offers his own measured judgement: that 'given what passes for democracy in the contemporary nation-state, a Republic in which elected office-holders had to function in public, had to persuade those gathered in the Forum (who themselves represented, however imperfectly, the vastly greater total of citizens), and could not pass legislation without the votes of the people, would still deserve a place among the objects of political thought' (p. 182).

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REPUBLICAN LEGISLATION

K. SANDBERG: *Magistrates and Assemblies. A Study of Legislative Practice in Republican Rome*. (Acta Instituti Romani Finlandiae 24.) Pp. 4 + vi + 214. Rome: Finnish Institute at Rome, 2001. ISBN: 952-5323-01-3.

This is not an easy hook to review: S. would, it seems, have liked to be able to advance a strong form of his hypothesis, namely that consuls could not engage in normal legislative activity until Sulla, and that different language was used to describe tribunician legislation and—when it became possible—consular legislation. Even S., however, cannot eliminate at least some pre-Sullan consular legislation.

To begin with terminology, S. holds that tribunes are described as legislating with the terms *promulgare* and *rogare*, consuls with the term *ferre*. In fact, it could perfectly well be said of a tribune that he *tulit* a statute (Cicero, *pro Balbo* 21, actually cited by S. at p. 70 n. 38; compare Val. Max. 5.8.2, cited at p. 117 n. 9). The word *ferre* is also used of tribunes in three cases from Livy cited by S. on p. 98 (compare p. 138 n. 28; p. 140 n. 42), where the senate instructs the consuls, a consul, or a praetor to arrange with the tribunes to legislate. At Livy 27.5.16 *rogare* is used of consuls and praetors.

Now there is no doubt that—in my view, for reasons of the availability of their time and the simplicity of the procedure—tribunes were often used by the senate to legislate: consuls were expected to fight wars, praetors, when they had come into existence, were expected to concern themselves with jurisdiction (see, against C. Brennan, G. Rowe, *BMCR* [2001], 8, 21). One needs to remember that Rome became from an early date a state with a highly differentiated office-holding (and priesthood-holding) structure. From the late second century B.C., consuls tended to spend more of their year of office in Rome, as political consensus was eroded, and so legislated more. Praetors, on the other hand, also from the late second century B.C., drew lots first for an urban *prouincia*, then for an overseas one; but their urban *prouincia* remained jurisdiction. Macrobius, *Saturnalia* 3.17.4 (p. 102 n. 22: at 17.3, print *lata*, with **M**, the *corrector* of **B**, **R**, and **F**, not *data*) proves only that consular legislation was rare, which we knew anyway. Given the rarity of such legislation, it is not surprising that the complete apparatus of *promulgare* and *rogare* happens not to be attested for it.

But S.'s approach to the sources in order to eliminate as much pre-Sullan consular legislation as possible is simply breath-taking: Livy 23.30.14 says *tutto tondo* that, at the very end of the year, Ti. Sempronius was instructed by the senate that 'cum <magistratum> [the consulship] inisset ad populum ferret, ut Q. Fabium duumuirum esse iuberent aedis dedicandae causa'. If all that Ti. Sempronius was to do was to chat up the tribunes, who were actually to legislate, why wait until he was in office? Any existing curule magistrate could have done this, since the tribunes were already in

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office, whereas he could not have legislated while observing the *trinum nundinum*, which we now know to have been of seventeen days. The claim of Cicero (*De domo* 127) that there was a 'lex uetus tribunicia' that forbade 'iniussu plebis aedis, terram, aram consecrari' does not serve to prove that Ti. Sempronius could not have legislated, for *consecrare* is not the same as *dedicare*, and in any case Ti. Sempronius was to legislate to make Q. Fabius and A. N. Other duumviri.

The attempt to write out of the story such consular legislation as is attested reveals S.'s desperation; it is simply bizarre to describe the Lex Licinia Mucia of 95 B.C., which deprived of citizenship men who believed that they possessed it, and the Lex Julia of 90 B.C., which more than doubled the size of the citizen body, as 'pertaining to foreign relations' (p. 101 n. 16, p. 111, p. 142). (I do not feel certain that the Lex Pompeia of Cn. Pompeius Strabo was comitial.)

The Lex Antonia de Termessibus of 68 B.C. shows the tribunes proposing legislation to the *plebs*, while the Lex Quinctia of 9 B.C. shows a consul proposing legislation to the *populus*, and it seems to me a waste of human ingenuity, either with Develin to doubt altogether the existence of two tribal assemblies, or with S. to suppose that they were a feature of the 'gradual collapse of the entire Republican system' (p. 109). Everyone knows that Cicero could talk the hind leg off a donkey; but, if Sulla had really introduced a major change in the nature of consular legislation, he was being extraordinarily and, above all, unnecessarily misleading in implying at *pro Flacco* 15 that the whole pattern of voting of his day went back to time immemorial. This also emerges from the clear distinction between *populus* and *plebs* at *de legibus* 3.10, and the complete absence of comment at 3.40; note also the same careful distinction at *ad fam.* 8.8.5 (= 84 SB) (49 B.C.) and Livy 27.5.16 (210 B.C. [!]).

S.'s Sullan innovation bites the dust. Note also, as has been seen, that the practice of praetors holding an urban jurisdiction for a year and then proceeding to a province outside Italy for a year goes back at least to the late second century B.C., not to Sulla (*contra* p. 39).

On other points, S. is right to warn against the Latin titles of statutes invented wholesale by Rotondi (pp. 65, 111, 152); and the 'proper' way to cite a statute was as the statute which so-and-so holding such-and-such a magistracy proposed/passed on such-and-such a day; but it is perverse to object to the usage 'Lex Valeria Horatia' etc., since it is clear that it was used by Romans as a shorthand designation, for instance in the Lex de Gallia Cisalpina, and it is an unimportant accident if it is not present in our fragmentary sources.

Col. ii, ll. 40–1 of the Lex Cornelia de XX quaestoribus are not about the storing place of the *lex* itself (*contra* p. 14 n. 4); it is abnormal for the text of a *lex* to refer to itself as a *rogatio* (*contra* p. 15; see *Roman Statutes*, pp. 1, 10–11, 14); it is bizarre to describe a formula preserved by a manuscript as not surviving (p. 16 n. 20); in the last sentence of p. 69 n. 36, delete 'not'; I do not understand why Laelius 'must have been tribune at some point' (p. 91), and I note that Münzer had no time for such a hypothesis; the discussion of the Comitia Centuriata at p. 124 fails to mention either its reform or the introduction of the secret ballot (once the *prima classis* consisted of the *seniores* and *iuniores* of the thirty-five tribes, eight of its votes—those of the urban tribes—could no longer be relied on); there is only one MS of Gaius (p. 134 n. 7), the famous, but hard-to-read and lacunose, Verona palimpsest; finally, it is rather odd in a Finnish work of 2001 to ignore the *Lexicon Topographicum* of Margareta Steinby.

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