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A COVER-UP IN EARLY ROMAN HISTORY: FABIA MINOR AND THE
SEXTIAN-LICINIAN REFORMS.

Abstract: The reform of the Roman magistracies made by the Sextian-Licinian rogations of 367 B.C. is celebrated in traditional accounts of Roman history as opening the consulship to plebeians. This paper argues that the motivation offered for this innovation by the tale of Fabia Minor, namely her social embarrassment and her appeal to her father's help, leading to the reform of the constitution, is nothing more than a veil to cover the ignorance of the annalists as to the true nature of what happened.

There are three major turning points in the constitutional history of the Early Republic. The first of these is the expulsion of the kings and the foundation of the republican state. The second is the end of Rome's experiment with collegiate leadership known as the Decemvirate. In conventional chronology the foundation of the Republic is dated to 509 BC, the end of the Decemvirate to 449.¹ In 367, again following conventional chronology, a third event took place, the adoption of the Sextian-Licinian rogations, a moment which the Romans, as early as the early second century, viewed as opening the consulship to plebeian candidates and, in fact, as reserving one of the two magistracies for a plebeian.² This paper is devoted principally to the story of Fabia Minor, presented by Livy as the spark which ignited this reform

¹ Liv. 1.60; 3.54. There is no need to stress the tenuousness of almost any date in the history of the first two centuries of the Republic. For convenience I shall refer to dates in the system of Atticus and Varro, the convention employed in editions of Livy. For the problem of early Roman chronology see Cornell (1995) Appendix and Forsythe (2005) Appendix.

² Liv. 6.42.9–11. The date and the tradition are as early as the work of Fabius Pictor, *ap. Gel. 5.4* (=Fabii Pictoris Annales Latini no. 6 (Peter)), *Quapropter tum primum ex plebe alter consul factus est, duo et vicesimo anno postquam Romam Galli ceperunt* ("Therefore, for the first time one of the consuls was chosen from the plebeians, this in the twenty-second year after the Gauls captured Rome.") The date given to the Gallic sack varied within the space of a few years. For Polybius (1.6.2) the sack took place not in 390 but in 386 (synchronous with the sack of Rhegium by Dionysius I, the Peace of Antalcidas and reference to the Battle of Aegispotami). The initial proposal of the rogations was made in 375 (Liv. 6.35.1).

movement. At its conclusion some attention will be paid to the question of the consulship as it emerged from the Sextian-Licinian reforms.

Each of these major developments in the history of the Republic in its first century and a half is also remarkable for the way Livy, our primary source for the period, describes its motivation. In all three cases the key figure driving change in the Roman government is a woman. Lucretia's misfortune at the hands of Sextus Tarquinius and her subsequent suicide trigger the revolt against regal government. The callous treatment of Verginia by the decemvir Appius Claudius, who attempts to rob her of her freeborn status, leads to the death of the heroine and the fall of the regime.³

In contrast to these tales of tragedy and pathos, Livy's account of the background of the Sextian-Licinian rogations introduces a genteel domestic story, although, as noted by Pais, it is another case of the woman-as-causal-agent motif.⁴ Marcus Fabius Ambustus, a leading patrician, had two daughters. The elder Fabia married a fellow patrician, Servius Sulpicius. The husband of her sister, Fabia Minor, however, was a plebeian, Gaius Licinius Stolo. Visiting her sister's house, Fabia Minor was thrown into a state of consternation by the arrival of her brother-in-law preceded by a lictor who knocked peremptorily on the door with his staff. Her sister broke out in laughter, thus heaping insult on agitation and making the younger Fabia feel the inferiority of her social standing. The distressed Fabia then took her complaints to her father, who put things right by setting in motion the reform of the Roman constitution.

In the Livian account, the reform of the consulship – or rather its revival, since the tradition of Roman history he followed held that the office had lapsed for a quarter century – was only one of the proposals made by Licinius and his partner in the tribunate, Lucius Sextius. The others were two familiar fixtures of Republican history, a debt relief measure and an act for the distribution of land. The almost decade long battle leading to their final enactment is a strange story (Liv. 6.35–42). Each year Licinius and his partner Sextius were elected tribunes. Each year for five years their attempts to move the legislation forward in the plebeian assembly were thwarted by their fellow tribunes. Licinius and Sextius countered by blocking the election of the high magistrates, thus creating the five

³ Lucretia: Liv. 1.57.10–60.4; Verginia: Liv. 2.44.1–54.15. The tales of Lucretia and Verginia are also found, of course, in the surviving portions of D.H. 4.64–7; 9.28–37.

⁴ Liv. 6.34.5–11. See also Pais (1918) 95: "Il vecchio motivo della donna che determina il cangiamento della costituzione."

year anarchy of Livy's history.⁵ Two dictators appear on the scene, but nothing is done. At one point Livy even has the plebeians voting against the consular law (6.39.2). At another he suggests that the land distribution and debt measures had failed, though they had been already enacted separately (6.42). Finally, in 368, success is achieved, but the Senate withholds approval. A secession of the plebs is threatened, but in the next year Marcus Furius Camillus, now in his fifth dictatorship, proposes a compromise giving the plebs their consul but also creating the praetorship for the patricians. In this rush to reform, the curule aedileship is also established.⁶

Commenting on this historical farrago Von Fritz wrote, in his fundamental study of the question, "obviously the contradictions and incongruities in this version are the result of an attempt to supplement and interpret an earlier but incomplete tradition on the basis of and in analogy to institutions and events belonging to a much later period."⁷ Von Fritz was referring to the last century of the Republic. Granting that this is true of the story of the proposal and enactment of the Sextian-Licinian rogations, what can be said of what set them in motion, the distress of Fabia Minor?

The unlikelihood of Fabia Minor's complaint being the true motive behind the Sextian-Licinian rogations has long been recognized. Niebuhr characterized it as a partisan attempt to diminish the stature of Gaius Licinius by making his constitutional reforms the product of "the most wretched female vanity."⁸ Or, on the other hand, the institution of the praetorship and the curule aedileship may have become attached to Licinius' legislative program in an effort to magnify the luster of its author and his family, and the tale of Fabia Minor and her father could have served to promote the picture of the Fabii as partisans of the plebs.⁹

What is of interest for the present argument is that the tale of Fabia Minor, like the tales of Lucretia and Verginia, serves in the Livian narrative to hide

⁵ D.S. 15.75.1 has only one year when the supreme magistracy was vacant.

⁶ Liv. 6.42.10–14; 7.1; during the struggle the *duumviri sacris faciendis* were expanded to a decemvirate (Liv. 6.37.12).

⁷ Von Fritz (1950) 15.

⁸ Niebuhr (1851) 2. The figure of Fabia Minor has been given detailed treatment in recent times; see Kraus (1991) and MacClain (1998). On women in the history of the Early Republic, see Kowalewski (2002). For the story of Fabia Minor in the context of Livian narrative, see Dutoit (1946).

⁹ Licinian propaganda (promoted by the annalist Licinius Macer): Pais (1918) 119–120; Fabian family glorification (promoted by Fabius Pictor): Alföldi (1956) 147–149.

uncertainty over the fundamental motives for constitutional reform. The question is not whether the tragedies of Lucretia and Verginia are factually true or how Fabia Minor's discomfort became part of the traditions of Roman history but what other and more significant causes are absent from our accounts, masked, as it were, by these touching or amusing stories. Apparently the annalists, on whom Livy and other historians depended, did not offer alternative explanations for these events.¹⁰ And another episode from the first half of the fourth century suggests that when Livy did have a choice he did not automatically repeat the romantic or tragic story. In the years following the Gallic sack the Romans faced hostilities against the Latins and the Volscians. Livy's version of one campaign (389 in the conventional dating) gives a purely military account of battle, and, of course, of Roman victory (6.2.9-14). Plutarch, however, in the *Life of Camillus*, repeats the Livian version of the storming of the Latin (or as Livy has it the Volscian) camp, but also adds a second story. According to this version before hostilities broke out the Latins had sought wives from the Romans but the Romans, barely recovered from the Gallic disaster, were reluctant to comply. After the war begins and the Latins were encamped not far from Rome, a slave girl named Tutula persuaded the magistrates to send her and other slave girls dressed as brides to the Latin camp.¹¹ The false brides disarm their hosts in the dead of night while Tutula and an accomplice climb a tree and telegraph the success of the operation by torch to the Roman forces. This story was certainly to be found in the annalistic sources used by both Plutarch and Livy. But Livy was satisfied with the less romantic version of events. In the case of the Sextian-Licinian rogations there was evidently only the romantic tale to elucidate the background of events. Von Fritz, as noted already, showed the improbabilities of the legislative campaign of Sextius and Licinius as recounted in Livy.¹² To his fundamental study should now be added the recognition that the story of Fabia

¹⁰ In the case of Verginia, although expanding on the romantic tale of the unfortunate virgin, Livy acknowledges the assassination of Lucius Siccius Dentatus as one of the *duo nefanda facinora* (the two abominable crimes) of the Decemvirs, which led to general resentment against them (*pessima decemvirorum in vulgus fama*, 3.43, deepest disrepute of the Decemvirs among the people).

¹¹ Plut. *Cam.* 33.4. Other sources: Macr. 1.2.38; Polyæn. 8.30.

¹² Von Fritz (1950).

Minor in Livy is no more than a cover-up for ignorance as to the motives that could have set a program of reform in motion.¹³

Did the package of reforms include a provision opening up the consulship to plebeians? "Whatever really happened in 367 is lost to us," is the succinct opinion of Wiseman.¹⁴ And one might be tempted to leave the question at that. However, Wiseman and more recently Richardson have espoused the idea that the dual consulship was not instituted at the beginning of the Republic but was, in fact, created in 367, a theory that appeals to those scholars who wish to see a praetor or dictator at the head of government in the Early Republic.¹⁵ Although distinct from question of the tale of Fabia Minor, it may be useful to add here some considerations giving support to this hypothesis

First of all, it is unlikely that any special provisions would have been needed to open the consulship to plebeians. Sixteen plebeians, we are told, were consuls during the first century of the Republic.¹⁶ These consuls pose an acute problem for the traditional account of the Roman constitution.¹⁷ Furthermore, although

¹³ One of the reviewers for *CJ* has kindly called my attention to the structural similarity of the story of Fabia Minor to that of the foundation of the sacellum of Pudicitia Plebeia in 296 B.C. by the patrician Verginia who had been excluded from the shrine of Pudicitia Patricia because of her marriage to a plebeian (Livy 10.23.6–10); Fabia Minor's tale might well have been invented on the model of Verginia and her sacellum.

¹⁴ Wiseman (1995) 108. Von Fritz's solution to this problem (1950) was to suggest that the Sextian-Licinian proposal opened the consulship to plebeians for the following year only. See the review of the literature by Oakley (1997) 653–4, and his general discussion of the Sextian-Licinian reforms (645–724), with addenda, Oakley (2005) 502–507; Forsythe (2005) 160–3.

¹⁵ Wiseman (1995) 106; Richardson (2008). On the theory of a praetor or dictator at the head of government in the Early Republic see the full discussion in my recent article (Holloway 2009). But the emphasis of such discussions is on the beginning of the Republic; the question of 367 appears only as an afterthought. As a result a scholar of the stature of De Martino was able to brush past the question of the reform of 367 and the consulship by simply stating, "La collegialità si comprende come il risultato del compromesso patrizio-plebeo del 367," (1972a) 294; cf. De Martino (1972b).

¹⁶ Listed in Cornell (1995) 253.

¹⁷ Beloch (1926) 12–22, 43–52 believed that these plebeian names were interpolations. De Sanctis (1956) 228–30 put forth a theory whereby the patricians closed ranks during the fifth century and so gained exclusive possession of the consulship, which heretofore had been open to both orders. Cornell (1983) proposed a kind of junior grade patrician status for these individuals. Livy (4.1–6, 9) recounts at some length the abortive effort of C. Canuleius to permit election of plebeians to the consulship. An alternative tradition to that found in Livy puts the admission of the plebs to the consulship immediately after the fall of the Decemvirs (D.S. 12.25). The parenthesis found in Dio *ap. Zonar.* 7.19 to the effect that consuls (*hypatoi*) were first called by that title following the ousting

their efforts had been seemingly crowned with success in 367, the plebeians were slow to gain a hold on the consulship. Seven times between 367 and 343, according to our sources, a college of two patrician consuls was elected.¹⁸

Additional support for attributing the institution of the dual consulship to the reforms of 367 comes from consideration of the consular *Fasti*. The names of 134 consuls are recorded for the years 509–366, a period of 143 years.¹⁹ Elsewhere I have argued that from its beginning the Republic was led by a single magistrate called the consul.²⁰ If there were no omissions of names and no consul held office more than once and allowing two years for the government of the decemvirs, reckoning on the basis of the recorded consular names would place the first consul in 500, a date quite within the range of possible dates for the founding of the Republic. There are also twelve eligible dictator names, although a dictator served only for six months.²¹ But their inclusion in the calculation would add 6 years, bringing the date for the first consul or dictator to 506; that is, to almost precisely the traditional date for the founding of the Republic, 509. Such calculations, however, are useful only in the most general way, not only because of the problems associated with the founding date of the Republic but also because of the interpolated consulships deplored by Cicero and the almost certain possibility of the election of some consuls to two or more terms.²² One must not be misled by the appearance in Livy and Diodorus of the so-called *tribuni militum consulari potestate* at the head of the state after 444. As I have argued elsewhere in detail, these men were the leaders of private war bands falsely assumed by the annalists to have been elected magistrates.²³

The fundamental problem of the consulship in the Sextian-Licinian reforms, as has been recognized, lies in Livy's conception of the office itself. For a man of his generation and for some generations before, it was inconceivable that the

of the Decemvirs, formerly having been known as praetors (*strategoi*) has all the earmarks of a gloss inserted by Dio's learned Byzantine editor, or Dio was himself inconsistent since at an early point in his history, he uses both the words *hypatos* and *archon* as terms for "consul" (Zonar. 7.13).

¹⁸ Listed in Oakley (1997) 652.

¹⁹ Broughton (1951) and, for quick reference, Mackay (1998).

²⁰ Holloway (2009).

²¹ Quick reference http://en.wikipedia.org/wiki/List_of_Roman_dictators. A thirteenth name, C. (Aemilius) Mamercus, is known only from Lyd., *Mag.* I 38. Broughton (1951) 35 suggests that this individual may have been an interrex.

²² Cic. *Brut.* 16.62. For the founding date of the Republic see most recently Forsythe (2005).

²³ Holloway (2008) with full reference to earlier discussions.

consulship was not a duality from its inception at the beginning of the Republic. The first among the annalists on whom he relied, writing their histories after the Second Punic War, already interpreted the reform dated to 367 as an act for admission of plebeians to the consulship and bequeathed this assumption to the Augustan historians. The modern historian is thus left with the daunting task of probing behind their errors.²⁴

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²⁴ Fabius Pictor in n. 2 above. Richardson (2008) has recently seen the creation of the myth of a dual consulship at the beginning of the Republic as propaganda launched by early annalists like Pictor writing when Rome was fighting the Hellenistic monarchies just as the first founding patriots of the Republic fought the Tarquins. But in dealing with the earliest magistrates of Rome it is always well to keep in mind Livy's comment, on the date of the Battle of Lake Regillus (2.21): *Tanti errores implicant temporum aliter apud alios ordinatis magistratibus ut nec qui consules secundum quos, nec quid quoque anno actum sit in tanta vetustate non rerum modo sed etiam auctorum digerere possis*, "Such errors lead to different dates in different authors for the list of magistrates so that you can neither determine which consuls followed which nor in what year events took place in such a distant past nor even who took part in them."

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