magistracy, one which only a patrician was allowed to hold, the period before 366.⁴¹

Why did young patricians, contrary to all expectations, wish to become plebeians during the early Republic?⁴² During the middle and especially during the late Republic, the number of patricians was small and steadily declining, while the number of offices reserved for them was relatively large.⁴³ But this was not the case in the early days of the Republic. At that time the number of patricians was relatively large and the political positions few, and those were not reserved for very young people. All young patricians could aspire after was, during that period, the two quaestorships for which initially appointment had been made by the consuls. In the second half of the fifth century the quaestorship became an elected office (447), and the number of quaestors was raised to four (421). Yet, at the same time the office was obviously opened to plebeians as by 409 three of the four elected quaestors were plebeians.⁴⁴ A young patrician might well have felt frustrated. It did not get easier, one may presume, when he got older. There was undoubtedly fierce competition for high offices (consulate and consular tribunate, an office open in practice to the plebeians as well after 400), and the frequent iterations at that

³⁶ Cic. *Brut.* 62; Zon. 7.15. Plin. *NH*, 38.15. Suet. *Aug.* 2.1. Cf. I. Shatzman, 'Patricians and Plebeians: The Case of the Veturii', *CQ* 23, 1973, 65–77.

³⁷ Holzapfel, *De Transitione*, (n. 35), 1–4.

³⁸ Palmer, *Archaic Community*, (n. 35), 293.

³⁹ Quint. 7.5.5: *Porro lex omnis aut tribuit aut adimit aut punit aut iubet aut vetat aut permittit.*

⁴⁰ Cic. *Dom.* 34.

⁴¹ Liv. 4.7.7–8: *Patricii, cum sine curuli magistratu res publica esset, coire et interregem creavere*; 6.35.10: *...comitia praeter aedilium tribunorumque plebi nulla sunt habita. Licinius Sextusque tribuni plebis refecti nullos curules magistratus creari passi sunt*; 6.37.8: *Nec iam posse dici id quod antea iactare soliti sint, non esse in plebeiis idoneos viros ad curulis magistratus*. Cf. also 9.34.5.

⁴² Zonaras (7.19) refers to the procedure when summarizing the events leading to the election of the first consular tribunes in 445.

⁴³ For a short and useful summary of modern debate on the number of patrician *gentes* see: J. C. Richard, 'Patricians and Plebeians: The Origins of Social Dichotomy', in K. A. Raafaub ed., *Social Struggles in Archaic Rome*, Berkeley, Los Angeles, London 1986, 106–108.

⁴⁴ Tac. *Ann.* 11.22; Livy 4.43.12; 4.54.2–3. Cf. Mommsen, *StR* II, 523; K. Latte, 'The Origins of the Roman Quaestorship', *TAPhA* 67, 1936, 24–33.

period certainly must have done nothing to alleviate the problem. A young patrician who failed to win election to one of rather few available positions had to wait until he reached a relatively advanced age when he had some chance of being appointed to the senate. It is small wonder that the young patricians became militants in the struggle against the plebeians.⁴⁵ It was a way of expressing their frustration, releasing energy and perhaps even trying to impress the *patres*, thereby paving a way to the top.

The plebeians, in contrast, had access to twelve magistracies each year. In their frequent contacts and clashes with the plebeians, some of the young patricians must have been aware of the formidable authority wielded by the tribunes and their assistants, the aediles of the plebs. Possibly, that power and the relatively good chance of winning election to the office that conferred it, appealed to the young patricians' personal ambition and motivated them to carry out a *transitio ad plebem*. Some of them, too, may have been persuaded to become plebeians by their recognition of the justness of the plebeian cause; still others may have done so because of family connections, or to exert a calming influence.⁴⁶

The purpose of the law was apparently to prevent certain young patricians from becoming plebeians, for if their access to plebeian magistracies was blocked in advance, they no longer had any reason in becoming plebeians. Who would have an interest in achieving such an end?

On the face of it, patrician fathers honoured with curule positions may have taken a dim view of their sons' defection to the adversary's camp, which was considered inferior. But this argument is deceptively simplistic. *Transitio ad plebem* was attained through adoption,⁴⁷ and since the curule father, as the law indisputably states, was alive, we must deduce that he willingly consented to sell his son thrice to an equally cooperative plebeian claimant.⁴⁸ Moreover, a patrician who went over to the plebs during the early Republic, presumably with his father's consent, knowingly excluded himself and his descendants from access to patrician prerogatives. Were the plebeian offices a worthy enough compensation when weighed against the potential loss? This, of course, is impossible to establish. However, it is not improbable that behind the practice stood the notion, especially after 400, when plebeians began to be elected as consular tribunes, that the admittance of plebeians to the patrician bastions of power was merely a question of time. Some patricians, it seems, took a carefully calculated risk, and they may have been one of the driving forces behind the activities that eventually led to the legislation of 367.

It is not improbable, therefore, that the law was initiated by the more ambitious plebeian leaders (perhaps with the aid of conservative patricians who did not view this practice favourably), who were apprehensive lest the young patricians would usurp their positions as leaders of the plebeian masses, that is, the soldiers, who constituted the primary weapon in the struggle against patrician supremacy. After all, the young patricians were the sons of those who had held a military command, which was the first and foremost role of the curule magistrates at that time. It was feared that their familiar names might win for them the sympathy of the masses, and alienate the plebs from their presumably natural representatives.

Apparently, not all patricians and plebeians were constantly at daggers drawn during the early Republic, and this seemingly bizarre law may shed yet another light on an otherwise obscure period.

⁴⁵ E.g. Livy 2.54.4; 3.11.4; 3.11.12; 3.14.4–5; 3.15; 3.37.6–8; 3.65.10; 4.9.4–8; 4.48.10; 5.2.13.

⁴⁶ Cf. Zon. 7.15,19; Livy 3.54.4; 3.64–65; 4.16.2–4; 5.10.11; 5.12.9–12.

⁴⁷ P. F. Girard, *Manuel élémentaire de droit romain*, Paris 1918, 6th ed., 174 n. 3. Holzapfel's, *De Transitione*, (n. 35), 19, contention based on Dio Cassius 39. 11 that *transitio ad plebem* required a *lex centuriata* is groundless.

⁴⁸ Girard, *Manuel* (n. 47), 175–184.

III.

Was the law ever abolished? probably not. The Romans were not in the habit of annulling antiquated laws;⁴⁹ these usually fell into disuse, and some were occasionally recalled from oblivion when deemed, depending on the circumstances, either advantageous or detrimental.⁵⁰ Is it possible, then, that the doubts raised about Servilius' eligibility for plebeian offices were conveniently engineered in an attempt to nip his career in the bud?

C. Servilius Geminus eventually led a successful and an honourable career.⁵¹ Yet, the course of his early career was not as smooth. For some unknown reason C. Servilius Geminus held both plebeian and curule aedileships, a phenomenon rare in itself and certainly not expected from a man of Servilius' rank.⁵² Servilius' very uncommon *cursus* implies that he was involved in matters that seriously confounded his career.

In 215 nineteen *publicani*, members of three *societates* volunteered to give the bankrupt state the necessary credit to provide the armies in Spain. In return, the publicans were exempted from military service, and assured that the cargoes which they shipped would be at the risk of the state.⁵³ Soon enough it became clear that two publicans, M. Postumius Pyrgensis and T. Pomponius Veientanus, were defrauding the state. The praetor brought the affair before the senate, but no decision was reached *quia patres ordinem publicanorum in tali tempore offensum nolebant*.⁵⁴ The people, however, were not as forgiving,⁵⁵ and their apparent discontent eventually stirred two tribunes, L. and Sp. Carvilius, to impose a fine on Postumius.⁵⁶ The fraudulent *publicanus*, in view of the evidence against him, had but one hope, the intercession of the tribune C. Servilius Casca, who was his *propinquus cognatusque*.⁵⁷ The tribune, however, *cui simul metus pudorque animum versabat*,⁵⁸ refrained from action. Postumius and his supporters resorted to violence and were consequently charged *de re capitali*; some were convicted and imprisoned others fled into exile.⁵⁹

Münzer conjectured that the tribune C. Servilius Casca was none other than C. Servilius Geminus, who had been a tribune before 209, and also identified him with the legate C. Servilius who was sent by the praetor *ex senatus consulto* to purchase grain in Etruria in 212. This legate subsequently relieved the garrison at Tarentum. The *cognomen* Casca, which was not in use at that period, was added to cover up Servilius' disgraceful conduct in Postumius' trial.⁶⁰

⁴⁹ Cf. Livy 34.3.4–5; 34.6.1–10.

⁵⁰ Livy 27.8.4–10.

⁵¹ Consul in 203, proconsul in 202, dictator to hold elections in 202, one of the ten commissioners elected to assign land to Scipio Africanus' veterans in 201–200 and in 194 he was elected *duumvir* to dedicate a temple to Jupiter on the *insula Tiberina*. He was also a member of two religious *collegia* (see ns. 68 and 69 below) and *pontifex maximus* from 183 until his death in 180 (*MRR* I, 310–311; 316; 317; 322; 346; 381; 390).

⁵² Of the three additional cases which Mommsen (*StR* I, 3rd ed., 551 n. 2) was able to trace, only C. Terentius Varro's double aedileship (Livy 22.26.3) is relevant; the other two were a by-product of the civil wars. It is clear from Livy's narrative (27.25.17–19) that Varro held both aedileships to cloak his humble origins.

⁵³ Livy 23.48.9–49.4.

⁵⁴ Livy 25.3.12.

⁵⁵ Livy 25.3.13: *Populus severior vindex fraudis erat*. Pomponius Veientinus, perhaps in an attempt to evade possible indictment after the fraud had been discovered, joined the army. As *praefectus socii* he ravaged Lucanian territory and was subsequently captured by Hanno: Livy 25.1.2–4; 25.3.9.

⁵⁶ Livy 25.3.13–14.

⁵⁷ Livy 25.3.15.

⁵⁸ Livy 25.3.17.

⁵⁹ Livy 25.3.19–4.11.

⁶⁰ Münzer, *Römische Adelsparteien* (n. 11), 140–143; idem, *Servilius* no. 51 in *RE* LII, 1923, cols. 1787–1788 and n. 12 above. Cf. *MRR* I, 268; 270.

Münzer's reconstruction of C. Servilius Geminus' early career met with criticism.⁶¹ Nonetheless, he is probably correct in his identification of the tribune of 212. In fact, the whole affair could contribute to the unveiling of the background for the *transitio ad plebem* of the Servilii brothers.

C. Servilius Geminus senior's presumed death put an untimely end to his career and perhaps even weakened the financial position of his family. Thereupon, his sons, or more probably the extended family *consilium*, concluded that their chances of advancement within the patrician branch of the Servilii would be impaired. As both brothers aspired after a political career, but probably lacked the necessary funds, there was but one feasible solution; adoption by a wealthy family.

Who was the adoptive family? Postumius Pyrgensis, as Livy stated, was *propinquus cognatusque* of Casca, *i.e.* the fraudulent publican was Servilius' blood-relative (*cognatus*), most probably a brother, of his natural mother.⁶² The term *propinquus* has no legal definition, but it is generally used to describe a relative or a kinsman.⁶³ It is possible, then, that C. Servilius Geminus was adopted by a *publicanus*, whose name was Casca, who was related in some way to his mother's family. His brother Marcus may have been adopted by the same or another plebeian family.

Servilius probably did use his adoptive name at the beginning of his career to accentuate his newly acquired plebeian status. After all, as far as we know, no Servilius had ever held a plebeian magistracy before. His *transitio ad plebem* could also explain his undecided conduct during Postumius' trial. A patrician who had recently turned plebeian, and hoped to pursue a political career as such, could not very well show flagrant disregard for the ostensible will of the people. Why did Servilius eventually drop his adoptive name? It was not unusual for patricians who transferred to the plebs to retain their old names especially when the adopter's family was not as famous and respected among the voters as that of the adopted.⁶⁴ However, it is not implausible that members of the Casca family took an active part in the violence that erupted during the trial of Postumius, and were even among those convicted. Servilius who was apprehensive lest the scandal might harm his career preferred to resume his original name.

Servilius' failure to produce the expected veto decided Postumius' fate. Postumius, however, was an influential man,⁶⁵ and his supporters did not forget Servilius' betrayal. When it became known that Servilius senior was alive, sometime between 212 and 209, they drew attention to the ancient law which forbade patricians who had gone over to the plebs to hold plebeian offices while their curule fathers were still alive. They presumably hoped to obstruct his career, and may be even to terminate it completely. Evidently, they did not question the legality of Servilius' *transitio ad plebem*, although it was most probably procured through *adrogatio*, since, at that time, he was believed to have been *sui iuris*.⁶⁶ Possibly because the fact that Servilius senior was deprived of his civic rights while in captivity rendered this argument ineffective. But it may also have been presumed that the father, if and when he returned to Rome, would not wish to harm his son's career, and would undoubtedly renounce his natural rights retroactively.⁶⁷

We do not know the identity of Servilius' adversaries, but it is quite obvious that the inner circles of the Roman nobility backed him and took every precaution to ascertain his political survival. Although

⁶¹ Aymard, 'Liviana', (n. 13), 200 n. 2; *MRR* I, 271–272 n. 5.

⁶² On the legal definition of *cognatus*, Gaius I,156. The adopted was not considered a kin of his adoptive father's wife or mother; Gaius II,137: *adoptio non ius sanguinis sed ius adgnationis adferet*. Cf. H. J. Roby, *Roman Private Law*, Cambridge 1902 (rep. 1975), I, 58–61.

⁶³ *E.g.* Cic. *Off.* 1.53; 59; *Rosc. Am.* 96; *Mil.* 76; *Fin.* 5.67; Sall. *Jug.* 14.15; Hor. *Sat.* 2.3.218.

⁶⁴ Holzapfel, *De Transitione* (n. 35), 35–36.

⁶⁵ Livy 25.3.12.

⁶⁶ Gell. 5.19; Girard, *Manuel* (n. 47), 178–185.

⁶⁷ *Ibid.* 176.

he was already *x vir sacris faciundis*,⁶⁸ he was also coopted as *pontifex* in 210,⁶⁹ an extremely rare phenomenon.⁷⁰ In 209, when doubts were first raised about Servilius' eligibility for plebeian offices, it was decided to run him for the curule aedilate as well, and immediately establish a firmer base for his future career. Servilius was duly elected curule aedile for 208.⁷¹ While still curule aedile, probably with a view to the praetorship, he was appointed *magister equitum* by the dictator *comitiorum ludorumque faciendorum causa*, the elderly T. Manlius Torquatus,⁷² who was the most prestigious senator at that period.⁷³ Shortly afterwards, in 206, Servilius was indeed elected praetor.⁷⁴ Finally, in 203, when as consul he brought his father back to Rome, a bill was passed to absolve Servilius from the law he had disregarded unknowingly, thus expunging once and for all any possible doubts as to the legality of his early career.⁷⁵

C. Servilius Geminus achieved the highest honours. L. and Sp. Carvilius, the tribunes who had initially brought charges against Postumius,⁷⁶ did not enjoy similar support. After their tribunate, they are never heard of again.

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⁶⁸ Münzer, *Römische Adelsparteien* (n. 11), 139 conjectured that he was coopted before 211. Cf. *MRR* I, 390.

⁶⁹ *MRR* I, 281; 390. Cf. D. E. Hahn, 'Roman Nobility and the Three Major Priesthoods, 218–167 B.C.', *TAPhA* 94, 1963, 82: "... since new priests were usually younger man about to embark on a career, we may infer that a priesthood was considered primarily a means of assistance for political advancement."

⁷⁰ *Ibid.* 75: "... it was all but unknown for a man to hold more than one priesthood." Hahn (75, n. 6) was able to trace only six 'republican' double priesthoods (including Servilius).

⁷¹ *MRR* I, 291.

⁷² *Ibid.*

⁷³ Cf. Livy 22.49.5; 23.22.7.

⁷⁴ *MRR* I, 298.

⁷⁵ Livy 30.19.9.

⁷⁶ Livy 25.3.13.