THEODOR MOMMSEN

THE HISTORY OF ROME, BOOK II

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The History of Rome, Book II / From the Abolition of the Monarchy in Rome to the Union of Italy:

Содержание

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Preparer's Note

This work contains many literal citations of and references to foreign words, sounds, and alphabetic symbols drawn from many languages, including Gothic and Phoenician, but chiefly Latin and Greek. This English Gutenberg edition, constrained to the characters of 7-bit ASCII code, adopts the following orthographic conventions:

1) Except for Greek, all literally cited non-English words that do not refer to texts cited as academic references, words that in the source manuscript appear italicized, are rendered with a single preceding, and a single following dash; thus, -xxxx-.

2) Greek words, first transliterated into Roman alphabetic equivalents, are rendered with a preceding and a following double- dash; thus, —xxxx—. Note that in some cases the root

word itself is a compound form such as xxx-xxxx, and is rendered as —xxx-xxx—

3) Simple unideographic references to vocalic sounds, single letters, or alphabeic dipthongs; and prefixes, suffixes, and syllabic references are represented by a single preceding dash; thus, -x, or -xxx.

4) Ideographic references, referring to signs of representation rather than to content, are represented as -"id:xxxx"-. "id:" stands for "ideograph", and indicates that the reader should form a picture based on the following "xxxx"; which may be a single symbol, a word, or an attempt at a picture composed of ASCII characters. For example, —"id:GAMMA gamma"– indicates an uppercase Greek gamma-form followed by the form in lowercase. Some such exotic parsing as this is necessary to explain alphabetic development because a single symbol may have been used for a number of sounds in a number of languages, or even for a number of sounds in the same language at different times. Thus, -"id:GAMMA gamma" might very well refer to a Phoenician construct that in appearance resembles the form that eventually stabilized as an uppercase Greek "gamma" juxtaposed to one of lowercase. Also, a construct such as —"id:E" indicates a symbol that with ASCII resembles most closely a Roman uppercase "E", but, in fact, is actually drawn more crudely.

5) Dr. Mommsen has given his dates in terms of Roman usage, A.U.C.; that is, from the founding of Rome, conventionally taken to be 753 B. C. The preparer of this document, has appended to

the end of each volume a table of conversion between the two systems.

BOOK SECOND
From the Abolition of the Monarchy in Rome to the Union of Italy

—dei ouk ekpleittein ton suggraphea terateuomenon dia teis iotopias tous entugchanontas.—
Polybius.

CHAPTER I
Change of the Constitution— Limitation of the Power of the Magistrate

Political and Social Distinctions in Rome

The strict conception of the unity and omnipotence of the state in all matters pertaining to it, which was the central principle of the Italian constitutions, placed in the hands of the single president nominated for life a formidable power, which was felt doubtless by the enemies of the land, but was not less heavily felt by its citizens. Abuse and oppression could not fail to ensue, and, as a necessary consequence, efforts were made to lessen that power. It was, however, the grand distinction of the endeavours after reform and the revolutions in Rome,

that there was no attempt either to impose limitations on the community as such or even to deprive it of corresponding organs of expression—that there never was any endeavour to assert the so-called natural rights of the individual in contradistinction to the community—that, on the contrary, the attack was wholly directed against the form in which the community was represented. From the times of the Tarquins down to those of the Gracchi the cry of the party of progress in Rome was not for limitation of the power of the state, but for limitation of the power of the magistrates: nor amidst that cry was the truth ever forgotten, that the people ought not to govern, but to be governed.

This struggle was carried on within the burgess-body. Side by side with it another movement developed itself—the cry of the non-burgesses for equality of political privileges. Under this head are included the agitations of the plebeians, the Latins, the Italians, and the freedmen, all of whom—whether they may have borne the name of burgesses, as did the plebeians and the freedmen, or not, as was the case with the Latins and Italians—were destitute of, and desired, political equality.

A third distinction was one of a still more general nature; the distinction between the wealthy and the poor, especially such as had been dispossessed or were endangered in possession. The legal and political relations of Rome led to the rise of a numerous class of farmers—partly small proprietors who were dependent on the mercy of the capitalist, partly small temporary lessees who were dependent on the mercy of the landlord—and in many

instances deprived individuals as well as whole communities of the lands which they held, without affecting their personal freedom. By these means the agricultural proletariate became at an early period so powerful as to have a material influence on the destinies of the community. The urban proletariate did not acquire political importance till a much later epoch.

On these distinctions hinged the internal history of Rome, and, as may be presumed, not less the history—totally lost to us—of the other Italian communities. The political movement within the fully-privileged burgess-body, the warfare between the excluded and excluding classes, and the social conflicts between the possessors and the non-possessors of land—variously as they crossed and interlaced, and singular as were the alliances they often produced —were nevertheless essentially and fundamentally distinct.

Abolition of the Life-Presidency of the Community

As the Servian reform, which placed the —metoikos— on a footing of equality in a military point of view with the burgess, appears to have originated from considerations of an administrative nature rather than from any political party-tendency, we may assume that the first of the movements which led to internal crises and changes of the constitution was that which sought to limit the magistracy. The earliest achievement of this, the most ancient opposition in Rome, consisted in the abolition of the life-tenure of the presidency of the community; in other words, in the abolition of the monarchy. How necessarily

this was the result of the natural development of things, is most strikingly demonstrated by the fact, that the same change of constitution took place in an analogous manner through the whole circuit of the Italo-Grecian world. Not only in Rome, but likewise among the other Latins as well as among the Sabellians, Etruscans, and Apulians—and generally, in all the Italian communities, just as in those of Greece—we find the rulers for life of an earlier epoch superseded in after times by annual magistrates. In the case of the Lucanian canton there is evidence that it had a democratic government in time of peace, and it was only in the event of war that the magistrates appointed a king, that is, an official similar to the Roman dictator. The Sabellian civic communities, such as those of Capua and Pompeii, in like manner were in later times governed by a "community-manager" (-medix tuticus-) changed from year to year, and we may assume that similar institutions existed among the other national and civic communities of Italy. In this light the reasons which led to the substitution of consuls for kings in Rome need no explanation. The organism of the ancient Greek and Italian polity developed of itself by a sort of natural necessity the limitation of the life-presidency to a shortened, and for the most part an annual, term. Simple, however, as was the cause of this change, it might be brought about in various ways; a resolution might be adopted on the death of one life-ruler not to elect another—a course which the Roman senate is said to have attempted after the death of Romulus; or the ruler might

voluntarily abdicate, as is alleged to have been the intention of king Servius Tullius; or the people might rise in rebellion against a tyrannical ruler, and expel him.

Expulsion of the Tarquins from Rome

It was in this latter way that the monarchy was terminated in Rome. For however much the history of the expulsion of the last Tarquinius, "the proud," may have been interwoven with anecdotes and spun out into a romance, it is not in its leading outlines to be called in question. Tradition credibly enough indicates as the causes of the revolt, that the king neglected to consult the senate and to complete its numbers; that he pronounced sentences of capital punishment and confiscation without advising with his counsellors; that he accumulated immense stores of grain in his granaries, and exacted from the burgesses military labour and task-work beyond what was due. The exasperation of the people is attested by the formal vow which they made man by man for themselves and for their posterity that thenceforth they would never tolerate a king; by the blind hatred with which the name of king was ever afterwards regarded in Rome; and above all by the enactment that the "king for offering sacrifice" (-rex sacrorum- or -sacrificulus-) —whom they considered it their duty to create that the gods might not miss their accustomed mediator—should be disqualified from holding any further office, so that this man became the foremost indeed, but also the most powerless in the Roman commonwealth. Along with the last king all the members of his clan were banished—a

proof how close at that time gentile ties still were. The Tarquinii thereupon transferred themselves to Caere, perhaps their ancient home,[1] where their family tomb has recently been discovered. In the room of the one president holding office for life two annual rulers were now placed at the head of the Roman community.

This is all that can be looked upon as historically certain in reference to this important event.[2] It is conceivable that in a great community with extensive dominion like the Roman the royal power, particularly if it had been in the same family for several generations, would be more capable of resistance, and the struggle would thus be keener, than in the smaller states; but there is no certain indication of any interference by foreign states in the struggle. The great war with Etruria—which possibly, moreover, has been placed so close upon the expulsion of the Tarquins only in consequence of chronological confusion in the Roman annals—cannot be regarded as an intervention of Etruria

[1] I. IX. The Tarquins

[2] The well-known fable for the most part refutes itself. To a considerable extent it has been concocted for the explanation of surnames (-Brutus-, -Poplicola-, -Scaevola-). But even its apparently historical ingredients are found on closer examination to have been invented. Of this character is the statement that Brutus was captain of the horsemen (-tribunus celerum-) and in that capacity proposed the decree of the people as to the banishment of the Tarquins; for, according to the Roman constitution, it is quite impossible that a mere officer should have had the right to convoke the curies. The whole of this statement has evidently been invented with the view of furnishing a legal basis for the Roman republic; and very ill invented it is, for in its case the -tribunus celerum- is confounded with the entirely different -magister equitum- (V. Burdens Of The Burgesses f.), and then the right of convoking the centuries which pertained to the latter by virtue of his praetorian rank is made to apply to the assembly of the curies.

in favour of a countryman who had been injured in Rome, for the very sufficient reason that the Etruscans notwithstanding their complete victory neither restored the Roman monarchy, nor even brought back the Tarquinian family.

Powers of the Consuls

If we are left in ignorance of the historical connections of this important event, we are fortunately in possession of clearer light as to the nature of the change which was made in the constitution. The royal power was by no means abolished, as is shown by the very fact that, when a vacancy occurred afterwards as before, an "interim king" (-interrex-) was nominated. The one life-king was simply replaced by two year-kings, who called themselves generals (-praetores-), or judges (-iudices-), or merely colleagues (consules).[3] The principles of collegiate tenure and of annual duration are those which distinguish the republic from the monarchy, and they first meet us here.

Collegiate Arrangement

The collegiate principle, from which the third and subsequently most current name of the annual kings was derived, assumed in their case an altogether peculiar form. The supreme power was not entrusted to the two magistrates conjointly, but each consul possessed and exercised it for himself as fully

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[3] -Consules- are those who "leap or dance together," as -praesul- is one who "leaps before," -exsul-, one who "leaps out" (—o ekpeson—), -insula-, a "leap into," primarily applied to a mass of rock fallen into the sea.

and wholly as it had been possessed and exercised by the king. This was carried so far that, instead of one of the two colleagues undertaking perhaps the administration of justice, and the other the command of the army, they both administered justice simultaneously in the city just as they both set out together to the army; in case of collision the matter was decided by a rotation measured by months or days. A certain partition of functions withal, at least in the supreme military command, might doubtless take place from the outset—the one consul for example taking the field against the Aequi, and the other against the Volsci—but it had in no wise binding force, and each of the colleagues was legally at liberty to interfere at any time in the province of the other. When, therefore, supreme power confronted supreme power and the one colleague forbade what the other enjoined, the consular commands neutralized each other. This peculiarly Latin, if not peculiarly Roman, institution of co-ordinate supreme authorities —which in the Roman commonwealth on the whole approved itself as practicable, but to which it will be difficult to find a parallel in any other considerable state —manifestly sprang out of the endeavour to retain the regal power in legally undiminished fulness. They were thus led not to break up the royal office into parts or to transfer it from an individual to a college, but simply to double it and thereby, if necessary, to neutralize it through its own action.

Term of Office

As regards the termination of their tenure of office, the earlier -interregnum- of five days furnished a legal precedent. The ordinary presidents of the community were bound not to remain in office longer than a year reckoned from the day of their entering on their functions;[4] and they ceased -de jure- to be magistrates upon the expiry of the year, just as the interrex on the expiry of the five days. Through this set termination of the supreme office the practical irresponsibility of the king was lost in the case of the consul. It is true that the king was always in the Roman commonwealth subject, and not superior, to the law; but, as according to the Roman view the supreme judge could not be prosecuted at his own bar, the king might doubtless have committed a crime, but there was for him no tribunal and no punishment. The consul, again, if he had committed murder or treason, was protected by his office, but only so long as it lasted; on his retirement he was liable to the ordinary penal jurisdiction like any other burgess.

To these leading changes, affecting the principles of the constitution, other restrictions were added of a subordinate and more external character, some of which nevertheless produced a

[4] The day of entering on office did not coincide with the beginning of the year (1st March), and was not at all fixed. The day of retiring was regulated by it, except when a consul was elected expressly in room of one who had dropped out (-consul suffectus-); in which case the substitute succeeded to the rights and consequently to the term of him whom he replaced. But these supplementary consuls in the earlier period only occurred when merely one of the consuls had dropped out: pairs of supplementary consuls are not found until the later ages of the republic. Ordinarily, therefore, the official year of a consul consisted of unequal portions of two civil years.

deep effect The privilege of the king to have his fields tilled by task-work of the burgesses, and the special relation of clientship in which the —metoeci— as a body must have stood to the king, ceased of themselves with the life tenure of the office.

Right of Appeal

Hitherto in criminal processes as well as in fines and corporal punishments it had been the province of the king not only to investigate and decide the cause, but also to decide whether the person found guilty should or should not be allowed to appeal for pardon. The Valerian law now (in 245) enacted that the consul must allow the appeal of the condemned, where sentence of capital or corporal punishment had been pronounced otherwise than by martial law—a regulation which by a later law (of uncertain date, but passed before 303) was extended to heavy fines. In token of this right of appeal, when the consul appeared in the capacity of judge and not of general, the consular lictors laid aside the axes which they had previously carried by virtue of the penal jurisdiction belonging to their master. The law however threatened the magistrate, who did not allow due course to the -provocatio-, with no other penalty than infamy—which, as matters then stood, was essentially nothing but a moral stain, and at the utmost only had the effect of disqualifying the infamous person from giving testimony. Here too the course followed was based on the same view, that it was in law impossible to diminish the old regal powers, and that the checks imposed upon the holder of the supreme authority in consequence of the revolution

had, strictly viewed, only a practical and moral value. When therefore the consul acted within the old regal jurisdiction, he might in so acting perpetrate an injustice, but he committed no crime and consequently was not amenable for what he did to the penal judge.

A limitation similar in its tendency took place in the civil jurisdiction; for probably there was taken from the consuls at the very outset the right of deciding at their discretion a legal dispute between private persons.

Restrictions on the Delegation of Powers

The remodelling of the criminal as of civil procedure stood in connection with a general arrangement respecting the transference of magisterial power to deputies or successors. While the king had been absolutely at liberty to nominate deputies but had never been compelled to do so, the consuls exercised the right of delegating power in an essentially different way. No doubt the rule that, if the supreme magistrate left the city, he had to appoint a warden there for the administration of justice,[5] remained in force also for the consuls, and the collegiate arrangement was not even extended to such delegation; on the contrary this appointment was laid on the consul who was the last to leave the city. But the right of delegation for the time when the consuls remained in the city was probably restricted, upon the very introduction of this office, by providing that

[5] I. V. The King

delegation should be prescribed to the consul for definite cases, but should be prohibited for all cases in which it was not so prescribed. According to this principle, as we have said, the whole judicial system was organized. The consul could certainly exercise criminal jurisdiction also as to a capital process in the way of submitting his sentence to the community and having it thereupon confirmed or rejected; but he never, so far as we see, exercised this right, perhaps was soon not allowed to exercise it, and possibly pronounced a criminal judgment only in the case of appeal to the community being for any reason excluded. Direct conflict between the supreme magistrate of the community and the community itself was avoided, and the criminal procedure was organized really in such a way, that the supreme magistracy remained only in theory competent, but always acted through deputies who were necessary though appointed by himself. These were the two—not standing—pronouncers-of-judgment for revolt and high treason (-duoviri perduellionis-) and the two standing trackers of murder, the -quaestores parricidii-. Something similar may perhaps have occurred in the regal period, where the king had himself represented in such processes;[6] but the standing character of the latter institution, and the collegiate principle carried out in both, belong at any rate to the republic. The latter arrangement became of great importance also, in so far that thereby for the first time alongside of the two standing supreme magistrates were placed

[6] I. XI. Crimes

two assistants, whom each supreme magistrate nominated at his entrance on office, and who in due course also went out with him on his leaving it—whose position thus, like the supreme magistracy itself, was organized according to the principles of a standing office, of a collegiate form, and of an annual tenure. This was not indeed as yet the inferior magistracy itself, at least not in the sense which the republic associated with the magisterial position, inasmuch as the commissioners did not emanate from the choice of the community; but it doubtless became the starting-point for the institution of subordinate magistrates, which was afterwards developed in so manifold ways.

In a similar way the decision in civil procedure was withdrawn from the supreme magistracy, inasmuch as the right of the king to transfer an individual process for decision to a deputy was converted into the duty of the consul, after settling the legitimate title of the party and the object of the suit, to refer the disposal of it to a private man to be selected by him and furnished by him with instructions.

In like manner there was left to the consuls the important administration of the state-treasure and of the state-archives; nevertheless probably at once, or at least very early, there were associated with them standing assistants in that duty, namely, those quaestors who, doubtless, had in exercising this function absolutely to obey them, but without whose previous knowledge and co-operation the consuls could not act.

Where on the other hand such directions were not in existence, the president of the community in the capital had personally to intervene; as indeed, for example, at the introductory steps of a process he could not under any circumstances let himself be represented by deputy.

This double restriction of the consular right of delegation subsisted for the government of the city, and primarily for the administration of justice and of the state-chest. As commander-in-chief, on the other hand, the consul retained the right of handing over all or any of the duties devolving on him. This diversity in the treatment of civil and military delegation explains why in the government of the Roman community proper no delegated magisterial authority (-pro magistrate-) was possible, nor were purely urban magistrates ever represented by non-magistrates; and why, on the other hand, military deputies (-pro consuls-, -pro praetore-, -pro quaestore-) were excluded from all action within the community proper.

Nominating a Successor

The right of nominating a successor had not been possessed by the king, but only by the interrex.[7] The consul was in this respect placed on a like footing with the latter; nevertheless, in the event of his not having exercised the power, the interrex stepped in as before, and the necessary continuity of the office subsisted still undiminished under the republican government.

[7] I. V. Prerogatives of the Senate

The right of nomination, however, was materially restricted in favour of the burgesses, as the consul was bound to procure the assent of the burgesses for the successors designated by him, and, in the sequel, to nominate only those whom the community designated to him. Through this binding right of proposal the nomination of the ordinary supreme magistrates doubtless in a certain sense passed substantially into the hands of the community; practically, however, there still existed a very considerable distinction between that right of proposal and the right of formal nomination. The consul conducting the election was by no means a mere returning officer; he could still, e. g. by virtue of his old royal prerogative reject particular candidates and disregard the votes tendered for them; at first he might even limit the choice to a list of candidates proposed by himself; and—what was of still more consequence—when the collegiate consulship was to be supplemented by the dictator, of whom we shall speak immediately, in so supplementing it the community was not consulted, but on the contrary the consul in that case appointed his colleague with the same freedom, wherewith the interrex had once appointed the king.

Change in the Nomination of Priests

The nomination of the priests, which had been a prerogative of the kings,[8] was not transferred to the consuls; but the colleges of priests filled up the vacancies in their own ranks,

[8] I. V. The King

while the Vestals and single priests were nominated by the pontifical college, on which devolved also the exercise of the paternal jurisdiction, so to speak, of the community over the priestesses of Vesta. With a view to the performance of these acts, which could only be properly performed by a single individual, the college probably about this period first nominated a president, the -Pontifex maximus-. This separation of the supreme authority in things sacred from the civil power—while the already-mentioned "king for sacrifice" had neither the civil nor the sacred powers of the king, but simply the title, conferred upon him —and the semi-magisterial position of the new high priest, so decidedly contrasting with the character which otherwise marked the priesthood in Rome, form one of the most significant and important peculiarities of this state-revolution, the aim of which was to impose limits on the powers of the magistrates mainly in the interest of the aristocracy.

We have already mentioned that the outward state of the consul was far inferior to that of the regal office hedged round as it was with reverence and terror, that the regal name and the priestly consecration were withheld from him, and that the axe was taken away from his attendants. We have to add that, instead of the purple robe which the king had worn, the consul was distinguished from the ordinary burgess simply by the purple border of his toga, and that, while the king perhaps regularly appeared in public in his chariot, the consul was bound to accommodate himself to the general rule and like every other

burgess to go within the city on foot.

The Dictator

These limitations, however, of the plenary power and of the insignia of the magistracy applied in the main only to the ordinary presidency of the community. In extraordinary cases, alongside of, and in a certain sense instead of, the two presidents chosen by the community there emerged a single one, the master of the army (-magister populi-) usually designated as the -dictator-. In the choice of dictator the community exercised no influence at all, but it proceeded solely from the free resolve of one of the consuls for the time being, whose action neither his colleague nor any other authority could hinder. There was no appeal from his sentence any more than from that of the king, unless he chose to allow it. As soon as he was nominated, all the other magistrates were by right subject to his authority. On the other hand the duration of the dictator's office was limited in two ways: first, as the official colleague of those consuls, one of whom had nominated him, he might not remain in office beyond their legal term; and secondly, a period of six months was fixed as the absolute maximum for the duration of his office. It was a further arrangement peculiar to the dictatorship, that the "master of the army" was bound to nominate for himself immediately a "master of horse" (-magister equitum-), who acted along with him as a dependent assistant somewhat as did the quaestor along with the consul, and with him retired from office —an arrangement undoubtedly connected with the fact that the

dictator, presumably as being the leader of the infantry, was constitutionally prohibited from mounting on horseback. In the light of these regulations the dictatorship is doubtless to be conceived as an institution which arose at the same time with the consulship, and which was designed, especially in the event of war, to obviate for a time the disadvantages of divided power and to revive temporarily the regal authority; for in war more particularly the equality of rights in the consuls could not but appear fraught with danger; and not only positive testimonies, but above all the oldest names given to the magistrate himself and his assistant, as well as the limitation of the office to the duration of a summer campaign, and the exclusion of the -provocatio- attest the pre-eminently military design of the original dictatorship.

On the whole, therefore, the consuls continued to be, as the kings had been, the supreme administrators, judges, and generals; and even in a religious point of view it was not the -rex sacrorum- (who was only nominated that the name might be preserved), but the consul, who offered prayers and sacrifices for the community, and in its name ascertained the will of the gods with the aid of those skilled in sacred lore. Against cases of emergency, moreover, a power was retained of reviving at any moment, without previous consultation of the community, the full and unlimited regal authority, so as to set aside the limitations imposed by the collegiate arrangement and by the special curtailments of jurisdiction. In this way the problem of legally retaining and practically restricting the regal authority

was solved in genuine Roman fashion with equal acuteness and simplicity by the nameless statesmen who worked out this revolution.

Centuries and Curies

The community thus acquired by the change of constitution rights of the greatest importance: the right of annually designating its presidents, and that of deciding in the last instance regarding the life or death of the burgess. But the body which acquired these rights could not possibly be the community as it had been hitherto constituted—the patriciate which had practically become an order of nobility. The strength of the nation lay in the "multitude" (-plebs-) which already comprehended in large numbers people of note and of wealth. The exclusion of this multitude from the public assembly, although it bore part of the public burdens, might be tolerated as long as that public assembly itself had no very material share in the working of the state machine, and as long as the royal power by the very fact of its high and free position remained almost equally formidable to the burgesses and to the —metoeci— and thereby maintained equality of legal redress in the nation. But when the community itself was called regularly to elect and to decide, and the president was practically reduced from its master to its commissioner for a set term, this relation could no longer be maintained as it stood; least of all when the state had to be remodelled on the morrow of a revolution, which could only have been carried out by the co-operation of the patricians and the

—metoeci—. An extension of that community was inevitable; and it was accomplished in the most comprehensive manner, inasmuch as the collective plebeiate, that is, all the non-burgesses who were neither slaves nor citizens of extraneous communities living at Rome under the -ius hospitii-, were admitted into the burgess-body. The curiate assembly of the old burgesses, which hitherto had been legally and practically the first authority in the state, was almost totally deprived of its constitutional prerogatives. It was to retain its previous powers only in acts purely formal or in those which affected clan-relations —such as the vow of allegiance to be taken to the consul or to the dictator when they entered on office just as previously to the king,[9] and the legal dispensations requisite for an -arrogatio- or a testament—but it was not in future to perform any act of a properly political character. Soon even the plebeians were admitted to the right of voting also in the curies, and by that step the old burgess-body lost the right of meeting and of resolving at all. The curial organization was virtually rooted out, in so far as it was based on the clan-organization and this latter was to be found in its purity exclusively among the old burgesses. When the plebeians were admitted into the curies, they were certainly also allowed to constitute themselves -de jure- as—what in the earlier period they could only have been -de facto-[10]—families and clans; but it is distinctly recorded by tradition

[9] I. V. The King

[10] I. VI. Dependents and Guests

and in itself also very conceivable, that only a portion of the plebeians proceeded so far as to constitute -gentes-, and thus the new curiate assembly, in opposition to its original character, included numerous members who belonged to no clan.

All the political prerogatives of the public assembly—as well the decision on appeals in criminal causes, which indeed were essentially political processes, as the nomination of magistrates and the adoption or rejection of laws—were transferred to, or were now acquired by, the assembled levy of those bound to military service; so that the centuries now received the rights, as they had previously borne the burdens, of citizens. In this way the small initial movements made by the Servian constitution—such as, in particular, the handing over to the army the right of assenting to the declaration of an aggressive war[11]—attained such a development that the curies were completely and for ever cast into the shade by the assembly of the centuries, and people became accustomed to regard the latter as the sovereign people. In this assembly debate took place merely when the presiding magistrate chose himself to speak or bade others do so; of course in cases of appeal both parties had to be heard. A simple majority of the centuries was decisive.

As in the curiate assembly those who were entitled to vote at all were on a footing of entire equality, and therefore after the admission of all the plebeians into the curies the result would have been a complete democracy, it may be easily conceived that

[11] I. VI. Political Effects of the Servian Military Organization

the decision of political questions continued to be withheld from the curies; the centuriate assembly placed the preponderating influence, not in the hands of the nobles certainly, but in those of the possessors of property, and the important privilege of priority in voting, which often practically decided the election, placed it in the hands of the -equites- or, in other words, of the rich.

Senate

The senate was not affected by the reform of the constitution in the same way as the community. The previously existing college of elders not only continued exclusively patrician, but retained also its essential prerogatives—the right of appointing the interrex, and of confirming or rejecting the resolutions adopted by the community as constitutional or unconstitutional. In fact these prerogatives were enhanced by the reform of the constitution, because the appointment of the magistrates also, which fell to be made by election of the community, was thenceforth subject to the confirmation or rejection of the patrician senate. In cases of appeal alone its confirmation, so far as we know, was never deemed requisite, because in these the matter at stake was the pardon of the guilty and, when this was granted by the sovereign assembly of the people, any cancelling of such an act was wholly out of the question.

But, although by the abolition of the monarchy the constitutional rights of the patrician senate were increased rather than diminished, there yet took place—and that, according to tradition, immediately on the abolition of the monarchy—so

far as regards other affairs which fell to be discussed in the senate and admitted of a freer treatment, an enlargement of that body, which brought into it plebeians also, and which in its consequences led to a complete remodelling of the whole. From the earliest times the senate had acted also, although not solely or especially, as a state-council; and, while probably even in the time of the kings it was not regarded as unconstitutional for non- senators in this case to take part in the assembly,[12] it was now arranged that for such discussions there should be associated with the patrician senate (-patres-) a number of non-patricians "added to the roll" (-conscripti-). This did not at all put them on a footing of equality; the plebeians in the senate did not become senators, but remained members of the equestrian order, were not designated -patres- but were even now -conscripti-, and had no right to the badge of senatorial dignity, the red shoe.[13] Moreover, they not only remained absolutely excluded from the exercise of the magisterial prerogatives belonging to the senate (-auctoritas-), but were obliged, even where the question had reference merely to an advice (-consilium-), to rest content with the privilege of being present in silence while the question was put to the patricians in turn, and of only indicating their opinion by adding to the numbers when the division was taken—voting with the feet (-pedibus in sententiam ire-, -pedarii-) as the proud nobility expressed it. Nevertheless, the plebeians found their way

[12] I. V. The Senate as State Council

[13] I. V. Prerogatives of the Senate

through the new constitution not merely to the Forum, but also to the senate-house, and the first and most difficult step towards equality of rights was taken in this quarter also.

Otherwise there was no material change in the arrangements affecting the senate. Among the patrician members a distinction of rank soon came to be recognized, especially in putting the vote: those who were proximately designated for the supreme magistracy, or who had already administered it, were entered on the list and were called upon to vote before the rest; and the position of the first of them, the foreman of the senate (-princeps senatus-) soon became a highly coveted place of honour. The consul in office, on the other hand, no more ranked as a member of senate than did the king, and therefore in taking the votes did not include his own. The selection of the members—both of the narrower patrician senate and of those merely added to the roll—fell to be made by the consuls just as formerly by the kings; but the nature of the case implied that, while the king had still perhaps some measure of regard to the representation of the several clans in the senate, this consideration was of no account so far as concerned the plebeians, among whom the clan-organization was but imperfectly developed, and consequently the relation of the senate to that organization in general fell more and more into abeyance. We have no information that the electing consuls were restricted from admitting more than a definite number of plebeians to the senate; nor was there need for such a regulation, because the consuls themselves belonged

to the nobility. On the other hand probably from the outset the consul was in virtue of his very position practically far less free, and far more bound by the opinions of his order and by custom, in the appointment of senators than the king. The rule in particular, that the holding of the consulship should necessarily be followed by admission to the senate for life, if, as was probably the case at this time, the consul was not yet a member of it at the time of his election, must have in all probability very early acquired consuetudinary force. In like manner it seems to have become early the custom not to fill up the senators' places immediately on their falling vacant, but to revise and complete the roll of the senate on occasion of the census, consequently, as a rule, every fourth year; which also involved a not unimportant restriction on the authority entrusted with the selection. The whole number of the senators remained as before, and in this the -conscripti- were also included; from which fact we are probably entitled to infer the numerical falling off of the patriciate.[14]

Conservative Character of the Revolution

We thus see that in the Roman commonwealth, even on the conversion of the monarchy into a republic, the old was as far as possible retained. So far as a revolution in a state can be conservative at all, this one was so; not one of the constituent

[14] That the first consuls admitted to the senate 164 plebeians, is hardly to be regarded as a historical fact, but rather as a proof that the later Roman archaeologists were unable to point out more than 136 -gentes- of the Roman nobility (Rom, Forsch. i. 121).

elements of the commonwealth was really overthrown by it. This circumstance indicates the character of the whole movement. The expulsion of the Tarquins was not, as the pitiful and deeply falsified accounts of it represent, the work of a people carried away by sympathy and enthusiasm for liberty, but the work of two great political parties already engaged in conflict, and clearly aware that their conflict would steadily continue—the old burgesses and the —metoeci— —who, like the English Whigs and Tories in 1688, were for a moment united by the common danger which threatened to convert the commonwealth into the arbitrary government of a despot, and differed again as soon as the danger was over. The old burgesses could not get rid of the monarchy without the cooperation of the new burgesses; but the new burgesses were far from being sufficiently strong to wrest the power out of the hands of the former at one blow. Compromises of this sort are necessarily limited to the smallest measure of mutual concessions obtained by tedious bargaining; and they leave the future to decide which of the constituent elements shall eventually preponderate, and whether they will work harmoniously together or counteract one another. To look therefore merely to the direct innovations, possibly to the mere change in the duration of the supreme magistracy, is altogether to mistake the broad import of the first Roman revolution: its indirect effects were by far the most important, and vaster doubtless than even its authors anticipated.

This, in short, was the time when the Roman burgess-body in the later sense of the term originated. The plebeians had hitherto been —metoeci— who were subjected to their share of taxes and burdens, but who were nevertheless in the eye of the law really nothing but tolerated aliens, between whose position and that of foreigners proper it may have seemed hardly necessary to draw a definite line of distinction. They were now enrolled in the lists as burgesses liable to military service, and, although they were still far from being on a footing of legal equality—although the old burgesses still remained exclusively entitled to perform the acts of authority constitutionally pertaining to the council of elders, and exclusively eligible to the civil magistracies and priesthoods, nay even by preference entitled to participate in the usufructs of burgesses, such as the joint use of the public pasture—yet the first and most difficult step towards complete equalization was gained from the time when the plebeians no longer served merely in the common levy, but also voted in the common assembly and in the common council when its opinion was asked, and the head and back of the poorest —metoikos— were as well protected by the right of appeal as those of the noblest of the old burgesses.

One consequence of this amalgamation of the patricians and plebeians in a new corporation of Roman burgesses was the conversion of the old burgesses into a clan-nobility, which was incapable of receiving additions or even of filling up its own ranks, since the nobles no longer possessed the right of passing decrees in common assembly and the adoption of

new families into the nobility by decree of the community appeared still less admissible. Under the kings the ranks of the Roman nobility had not been thus closed, and the admission of new clans was no very rare occurrence: now this genuine characteristic of patricianism made its appearance as the sure herald of the speedy loss of its political privileges and of its exclusive estimation in the community. The exclusion of the plebeians from all public magistracies and public priesthoods —while they were admissible to the position of officers and senators—and the maintenance, with perverse obstinacy, of the legal impossibility of marriage between old burgesses and plebeians, further impressed on the patriciate from the outset the stamp of an exclusive and wrongly privileged aristocracy.

A second consequence of the new union of the burgesses must have been a more definite regulation of the right of settlement, with reference both to the Latin confederates and to other states. It became necessary—not so much on account of the right of suffrage in the centuries (which indeed belonged only to the freeholder) as on account of the right of appeal, which was intended to be conceded to the plebeian, but not to the foreigner dwelling for a time or even permanently in Rome—to express more precisely the conditions of the acquisition of plebeian rights, and to mark off the enlarged burgess-body in its turn from those who were now the non-burgesses. To thisepoch therefore we may trace back—in the views and feelings of the people—both the invidiousness of the distinction between patricians and

plebeians, and the strict and haughty line of demarcation between -cives Romani- and aliens. But the former civic distinction was in its nature transient, while the latter political one was permanent; and the sense of political unity and rising greatness, which was thus implanted in the heart of the nation, was expansive enough first to undermine and then to carry away with its mighty current those paltry distinctions.

Law and Edict

It was at this period, moreover, that law and edict were separated. The distinction indeed had its foundation in the essential character of the Roman state; for even the regal power in Rome was subordinate, not superior, to the law of the land. But the profound and practical veneration, which the Romans, like every other people of political capacity, cherished for the principle of authority, gave birth to the remarkable rule of Roman constitutional and private law, that every command of the magistrate not based upon a law was at least valid during his tenure of office, although it expired with that tenure. It is evident that in this view, so long as the presidents were nominated for life, the distinction between law and edict must have practically been almost lost sight of, and the legislative activity of the public assembly could acquire no development. On the other hand it obtained a wide field of action after the presidents were changed annually; and the fact was now by no means void of practical importance, that, if the consul in deciding a process committed a legal informality, his successor could institute a fresh trial of

the cause.

Civil and Military Authority

It was at this period, finally, that the provinces of civil and military authority were separated. In the former the law ruled, in the latter the axe: the former was governed by the constitutional checks of the right of appeal and of regulated delegation; in the latter the general held an absolute sway like the king.[15] It was an established principle, that the general and the army as such should not under ordinary circumstances enter the city proper. That organic and permanently operative enactments could only be made under the authority of the civil power, was implied in the spirit, if not in the letter, of the constitution. Instances indeed occasionally occurred where the general, disregarding this principle, convoked his forces in the camp as a burgess assembly, nor was a decree passed under such circumstances legally void; but custom disapproved of such a proceeding, and it soon fell into disuse as though it had been forbidden. The distinction between Quirites and soldiers became more and more deeply rooted in the minds of the burgesses.

Government of the Patriciate

Time however was required for the development of these consequences of the new republicanism; vividly as posterity felt

[15] It may not be superfluous to remark, that the -iudicium legitimum-, as well as that -quod imperio continetur-, rested on the imperium of the directing magistrate, and the distinction only consisted in the circumstance that the -imperium- was in the former case limited by the -lex-, while in the latter it was free.

its effects, the revolution probably appeared to the contemporary world at first in a different light. The non-burgesses indeed gained by it burgess-rights, and the new burgess-body acquired in the -comitia centuriata- comprehensive prerogatives; but the right of rejection on the part of the patrician senate, which in firm and serried ranks confronted the -comitia- as if it were an Upper House, legally hampered their freedom of movement precisely in the most important matters, and although not in a position to thwart the serious will of the collective body, could yet practically delay and cripple it. If the nobility in giving up their claim to be the sole embodiment of the community did not seem to have lost much, they had in other respects decidedly gained. The king, it is true, was a patrician as well as the consul, and the right of nominating the members of the senate belonged to the latter as to the former; but while his exceptional position raised the former no less above the patricians than above the plebeians, and while cases might easily occur in which he would be obliged to lean upon the support of the multitude even against the nobility, the consul—ruling for a brief term, but before and after that term simply one of the nobility, and obeying to-morrow the noble fellow-burgess whom he had commanded to-day—by no means occupied a position aloof from his order, and the spirit of the noble in him must have been far more powerful than that of the magistrate. Indeed, if at any time by way of exception a patrician disinclined to the rule of the nobility was called to the government, his official authority was

paralyzed partly by the priestly colleges, which were pervaded by an intense aristocratic spirit, partly by his colleague, and was easily suspended by the dictatorship; and, what was of still more moment, he wanted the first element of political power, time. The president of a commonwealth, whatever plenary authority may be conceded to him, will never gain possession of political power, if he does not continue for some considerable time at the head of affairs; for a necessary condition of every dominion is duration. Consequently the senate appointed for life inevitably acquired—and that by virtue chiefly of its title to advise the magistrate in all points, so that we speak not of the narrower patrician, but of the enlarged patricio-plebeian, senate—so great an influence as contrasted with the annual rulers, that their legal relations became precisely inverted; the senate substantially assumed to itself the powers of government, and the former ruler sank into a president acting as its chairman and executing its decrees. In the case of every proposal to be submitted to the community for acceptance or rejection the practice of previously consulting the whole senate and obtaining its approval, while not constitutionally necessary, was consecrated by use and wont; and it was not lightly or willingly departed from. The same course was followed in the case of important state-treaties, of the management and distribution of the public lands, and generally of every act the effects of which extended beyond the official year; and nothing was left to the consul but the transaction of current business, the initial steps in civil processes, and the

command in war. Especially important in its consequences was the change in virtue of which neither the consul, nor even the otherwise absolute dictator, was permitted to touch the public treasure except with the consent and by the will of the senate. The senate made it obligatory on the consuls to commit the administration of the public chest, which the king had managed or might at any rate have managed himself, to two standing subordinate magistrates, who were nominated no doubt by the consuls and had to obey them, but were, as may easily be conceived, much more dependent than the consuls themselves on the senate.[16] It thus drew into its own hands the management of finance; and this right of sanctioning the expenditure of money on the part of the Roman senate may be placed on a parallel in its effects with the right of sanctioning taxation in the constitutional monarchies of the present day.

The consequences followed as a matter of course. The first and most essential condition of all aristocratic government is, that the plenary power of the state be vested not in an individual but in a corporation. Now a preponderantly aristocratic corporation, the senate, had appropriated to itself the government, and at the same time the executive power not only remained in the hands of the nobility, but was also entirely subject to the governing corporation. It is true that a considerable number of men not belonging to the nobility sat in the senate; but as they were incapable of holding magistracies

[16] II. I. Restrictions on the Delegation of Powers

or even of taking part in the debates, and thus were excluded from all practical share in the government, they necessarily played a subordinate part in the senate, and were moreover kept in pecuniary dependence on the corporation through the economically important privilege of using the public pasture. The gradually recognized right of the patrician consuls to revise and modify the senatorial list at least every fourth year, ineffective as presumably it was over against the nobility, might very well be employed in their interest, and an obnoxious plebeian might by means of it be kept out of the senate or even be removed from its ranks.

The Plebeian Opposition

It is therefore quite true that the immediate effect of the revolution was to establish the aristocratic government. It is not, however, the whole truth. While the majority of contemporaries probably thought that the revolution had brought upon the plebeians only a more rigid despotism, we who come afterwards discern in that very revolution the germs of young liberty. What the patricians gained was gained at the expense not of the community, but of the magistrate's power. It is true that the community gained only a few narrowly restricted rights, which were far less practical and palpable than the acquisitions of the nobility, and which not one in a thousand probably had the wisdom to value; but they formed a pledge and earnest of the future. Hitherto the —metoeci— had been politically nothing, the old burgesses had been everything; now that the former were

embraced in the community, the old burgesses were overcome; for, however much might still be wanting to full civil equality, it is the first breach, not the occupation of the last post, that decides the fall of the fortress. With justice therefore the Roman community dated its political existence from the beginning of the consulate.

While however the republican revolution may, notwithstanding the aristocratic rule which in the first instance it established, be justly called a victory of the former —metoeci — or the -plebs-, the revolution even in this respect bore by no means the character which we are accustomed in the present day to designate as democratic. Pure personal merit without the support of birth and wealth could perhaps gain influence and consideration more easily under the regal government than under that of the patriciate. Then admission to the patriciate was not in law foreclosed; now the highest object of plebeian ambition was to be admitted into the dumb appendage of the senate. The nature of the case implied that the governing aristocratic order, so far as it admitted plebeians at all, would grant the right of occupying seats in the senate not absolutely to the best men, but chiefly to the heads of the wealthy and notable plebeian families; and the families thus admitted jealously guarded the possession of the senatorial stalls. While a complete legal equality therefore had subsisted within the old burgess-body, the new burgess-body or former —metoeci— came to be in this way divided from the first into a number of privileged families and a multitude kept in

a position of inferiority. But the power of the community now according to the centuriate organization came into the hands of that class which since the Servian reform of the army and of taxation had borne mainly the burdens of the state, namely the freeholders, and indeed not so much into the hands of the great proprietors or into those of the small cottagers, as into those of the intermediate class of farmers—an arrangement in which the seniors were still so far privileged that, although less numerous, they had as many voting- divisions as the juniors. While in this way the axe was laid to the root of the old burgess-body and their clan-nobility, and the basis of a new burgess-body was laid, the preponderance in the latter rested on the possession of land and on age, and the first beginnings were already visible of a new aristocracy based primarily on the actual consideration in which the families were held—the future nobility. There could be no clearer indication of the fundamentally conservative character of the Roman commonwealth than the fact, that the revolution which gave birth to the republic laid down at the same time the primary outlines of a new organization of the state, which was in like manner conservative and in like manner aristocratic.

CHAPTER II
The Tribunate of the Plebs and the Decemvirate

Material Interests

Under the new organization of the commonwealth the old burgesses had attained by legal means to the full possession of political power. Governing through the magistracy which had been reduced to be their servant, preponderating in the Senate, in sole possession of all public offices and priesthoods, armed with exclusive cognizance of things human and divine and familiar with the whole routine of political procedure, influential in the public assembly through the large number of pliant adherents attached to the several families, and, lastly, entitled to examine and to reject every decree of the community,—the patricians might have long preserved their practical power, just because they had at the right time abandoned their claim to sole legal authority. It is true that the plebeians could not but be painfully sensible of their political disabilities; but undoubtedly in the first instance the nobility had not much to fear from a purely political opposition, if it understood the art of keeping the multitude, which desired nothing but equitable administration and protection of its material interests, aloof from political strife. In fact during the first period after the expulsion of the kings we

meet with various measures which were intended, or at any rate seemed to be intended, to gain the favour of the commons for the government of the nobility especially on economic grounds. The port-dues were reduced; when the price of grain was high, large quantities of corn were purchased on account of the state, and the trade in salt was made a state-monopoly, in order to supply the citizens with corn and salt at reasonable prices; lastly, the national festival was prolonged for an additional day. Of the same character was the ordinance which we have already mentioned respecting property fines,[17] which was not merely intended in general to set limits to the dangerous fining-prerogative of the magistrates, but was also, in a significant manner, calculated for the especial protection of the man of small means. The magistrate was prohibited from fining the same man on the same day to an extent beyond two sheep or beyond thirty oxen, without granting leave to appeal; and the reason of these singular rates can only perhaps be found in the fact, that in the case of the man of small means possessing only a few sheep a different maximum appeared necessary from that fixed for the wealthy proprietor of herds of oxen —a considerate regard to the wealth or poverty of the person fined, from which modern legislators might take a lesson.

But these regulations were merely superficial; the main current flowed in the opposite direction. With the change in the constitution there was introduced a comprehensive revolution in

[17] II. I. Right of Appeal

the financial and economic relations of Rome, The government of the kings had probably abstained on principle from enhancing the power of capital, and had promoted as far as it could an increase in the number of farms. The new aristocratic government, again, appears to have aimed from the first at the destruction of the middle classes, particularly of the intermediate and smaller holdings of land, and at the development of a domination of landed and moneyed lords on the one hand, and of an agricultural proletariate on the other.

Rising Power of the Capitalists

The reduction of the port-dues, although upon the whole a popular measure, chiefly benefited the great merchant. But a much greater accession to the power of capital was supplied by the indirect system of finance-administration. It is difficult to say what were the remote causes that gave rise to it: but, while its origin may probably be referred to the regal period, after the introduction of the consulate the importance of the intervention of private agency must have been greatly increased, partly by the rapid succession of magistrates in Rome, partly by the extension of the financial action of the treasury to such matters as the purchase and sale of grain and salt; and thus the foundation must have been laid for that system of farming the finances, the development of which became so momentous and so pernicious for the Roman commonwealth. The state gradually put all its indirect revenues and all its more complicated payments and transactions into the hands of middlemen, who gave or received

a round sum and then managed the matter for their own benefit. Of course only considerable capitalists and, as the state looked strictly to tangible security, in the main only large landholders, could enter into such engagements: and thus there grew up a class of tax-farmers and contractors, who, in the rapid growth of their wealth, in their power over the state to which they appeared to be servants, and in the absurd and sterile basis of their moneyed dominion, quite admit of comparison with the speculators on the stock exchange of the present day.

Public Land

The concentrated aspect assumed by the administration of finance showed itself first and most palpably in the treatment of the public lands, which tended almost directly to accomplish the material and moral annihilation of the middle classes. The use of the public pasture and of the state-domains generally was from its very nature a privilege of burgesses; formal law excluded the plebeian from the joint use of the common pasture. As however, apart from the conversion of the public land into private property or its assignation, Roman law knew no fixed rights of usufruct on the part of individual burgesses to be respected like those of property, it depended solely on the pleasure of the king, so long as the public land remained such, to grant and to define its joint enjoyment; and it is not to be doubted that he frequently made use of his right, or at least his power, as to this matter in favour of plebeians. But on the introduction of the republic the principle was again strictly insisted on, that

the use of the common pasture belonged in law merely to the burgess of best right, or in other words to the patrician; and, though the senate still as before allowed exceptions in favour of the wealthy plebeian houses represented in it, the small plebeian landholders and the day-labourers, who stood most in need of the common pasture, had its joint enjoyment injuriously withheld from them. Moreover there had hitherto been paid for the cattle driven out on the common pasture a grazing-tax, which was moderate enough to make the right of using that pasture still be regarded as a privilege, and yet yielded no inconsiderable revenue to the public purse. The patrician quaestors were now remiss and indulgent in levying it, and gradually allowed it to fall into desuetude. Hitherto, particularly when new domains were acquired by conquest, allocations of land had been regularly arranged, in which all the poorer burgesses and —metoeci— were provided for; it was only the land which was not suitable for agriculture that was annexed to the common pasture. The ruling class did not venture wholly to give up such assignations, and still less to propose them merely in favour of the rich; but they became fewer and scantier, and were replaced by the pernicious system of occupation-that is to say, the cession of domain-lands, not in property or under formal lease for a definite term, but in special usufruct until further notice, to the first occupant and his heirs-at-law, so that the state was at any time entitled to resume them, and the occupier had to pay the tenth sheaf, or in oil and wine the fifth part of the produce, to the exchequer. This was

simply the -precarium- already described[18] applied to the state-domains, and may have been already in use as to the public land at an earlier period, particularly as a temporary arrangement until its assignation should be carried out. Now, however, not only did this occupation-tenure become permanent, but, as was natural, none but privileged persons or their favourites participated, and the tenth and fifth were collected with the same negligence as the grazing-money. A threefold blow was thus struck at the intermediate and smaller landholders: they were deprived of the common usufructs of burgesses; the burden of taxation was increased in consequence of the domain revenues no longer flowing regularly into the public chest; and those land-allocations were stopped, which had provided a constant outlet for the agricultural proletariate somewhat as a great and well-regulated system of emigration would do at the present day. To these evils was added the farming on a large scale, which was probably already beginning to come into vogue, dispossessing the small agrarian clients, and in their stead cultivating the estates by rural slaves; a blow, which was more difficult to avert and perhaps more pernicious than all those political usurpations put together. The burdensome and partly unfortunate wars, and the exorbitant taxes and task-works to which these gave rise, filled up the measure of calamity, so as either to deprive the possessor directly of his farm and to make him the bondsman if not the slave of his creditor-lord, or to reduce him through encumbrances

[18] I. XIII. Landed proprietors

practically to the condition of a temporary lessee of his creditor. The capitalists, to whom a new field was here opened of lucrative speculation unattended by trouble or risk, sometimes augmented in this way their landed property; sometimes they left to the farmer, whose person and estate the law of debt placed in their hands, nominal proprietorship and actual possession. The latter course was probably the most common as well as the most pernicious; for while utter ruin might thereby be averted from the individual, this precarious position of the farmer, dependent at all times on the mercy of his creditor—a position in which he knew nothing of property but its burdens—threatened to demoralise and politically to annihilate the whole farmer-class. The intention of the legislator, when instead of mortgaging he prescribed the immediate transfer of the property to the creditor with a view to prevent insolvency and to devolve the burdens of the state on the real holders of the soil,[19] was evaded by the rigorous system of personal credit, which might be very suitable for merchants, but ruined the farmers. The free divisibility of the soil always involved the risk of an insolvent agricultural proletariate; and under such circumstances, when all burdens were increasing and all means of deliverance were foreclosed, distress and despair could not but spread with fearful rapidity among the agricultural middle class.

Relations of the Social Question to the Question between

[19] I. VI. Character of the Roman Law

The distinction between rich and poor, which arose out of these relations, by no means coincided with that between the clans and the plebeians. If far the greater part of the patricians were wealthy landholders, opulent and considerable families were, of course, not wanting among the plebeians; and as the senate, which even then perhaps consisted in greater part of plebeians, had assumed the superintendence of the finances to the exclusion even of the patrician magistrates, it was natural that all those economic advantages, for which the political privileges of the nobility were abused, should go to the benefit of the wealthy collectively; and the pressure fell the more heavily upon the commons, since those who were the ablest and the most capable of resistance were by their admission to the senate transferred from the class of the oppressed to the ranks of the oppressors.

But this state of things prevented the political position of the aristocracy from being permanently tenable. Had it possessed the self-control to govern justly and to protect the middle class—as individual consuls from its ranks endeavoured, but from the reduced position of the magistracy were unable effectually, to do—it might have long maintained itself in sole possession of the offices of state. Had it been willing to admit the wealthy and respectable plebeians to full equality of rights—possibly by connecting the acquisition of the patriciate with admission into the senate—both might long have governed and speculated

with impunity. But neither of these courses was adopted; the narrowness of mind and short- sightedness, which are the proper and inalienable privileges of all genuine patricianism, were true to their character also in Rome, and rent the powerful commonwealth asunder in useless, aimless, and inglorious strife.

Secession to the Sacred Mount

The immediate crisis however proceeded not from those who felt the disabilities of their order, but from the distress of the farmers. The rectified annals place the political revolution in the year 244, the social in the years 259 and 260; they certainly appear to have followed close upon each other, but the interval was probably longer. The strict enforcement of the law of debt —so runs the story—excited the indignation of the farmers at large. When in the year 259 the levy was called forth for a dangerous war, the men bound to serve refused to obey the command. Thereupon the consul Publius Servilius suspended for a time the application of the debtor-laws, and gave orders to liberate the persons already imprisoned for debt as well as prohibited further arrests; so that the farmers took their places in the ranks and helped to secure the victory. On their return from the field of battle the peace, which had been achieved by their exertions, brought back their prison and their chains: with merciless rigour the second consul, Appius Claudius, enforced the debtor-laws and his colleague, to whom his former soldiers appealed for aid, dared not offer opposition. It seemed as if collegiate rule had been introduced not for the protection of

the people, but to facilitate breach of faith and despotism; they endured, however, what could not be changed. But when in the following year the war was renewed, the word of the consul availed no longer. It was not till Manius Valerius was nominated dictator that the farmers submitted, partly from their awe of the higher magisterial authority, partly from their confidence in his friendly feeling to the popular cause—for the Valerii were one of those old patrician clans by whom government was esteemed a privilege and an honour, not a source of gain. The victory was again with the Roman standards; but when the victors came home and the dictator submitted his proposals of reform to the senate, they were thwarted by its obstinate opposition. The army still stood in its array, as usual, before the gates of the city. When the news arrived, the long threatening storm burst forth; the -esprit de corps- and the compact military organization carried even the timid and the indifferent along with the movement. The army abandoned its general and its encampment, and under the leadership of the commanders of the legions—the military tribunes, who were at least in great part plebeians—marched in martial order into the district of Crustumeria between the Tiber and the Anio, where it occupied a hill and threatened to establish in this most fertile part of the Roman territory a new plebeian city. This secession showed in a palpable manner even to the most obstinate of the oppressors that such a civil war must end with economic ruin to themselves; and the senate gave way. The dictator negotiated an agreement; the citizens returned within the

city walls; unity was outwardly restored. The people gave Manius Valerius thenceforth the name of "the great" (-maximus-)—and called the mount beyond the Anio "the sacred mount." There was something mighty and elevating in such a revolution, undertaken by the multitude itself without definite guidance under generals whom accident supplied, and accomplished without bloodshed; and with pleasure and pride the citizens recalled its memory. Its consequences were felt for many centuries: it was the origin of the tribunate of the plebs.

Plebian Tribunes and Plebian Aediles

In addition to temporary enactments, particularly for remedying the most urgent distress occasioned by debt, and for providing for a number of the rural population by the founding of various colonies, the dictator carried in constitutional form a law, which he moreover —doubtless in order to secure amnesty to the burgesses for the breach of their military oath—caused every individual member of the community to swear to, and then had it deposited in a temple under the charge and custody of two magistrates specially appointed from the plebs for the purpose, the two "house-masters" (-aediles-). This law placed by the side of the two patrician consuls two plebeian tribunes, who were to be elected by the plebeians assembled in curies. The power of the tribunes was of no avail in opposition to the military -imperium-, that is, in opposition to the authority of the dictator everywhere or to that of the consuls beyond the city; but it confronted, on a footing of independence and equality, the

ordinary civil powers which the consuls exercised. There was, however, no partition of powers. The tribunes obtained the right which pertained to the consul against his fellow-consul and all the more against an inferior magistrate,[20] namely, the right to cancel any command issued by a magistrate, as to which the burgess whom it affected held himself aggrieved and lodged a complaint, through their protest timeously and personally interposed, and likewise of hindering or cancelling at discretion any proposal made by a magistrate to the burgesses, in other words, the right of intercession or the so-called tribunician veto.

Intercession

The power of the tribunes, therefore, primarily involved the right of putting a stop to administration and to judicial action at their pleasure, of enabling a person bound to military service to withhold himself from the levy with impunity, of preventing or cancelling the raising of an action and legal execution against the debtor, the initiation of a criminal process and the arrest of the accused while the investigation was pending, and other powers of the same sort. That this legal help might not be frustrated by the absence of the helpers, it was further ordained that the tribune should not spend a night out of the city, and that his door must stand open day and night. Moreover, it lay in the power of the tribunate of the people through a single word of a single tribune to restrain the adoption of a resolution by the community, which

[20] II. I. Collegiate Arrangement

otherwise by virtue of its sovereign right might have without ceremony recalled the privileges conferred by it on the plebs.

But these rights would have been ineffective, if there had not belonged to the tribune of the people an instantaneously operative and irresistible power of enforcing them against him who did not regard them, and especially against the magistrate contravening them. This was conferred in such a form that the acting in opposition to the tribune when making use of his right, above all things the laying hands on his person, which at the Sacred Mount every plebeian, man by man for himself and his descendants, had sworn to protect now and in all time to come from all harm, should be a capital crime; and the exercise of this criminal justice was committed not to the magistrates of the community but to those of the plebs. The tribune might in virtue of this his judicial office call to account any burgess, especially the consul in office, have him seized if he should not voluntarily submit, place him under arrest during investigation or allow him to find bail, and then sentence him to death or to a fine. For this purpose the two plebeian aediles appointed at the same time were attached to the tribunes as their servants and assistants, primarily to effect arrest, on which account the same inviolable character was assured to them also by the collective oath of the plebeians. Moreover the aediles themselves had judicial powers like the tribunes, but only for the minor causes that might be settled by fines. If an appeal was lodged against the decision of tribune or aedile, it was addressed not to the whole body of the

burgesses, with which the officials of the plebs were not entitled at all to transact business, but to the whole body of the plebeians, which in this case met by curies and finally decided by majority of votes.

This procedure certainly savoured of violence rather than of justice, especially when it was adopted against a non-plebeian, as must in fact have been ordinarily the case. It was not to be reconciled either with the letter or the spirit of the constitution that a patrician should be called to account by authorities who presided not over the body of burgesses, but over an association formed within it, and that he should be compelled to appeal, not to the burgesses, but to this very association. This was originally without question Lynch justice; but the self-help was doubtless carried into effect from early times in form of law, and was after the legal recognition of the tribunate of the plebs regarded as lawfully admissible.

In point of intention this new jurisdiction of the tribunes and the aediles, and the appellate decision of the plebeian assembly therein originating, were beyond doubt just as much bound to the laws as the jurisdiction of the consuls and quaestors and the judgment of the centuries on appeal; the legal conceptions of crime against the community[21] and of offences against order[22] were transferred from the community and its magistrates to the plebs and its champions. But these conceptions were themselves

[21] I. XI. Property

[22] I. XI. Punishment of Offenses against Order

so little fixed, and their statutory definition was so difficult and indeed impossible, that the administration of justice under these categories from its very nature bore almost inevitably the stamp of arbitrariness. And now when the very idea of right had become obscured amidst the struggles of the orders, and when the legal party—leaders on both sides were furnished with a co-ordinate jurisdiction, this jurisdiction must have more and more approximated to a mere arbitrary police. It affected in particular the magistrate. Hitherto the latter according to Roman state law, so long as he was a magistrate, was amenable to no jurisdiction at all, and, although after demitting his office he might have been legally made responsible for each of his acts, the exercise of this right lay withal in the hands of the members of his own order and ultimately of the collective community, to which these likewise belonged. Now in the tribunician jurisdiction there emerged a new power, which on the one hand might interfere against the supreme magistrate even during his tenure of office, and on the other hand was wielded against the noble burgesses exclusively by the non-noble, and which was the more oppressive that neither the crime nor its punishment was formally defined by law. In reality through the co-ordinate jurisdiction of the plebs and the community the estates, limbs, and lives of the burgesses were abandoned to the arbitrary pleasure of the party assemblies.

In civil jurisdiction the plebeian institutions interfered only so far, that in the processes affecting freedom, which were so important for the plebs, the nomination of jurymen was

withdrawn from the consuls, and the decisions in such cases were pronounced by the "ten-men-judges" destined specially for that purpose (-iudices-, -decemviri-, afterwards -decemviri litibus iudicandis-).

Legislation

With this co-ordinate jurisdiction there was further associated a co-ordinate initiative in legislation. The right of assembling the members and of procuring decrees on their part already pertained to the tribunes, in so far as no association at all can be conceived without such a right. But it was conferred upon them, in a marked way, by legally securing that the autonomous right of the plebs to assemble and pass resolutions should not be interfered with on the part of the magistrates of the community or, in fact, of the community itself. At all events it was the necessary preliminary to the legal recognition of the plebs generally, that the tribunes could not be hindered from having their successors elected by the assembly of the plebs and from procuring the confirmation of their criminal sentences by the same body; and this right accordingly was further specially guaranteed to them by the Icilian law (262), which threatened with severe punishment any one who should interrupt the tribune while speaking, or should bid the assembly disperse. It is evident that under such circumstances the tribune could not well be prevented from taking a vote on other proposals than the choice of his successor and the confirmation of his sentences. Such "resolves of the multitude" (-plebi scita-) were

not indeed strictly valid decrees of the people; on the contrary, they were at first little more than are the resolutions of our modern public meetings; but, as the distinction between the comitia of the people and the councils of the multitude was of a formal nature rather than aught else, the validity of these resolves as autonomous determinations of the community was at once claimed at least on the part of the plebeians, and the Icilian law for instance was immediately carried in this way. Thus was the tribune of the people appointed as a shield and protection for the individual, and as leader and manager for all, provided with unlimited judicial power in criminal proceedings, that in this way he might give emphasis to his command, and lastly even pronounced to be in his person inviolable (-sacrosanctus-), inasmuch as whoever laid hands upon him or his servant was not merely regarded as incurring the vengeance of the gods, but was also among men accounted as if, after legally proven crime, deserving of death.

Relation of the Tribune to the Consul

The tribunes of the multitude (-tribuni plebis-) arose out of the military tribunes and derived from them their name; but constitutionally they had no further relation to them. On the contrary, in respect of powers the tribunes of the plebs stood on a level with the consuls. The appeal from the consul to the tribune, and the tribune's right of intercession in opposition to the consul, were, as has been already said, precisely of the same nature with the appeal from consul to consul and the intercession of the one

consul in opposition to the other; and both cases were simply applications of the general principle of law that, where two equal authorities differ, the veto prevails over the command. Moreover the original number (which indeed was soon augmented), and the annual duration of the magistracy, which in the case of the tribunes changed its occupants on the 10th of December, were common to the tribunes and the consuls. They shared also the peculiar collegiate arrangement, which placed the full powers of the office in the hands of each individual consul and of each individual tribune, and, when collisions occurred within the college, did not count the votes, but gave the Nay precedence over the Yea; for which reason, when a tribune forbade, the veto of the individual was sufficient notwithstanding the opposition of his colleagues, while on the other hand, when he brought an accusation, he could be thwarted by any one of those colleagues. Both consuls and tribunes had full and co-ordinate criminal jurisdiction, although the former exercised it indirectly, and the latter directly; as the two quaestors were attached to the former, the two aediles were associated with the latter.[23] The consuls

[23] That the plebeian aediles were formed after the model of the patrician quaestors in the same way as the plebeian tribunes after the model of the patrician consuls, is evident both as regards their criminal functions (in which the distinction between the two magistracies seems to have lain in their tendencies only, not in their powers) and as regards their charge of the archives. The temple of Ceres was to the aediles what the temple of Saturn was to the quaestors, and from the former they derived their name. Significant in this respect is the enactment of the law of 305 (Liv. iii. 55), that the decrees of the senate should be delivered over to the aediles there (p. 369), whereas, as is well known, according to the ancient —and subsequently after the settlement

were necessarily patricians, the tribunes necessarily plebeians. The former had the ampler power, the latter the more unlimited, for the consul submitted to the prohibition and the judgment of the tribunes, but the tribune did not submit himself to the consul. Thus the tribunician power was a copy of the consular; but it was none the less a contrast to it. The power of the consuls was essentially positive, that of the tribunes essentially negative. The consuls alone were magistrates of the Roman people, not the tribunes; for the former were elected by the whole burgesses, the latter only by the plebeian association. In token of this the consul appeared in public with the apparel and retinue pertaining to state- officials; the tribunes sat on a stool instead of the "chariot seat," and lacked the official attendants, the purple border, and generally all the insignia of magistracy: even in the senate the tribune had neither presidency nor so much as a seat. Thus in this remarkable institution absolute prohibition was in the most stern and abrupt fashion opposed to absolute command; the quarrel was settled by legally recognizing and regulating the discord between rich and poor.

Political Value of the Tribunate

But what was gained by a measure which broke up the unity of the state; which subjected the magistrates to a controlling authority unsteady in its action and dependent on all the passions of the moment; which in the hour of peril might have brought

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of the struggles between the orders, again preponderant—practice those decrees were committed to the quaestors for preservation in the temple of Saturn.

the administration to a dead-lock at the bidding of any one of the opposition chiefs elevated to the rival throne; and which, by investing all the magistrates with co-ordinate jurisdiction in the administration of criminal law, as it were formally transferred that administration from the domain of law to that of politics and corrupted it for all time coming? It is true indeed that the tribunate, if it did not directly contribute to the political equalization of the orders, served as a powerful weapon in the hands of the plebeians when these soon afterwards desired admission to the offices of state. But this was not the real design of the tribunate. It was a concession wrung not from the politically privileged order, but from the rich landlords and capitalists; it was designed to ensure to the commons equitable administration of law, and to promote a more judicious administration of finance. This design it did not, and could not, fulfil. The tribune might put a stop to particular iniquities, to individual instances of crying hardship; but the fault lay not in the unfair working of a righteous law, but in a law which was itself unrighteous, and how could the tribune regularly obstruct the ordinary course of justice? Could he have done so, it would have served little to remedy the evil, unless the sources of impoverishment were stopped—the perverse taxation, the wretched system of credit, and the pernicious occupation of the domain-lands. But such measures were not attempted, evidently because the wealthy plebeians themselves had no less interest in these abuses than the patricians. So this singular magistracy

was instituted, which presented to the commons an obvious and available aid, and yet could not possibly carry out the necessary economic reform. It was no proof of political wisdom, but a wretched compromise between the wealthy aristocracy and the leaderless multitude. It has been affirmed that the tribunate of the people preserved Rome from tyranny. Were it true, it would be of little moment: a change in the form of the state is not in itself an evil for a people; on the contrary, it was a misfortune for the Romans that monarchy was introduced too late, after the physical and mental energies of the nation were exhausted. But the assertion is not even correct; as is shown by the circumstance that the Italian states remained as regularly free from tyrants as the Hellenic states regularly witnessed their emergence. The reason lies simply in the fact that tyranny is everywhere the result of universal suffrage, and that the Italians excluded the burgesses who had no land from their public assemblies longer than the Greeks did: when Rome departed from this course, monarchy did not fail to emerge, and was in fact associated with this very tribunician orifice. That the tribunate had its use, in pointing out legitimate paths of opposition and averting many a wrong, no one will fail to acknowledge; but it is equally evident that, where it did prove useful, it was employed for very different objects from those for which it had been established. The bold experiment of allowing the leaders of the opposition a constitutional veto, and of investing them with power to assert it regardless of the consequences, proved to be an expedient by which the state

was politically unhinged; and social evils were prolonged by the application of useless palliatives.

Further Dissensions

Now that civil war was organized, it pursued its course. The parties stood face to face as if drawn up for battle, each under its leaders. Restriction of the consular and extension of the tribunician power were the objects contended for on the one side; the annihilation of the tribunate was sought on the other. Legal impunity secured for insubordination, refusal to enter the ranks for the defence of the land, impeachments involving fines and penalties directed specially against magistrates who had violated the rights of the commons or who had simply provoked their displeasure, were the weapons of the plebeians; and to these the patricians opposed violence, concert with the public foes, and occasionally also the dagger of the assassin. Hand-to-hand conflicts took place in the streets, and on both sides the sacredness of the magistrate's person was violated. Many families of burgesses are said to have migrated, and to have sought more peaceful abodes in neighbouring communities; and we may well believe it. The strong patriotism of the people is obvious from the fact, not that they adopted this constitution, but that they endured it, and that the community, notwithstanding the most vehement convulsions, still held together.

Coriolanus

The best-known incident in these conflicts of the orders is

the history of Gnaeus Marcius, a brave aristocrat, who derived his surname from the storming of Corioli. Indignant at the refusal of the centuries to entrust to him the consulate in the year 263, he is reported to have proposed, according to one version, the suspension of the sales of corn from the state-stores, till the hungry people should give up the tribunate; according to another version, the direct abolition of the tribunate itself. Impeached by the tribunes so that his life was in peril, it is said that he left the city, but only to return at the head of a Volscian army; that when he was on the point of conquering the city of his fathers for the public foe, the earnest appeal of his mother touched his conscience; and that thus he expiated his first treason by a second, and both by death. How much of this is true cannot be determined; but the story, over which the naive misrepresentations of the Roman annalists have shed a patriotic glory, affords a glimpse of the deep moral and political disgrace of these conflicts between the orders. Of a similar stamp was the surprise of the Capitol by a band of political refugees, led by a Sabine chief, Appius Herdonius, in the year 294; they summoned the slaves to arms, and it was only after a violent conflict, and by the aid of the Tusculans who hastened to render help, that the Roman burgess-force overcame the Catilinarian band. The same character of fanatical exasperation marks other events of this epoch, the historical significance of which can no longer be apprehended in the lying family narratives; such as the predominance of the Fabian clan which furnished one of

the two consuls from 269 to 275, and the reaction against it, the emigration of the Fabii from Rome, and their annihilation by the Etruscans on the Cremera (277)Still more odious was the murder of the tribune of the people, Gnaeus Genucius, who had ventured to call two consulars to account, and who on the morning of the day fixed for the impeachment was found dead in bed (281)The immediate effect of this misdeed was the Publilian law (283), one of the most momentous in its consequences with which Roman history has to deal. Two of the most important arrangements—the introduction of the plebeian assembly of tribes, and the placing of the -plebiscitum- on a level, although conditionally, with the formal law sanctioned by the whole community—are to be referred, the former certainly, the latter probably, to the proposal of Volero Publilius the tribune of the people in 283. The plebs had hitherto adopted its resolutions by curies; accordingly in these its separate assemblies, on the one hand, the voting had been by mere number without distinction of wealth or of freehold property, and, on the other hand, in consequence of that standing side by side on the part of the clansmen, which was implied in the very nature of the curial assembly, the clients of the great patrician families had voted with one another in the assembly of the plebeians. These two circumstances had given to the nobility various opportunities of exercising influence on that assembly, and especially of managing the election of tribunes according to their views; and both were henceforth done away by means of the new method of

voting according to tribes. Of these, four had been formed under the Servian constitution for the purposes of the levy, embracing town and country alike;[24] subsequently-perhaps in the year 259—the Roman territory had been divided into twenty districts, of which the first four embraced the city and its immediate environs, while the other sixteen were formed out of the rural territory on the basis of the clan-cantons of the earliest Roman domain.[25] To these was added—probably only in consequence of the Publilian law, and with a view to bring about the inequality, which was desirable for voting purposes, in the total number of the divisions—as a twenty-first tribe the Crustuminian, which derived its name from the place where the plebs had constituted itself as such and had established the tribunate;[26] and thenceforth the special assemblies of the plebs took place, no longer by curies, but by tribes. In these divisions, which were based throughout on the possession of land, the voters were exclusively freeholders: but they voted without distinction as to the size of their possession, and just as they dwelt together in villages and hamlets. Consequently, this assembly of the tribes, which otherwise was externally modelled on that of the curies, was in reality an assembly of the independent middle class, from which, on the one hand, the great majority of freedmen and clients were excluded as not being freeholders, and in which, on the

[24] I. VI. Levy Districts

[25] I. III. Clan-Villages

[26] II. II. Secession to the Sacred mount

other hand, the larger landholders had no such preponderance as in the centuries. This "meeting of the multitude" (-concilium plebis-) was even less a general assembly of the burgesses than the plebeian assembly by curies had been, for it not only, like the latter, excluded all the patricians, but also the plebeians who had no land; but the multitude was powerful enough to carry the point that its decree should have equal legal validity with that adopted by the centuries, in the event of its having been previously approved by the whole senate. That this last regulation had the force of established law before the issuing of the Twelve Tables, is certain; whether it was directly introduced on occasion of the Publilian -plebiscitum-, or whether it had already been called into existence by some other—now forgotten—statute, and was only applied to the Publilian -plebiscitum- cannot be any longer ascertained. In like manner it remains uncertain whether the number of tribunes was raised by this law from two to four, or whether that increase had taken place previously.

Agrarian Law of Spurius Cassius

More sagacious in plan than all these party steps was the attempt of Spurius Cassius to break down the financial omnipotence of the rich, and so to put a stop to the true source of the evil. He was a patrician, and none in his order surpassed him in rank and renown. After two triumphs, in his third consulate (268), he submitted to the burgesses a proposal to have the public domain measured and to lease part of it for the benefit of the public treasury, while a further portion was to be distributed

among the necessitous. In other words, he attempted to wrest the control of the public lands from the senate, and, with the support of the burgesses, to put an end to the selfish system of occupation. He probably imagined that his personal distinction, and the equity and wisdom of the measure, might carry it even amidst that stormy sea of passion and of weakness. But he was mistaken. The nobles rose as one man; the rich plebeians took part with them; the commons were displeased because Spurius Cassius desired, in accordance with federal rights and equity, to give to the Latin confederates their share in the assignation. Cassius had to die. There is some truth in the charge that he had usurped regal power, for he had indeed endeavoured like the kings to protect the free commons against his own order. His law was buried along with him; but its spectre thenceforward incessantly haunted the eyes of the rich, and again and again it rose from the tomb against them, until amidst the conflicts to which it led the commonwealth perished.

Decemvirs

A further attempt was made to get rid of the tribunician power by securing to the plebeians equality of rights in a more regular and more effectual way. The tribune of the people, Gaius Terentilius Arsa, proposed in 292 the nomination of a commission of five men to prepare a general code of law by which the consuls should in future be bound in exercising their judicial powers. But the senate refused to sanction this proposal, and ten years elapsed ere it was carried into effect—years

of vehement strife between the orders, and variously agitated moreover by wars and internal troubles. With equal obstinacy the party of the nobles hindered the concession of the law in the senate, and the plebs nominated again and again the same men as tribunes. Attempts were made to obviate the attack by other concessions. In the year 297 an increase of the tribunes from four to ten was sanctioned—a very dubious gain; and in the following year, by an Icilian -plebiscitum- which was admitted among the sworn privileges of the plebs, the Aventine, which had hitherto been a temple-grove and uninhabited, was distributed among the poorer burgesses as sites for buildings in heritable occupancy. The plebs took what was offered to them, but never ceased to insist in their demand for a legal code. At length, in the year 300, a compromise was effected; the senate in substance gave way. The preparation of a legal code was resolved upon; for that purpose, as an extraordinary measure, the centuries were to choose ten men who were at the same time to act as supreme magistrates in room of the consuls (-decemviri consulari imperio legibus scribundls-), and to this office not merely patricians, but plebeians also might be elected. These were here for the first time designated as eligible, though only for an extraordinary office. This was a great step in the progress towards full political equality; and it was not too dearly purchased, when the tribunate of the people as well as the right of appeal were suspended while the decemvirate lasted, and the decemvirs were simply bound not to infringe the sworn liberties of the community. Previously

however an embassy was sent to Greece to bring home the laws of Solon and other Greek laws; and it was only on its return that the decemvirs were chosen for the year 303. Although they were at liberty to elect plebeians, the choice fell on patricians alone —so powerful was the nobility still—and it was only when a second election became necessary for 304, that some plebeians were chosen—the first non-patrician magistrates that the Roman community had.

Taking a connected view of these measures, we can scarcely attribute to them any other design than that of substituting for tribunician intercession a limitation of the consular powers by written law. On both sides there must have been a conviction that things could not remain as they were, and the perpetuation of anarchy, while it ruined the commonwealth, was in reality of no benefit to any one. People in earnest could not but discern that the interference of the tribunes in administration and their action as prosecutors had an absolutely pernicious effect; and the only real gain which the tribunate brought to the plebeians was the protection which it afforded against a partial administration of justice, by operating as a sort of court of cassation to check the caprice of the magistrate. Beyond doubt, when the plebeians desired a written code, the patricians replied that in that event the legal protection of tribunes would be superfluous; and upon this there appears to have been concession by both sides. Perhaps there was never anything definitely expressed as to what was to be done after the drawing up of the code; but that the plebs

definitely renounced the tribunate is not to be doubted, since it was brought by the decemvirate into such a position that it could not get back the tribunate otherwise than by illegal means. The promise given to the plebs that its sworn liberties should not be touched, may be referred to the rights of the plebeians independent of the tribunate, such as the -provocatio- and the possession of the Aventine. The intention seems to have been that the decemvirs should, on their retiring, propose to the people to re-elect the consuls who should now judge no longer according to their arbitrary pleasure but according to written law.

Legislation of the Twelve Tables

The plan, if it should stand, was a wise one; all depended on whether men's minds exasperated on either side with passion would accept that peaceful adjustment. The decemvirs of the year 303 submitted their law to the people, and it was confirmed by them, engraven on ten tables of copper, and affixed in the Forum to the rostra in front of the senate-house. But as a supplement appeared necessary, decemvirs were again nominated in the year 304, who added two more tables. Thus originated the first and only Roman code, the law of the Twelve Tables. It proceeded from a compromise between parties, and for that very reason could not well have contained any changes in the existing law of a comprehensive nature, going beyond the regulation of secondary matters and of the mere adaptation of means and ends. Even in the system of credit no further alleviation was introduced than the establishment of a—probably

low—maximum of interest (10 per cent) and the threatening of heavy penalties against the usurer-penalties, characteristically enough, far heavier than those of the thief; the harsh procedure in actions of debt remained at least in its leading features unaltered. Still less, as may easily be conceived, were changes contemplated in the rights of the orders. On the contrary the legal distinction between burgesses liable to be taxed and those who were without estate, and the invalidity of marriage between patricians and plebeians, were confirmed anew in the law of the city. In like manner, with a view to restrict the caprice of the magistrate and to protect the burgess, it was expressly enacted that the later law should uniformly have precedence over the earlier, and that no decree of the people should be issued against a single burgess. The most remarkable feature was the exclusion of appeal to the -comitia tributa- in capital causes, while the privilege of appeal to the centuries was guaranteed; which admits of explanation from the circumstance that the penal jurisdiction was in fact usurped by the plebs and its presidents,[27] and with the tribunate there necessarily fell the tribunician capital process, while it was perhaps the intention to retain the aedilician process of fine (-multa-). The essential political significance of the measure resided far less in the contents of the legislation than in the formal obligation now laid upon the consuls to administer justice according to these forms of process and these rules of law, and in the public exhibition of the code, by which the administration

[27] II. II. Intercession

of justice was subjected to the control of publicity and the consul was compelled to dispense equal and truly common justice to all.

Fall of the Decemvirs

The end of the decemvirate is involved in much obscurity. It only remained—so runs the story—for the decemvirs to publish the last two tables, and then to give place to the ordinary magistracy. But they delayed to do so: under the pretext that the laws were not yet ready, they themselves prolonged their magistracy after the expiry of their official year—which was so far possible, as under Roman constitutional law the magistracy called in an extraordinary way to the revision of the constitution could not become legally bound by the term set for its ending. The moderate section of the aristocracy, with the Valerii and Horatii at their head, are said to have attempted in the senate to compel the abdication of the decemvirate; but the head of the decemvirs Appius Claudius, originally a rigid aristocrat, but now changing into a demagogue and a tyrant, gained the ascendancy in the senate, and the people submitted. The levy of two armies was accomplished without opposition, and war was begun against the Volscians as well as against the Sabines. Thereupon the former tribune of the people, Lucius Siccius Dentatus, the bravest man in Rome, who had fought in a hundred and twenty battles and had forty-five honourable scars to show, was found dead in front of the camp, foully murdered, as it was said, at the instigation of the decemvirs. A revolution was fermenting in men's minds; and its outbreak was hastened by the unjust

sentence pronounced by Appius in the process as to the freedom of the daughter of the centurion Lucius Verginius, the bride of the former tribune of the people Lucius Icilius—a sentence which wrested the maiden from her relatives with a view to make her non-free and beyond the pale of the law, and induced her father himself to plunge his knife into the heart of his daughter in the open Forum, to rescue her from certain shame. While the people in amazement at the unprecedented deed surrounded the dead body of the fair maiden, the decemvir commanded his lictors to bring the father and then the bridegroom before his tribunal, in order to render to him, from whose decision there lay no appeal, immediate account for their rebellion against his authority. The cup was now full. Protected by the furious multitude, the father and the bridegroom of the maiden made their escape from the lictors of the despot, and while the senate trembled and wavered in Rome, the pair presented themselves, with numerous witnesses of the fearful deed, in the two camps. The unparalleled tale was told; the eyes of all were opened to the gap which the absence of tribunician protection had made in the security of law; and what the fathers had done their sons repeated. Once more the armies abandoned their leaders: they marched in warlike order through the city, and proceeded once more to the Sacred Mount, where they again nominated their own tribunes. Still the decemvirs refused to lay down their power; then the army with its tribunes appeared in the city, and encamped on the Aventine. Now at length, when civil

war was imminent and the conflict in the streets might hourly begin, the decemvirs renounced their usurped and dishonoured power; and the consuls Lucius Valerius and Marcus Horatius negotiated a second compromise, by which the tribunate of the plebs was again established. The impeachment of the decemvirs terminated in the two most guilty, Appius Claudius and Spurius Oppius, committing suicide in prison, while the other eight went into exile and the state confiscated their property. The prudent and moderate tribune of the plebs, Marcus Duilius, prevented further judicial prosecutions by a seasonable use of his veto.

So runs the story as recorded by the pen of the Roman aristocrats; but, even leaving out of view the accessory circumstances, the great crisis out of which the Twelve Tables arose cannot possibly have ended in such romantic adventures, and in political issues so incomprehensible. The decemvirate was, after the abolition of the monarchy and the institution of the tribunate of the people, the third great victory of the plebs; and the exasperation of the opposite party against the institution and against its head Appius Claudius is sufficiently intelligible. The plebeians had through its means secured the right of eligibility to the highest magistracy of the community and a general code of law; and it was not they that had reason to rebel against the new magistracy, and to restore the purely patrician consular government by force of arms. This end can only have been pursued by the party of the nobility, and if the patricio-plebeian decemvirs made the attempt to maintain themselves in office

beyond their time, the nobility were certainly the first to enter the lists against them; on which occasion doubtless the nobles would not neglect to urge that the stipulated rights of the plebs should be curtailed and the tribunate, in particular, should be taken from it. If the nobility thereupon succeeded in setting aside the decemvirs, it is certainly conceivable that after their fall the plebs should once more assemble in arms with a view to secure the results both of the earlier revolution of 260 and of the latest movement; and the Valerio-Horatian laws of 305 can only be understood as forming a compromise in this conflict.

The Valerio-Horatian Laws

The compromise, as was natural, proved very favourable to the plebeians, and again imposed severely felt restrictions on the power of the nobility. As a matter of course the tribunate of the people was restored, the code of law wrung from the aristocracy was definitively retained, and the consuls were obliged to judge according to it. Through the code indeed the tribes lost their usurped jurisdiction in capital causes; but the tribunes got it back, as a way was found by which it was possible for them to transact business as to such cases with the centuries. Besides they retained, in the right to award fines without limitation and to submit this sentence to the -comitia tributa-, a sufficient means of putting an end to the civic existence of a patrician opponent. Further, it was on the proposition of the consuls decreed by the centuries that in future every magistrate—and therefore the dictator among the rest—should be bound at his nomination

to allow the right of appeal: any one who should nominate a magistrate on other terms was to expiate the offence with his life. In other respects the dictator retained his former powers; and in particular his official acts could not, like those of the consuls, be cancelled by a tribune.

The plenitude of the consular power was further restricted in so far as the administration of the military chest was committed to two paymasters (-quaestores-) chosen by the community, who were nominated for the first time in 307. The nomination as well of the two new paymasters for war as of the two administering the city-chest now passed over to the community; the consul retained merely the conduct of the election instead of the election itself. The assembly in which the paymasters were elected was that of the whole patricio-plebeian freeholders, and voted by districts; an arrangement which likewise involved a concession to the plebeian farmers, who had far more command of these assemblies than of the centuriate -comitia-.

A concession of still greater consequence was that which allowed the tribunes to share in the discussions of the senate. To admit the tribunes to the hall where the senate sat, appeared to that body beneath its dignity; so a bench was placed for them at the door that they might from that spot follow its proceedings. The tribunician right of intercession had extended also to the decrees of the senate as a collective body, after the latter had become not merely a deliberative but a decretory board, which probably occurred at first in the case of a -plebiscitum- that

was meant to be binding for the whole community;[28] it was natural that there should thenceforth be conceded to the tribunes a certain participation in the discussions of the senate-house. In order also to secure the decrees of the senate— with the validity of which indeed that of the most important -plebiscita- was bound up—from being tampered with or forged, it was enacted that in future they should be deposited not merely under charge of the patrician -quaestores urbani- in the temple of Saturn, but also under that of the plebian aediles in the temple of Ceres. Thus this struggle, which was begun in order to get rid of the tribunician power, terminated in the renewed and now definitive sanctioning of its right to annul not only particular acts of administration on the appeal of the person aggrieved, but also any resolution of the constituent powers of the state at pleasure. The persons of the tribunes, and the uninterrupted maintenance of the college at its full number, were once more secured by the most sacred oaths and by every element of reverence that religion could present, and not less by the most formal laws. No attempt to abolish this magistracy was ever from this time forward made in Rome.

[28] II. II. Legislation

CHAPTER III
The Equalization of the Orders, and the New Aristocracy

Union of the Plebians

The tribunician movements appear to have mainly originated in social rather than political discontent, and there is good reason to suppose that some of the wealthy plebeians admitted to the senate were no less opposed to these movements than the patricians. For they too benefited by the privileges against which the agitation was mainly directed; and although in other respects they found themselves treated as inferior, it probably seemed to them by no means an appropriate time for asserting their claim to participate in the magistracies, when the exclusive financial power of the whole senate was assailed. This explains why during the first fifty years of the republic no step was taken aiming directly at the political equalization of the orders.

But this league between the patricians and the wealthy plebeians by no means bore within itself any guarantee of permanence. Beyond doubt from the very first a portion of the leading plebeian families had attached themselves to the movement-party, partly from a sense of what was due to the fellow-members of their order, partly in consequence of the natural bond which unites all who are treated as inferior, and

partly because they perceived that concessions to the multitude were inevitable in the issue, and that, if turned to due account, they would result in the abrogation of the exclusive rights of the patriciate and would thereby give to the plebeian aristocracy a decisive preponderance in the state. Should this conviction become —as was inevitable—more and more prevalent, and should the plebeian aristocracy at the head of its order take up the struggle with the patrician nobility, it would wield in the tribunate a legalized instrument of civil warfare, and it might, with the weapon of social distress, so fight its battles as to dictate to the nobility the terms of peace and, in the position of mediator between the two parties, compel its own admission to the offices of state.

Such a crisis in the position of parties occurred after the fall of the decemvirate. It had now become perfectly clear that the tribunate of the plebs could never be set aside; the plebeian aristocracy could not do better than seize this powerful lever and employ it for the removal of the political disabilities of their order.

Throwing Open of Marriage and of Magistracies—Military Tribunes with Consular Powers

Nothing shows so clearly the defencelessness of the clan-nobility when opposed to the united plebs, as the fact that the fundamental principle of the exclusive party—the invalidity of marriage between patricians and plebeians—fell at the first blow scarcely four years after the decemviral revolution. In the

year 309 it was enacted by the Canuleian plebiscite, that a marriage between a patrician and a plebeian should be valid as a true Roman marriage, and that the children begotten of such a marriage should follow the rank of the father. At the same time it was further carried that, in place of consuls, military tribunes—of these there were at that time, before the division of the army into legions, six, and the number of these magistrates was adjusted accordingly-with consular powers[29] and consular duration of office should be elected by

[29] The hypothesis that legally the full -imperium- belonged to the patrician, and only the military -imperium- to the plebeian, consular tribunes, not only provokes various questions to which there is no answer—as to the course followed, for example, in the event of the election falling, as was by law quite possible, wholly on plebeians — but specially conflicts with the fundamental principle of Roman constitutional law, that the -imperium-, that is to say, the right of commanding the burgess in name of the community, was functionally indivisible and capable of no other limitation at all than a territorial one. There was a province of urban law and a province of military law, in the latter of which the -provocatio- and other regulations of urban law were not applicable; there were magistrates, such as the proconsuls, who were empowered to discharge functions simply in the latter; but there were, in the strict sense of law, no magistrates with merely jurisdictional, as there were none with merely military, -imperium-. The proconsul was in his province, just like the consul, at once commander-in-chief and supreme judge, and was entitled to send to trial actions not only between non-burgesses and soldiers, but also between one burgess and another. Even when, on the institution of the praetorship, the idea rose of apportioning special functions to the -magistratus maiores-, this division of powers had more of a practical than of a strictly legal force; the -praetor urbanus- was primarily indeed the supreme judge, but he could also convoke the centuries, at least for certain cases, and could command an army; the consul in the city held primarily the supreme administration and the supreme command, but he too acted as a judge in cases of emancipation and adoption—the functional indivisibility of the supreme magistracy was therefore, even

the centuries. The proximate cause was of a military nature, as the various wars required a greater number of generals in chief command than the consular constitution allowed; but the change came to be of essential importance for the conflicts of the orders, and it may be that that military object was rather the pretext than the reason for this arrangement. According to the ancient law every burgess or —metoikos— liable to service might attain the post of an officer,[30] and in virtue of that principle the supreme magistracy, after having been temporarily opened up to the plebeians in the decemvirate, was now after a more comprehensive fashion rendered equally accessible to all freeborn burgesses. The question naturally occurs, what interest the aristocracy could have—now that it was under the necessity of abandoning its exclusive possession of the supreme magistracy and of yielding in the matter—in refusing to the plebeians the title, and conceding to them the consulate under this singular

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in these instances, very strictly adhered to on both sides. Thus the military as well as jurisdictional authority, or, laying aside these abstractions foreign to the Roman law of this period, the absolute magisterial power, must have virtually pertained to the plebeian consular tribunes as well as to the patrician. But it may well be, as Becker supposes (Handb. ii. 2, 137), that, for the same reasons, for which at a subsequent period there was placed alongside of the consulship common to both orders the praetorship actually reserved for a considerable time for the patricians, even during the consular tribunate the plebeian members of the college were -de facto- kept aloof from jurisdiction, and so far the consular tribunate prepared the way for the subsequent actual division of jurisdiction between consuls and praetors.

[30] I. VI. Political Effects of the Servian Military Organization

form?[31] But, in the first place, there were associated with the holding of the supreme magistracy various honorary rights, partly personal, partly hereditary; thus the honour of a triumph was regarded as legally dependent on the occupancy of the supreme magistracy, and was never given to an officer who had not administered the latter office in person; and the descendants of a curule magistrate were at liberty to set up the image of such an ancestor in the family hall and to exhibit it in public on fitting occasions, while this was not allowed in the case of other ancestors.[32] It is as easy to be explained as it is difficult to be vindicated, that the governing aristocratic order should have allowed the government itself to be wrested from their hands far sooner than the honorary rights associated with it,

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[31] The defence, that the aristocracy clung to the exclusion of the plebeians from religious prejudice, mistakes the fundamental character of the Roman religion, and imports into antiquity the modern distinction between church and state. The admittance of a non-burgess to a religious ceremony of the citizens could not indeed but appear sinful to the orthodox Roman; but even the most rigid orthodoxy never doubted that admittance to civic communion, which absolutely and solely depended on the state, involved also full religious equality. All such scruples of conscience, the honesty of which in themselves we do not mean to doubt, were precluded, when once they granted to the plebeians -en masse- at the right time the patriciate. This only may perhaps be alleged by way of excuse for the nobility, that after it had neglected the right moment for this purpose at the abolition of the monarchy, it was no longer in a position subsequently of itself to retrieve the neglect (II. I. The New Community).

[32] Whether this distinction between these "curule houses" and the other families embraced within the patriciate was ever of serious political importance, cannot with certainty be either affirmed or denied; and as little do we know whether at this epoch there really was any considerable number of patrician families that were not yet curule.

especially such as were hereditary; and therefore, when it was obliged to share the former with the plebeians, it gave to the actual supreme magistrate the legal standing not of the holder of a curule chair, but of a simple staff-officer, whose distinction was one purely personal. Of greater political importance, however, than the refusal of the -ius imaginum- and of the honour of a triumph was the circumstance, that the exclusion of the plebeians sitting in the senate from debate necessarily ceased in respect to those of their number who, as designated or former consuls, ranked among the senators whose opinion had to be asked before the rest; so far it was certainly of great importance for the nobility to admit the plebeian only to a consular office, and not to the consulate itself.

Opposition of the Patriciate

But notwithstanding these vexatious disabilities the privileges of the clans, so far as they had a political value, were legally superseded by the new institution; and, had the Roman nobility been worthy of its name, it must now have given up the struggle. But it did not. Though a rational and legal resistance was thenceforth impossible, spiteful opposition still found a wide field of petty expedients, of chicanery and intrigue; and, far from honourable or politically prudent as such resistance was, it was still in a certain sense fruitful of results. It certainly procured at length for the commons concessions which could not easily have been wrung from the united Roman aristocracy; but it also prolonged civil war for another century and enabled the nobility,

in defiance of those laws, practically to retain the government in their exclusive possession for several generations longer.

Their Expedients

The expedients of which the nobility availed themselves were as various as political paltriness could suggest. Instead of deciding at once the question as to the admission or exclusion of the plebeians at the elections, they conceded what they were compelled to concede only with reference to the elections immediately impending. The vain struggle was thus annually renewed whether patrician consuls or military tribunes from both orders with consular powers should be nominated; and among the weapons of the aristocracy this mode of conquering an opponent by wearying and annoying him proved by no means the least effective.

Subdivision of the Magistracy—Censorship

Moreover they broke up the supreme power which had hitherto been undivided, in order to delay their inevitable defeat by multiplying the points to be assailed. Thus the adjustment of the budget and of the burgess—and taxation-rolls, which ordinarily took place every fourth year and had hitherto been managed by the consuls, was entrusted as early as the year 319 to two valuators (-censores-), nominated by the centuries from among the nobles for a period, at the most, of eighteen months. The new office gradually became the palladium of

the aristocratic party, not so much on account of its financial influence as on account of the right annexed to it of filling up the vacancies in the senate and in the equites, and of removing individuals from the lists of the senate, equites, and burgesses on occasion of their adjustment. At this epoch, however, the censorship by no means possessed the great importance and moral supremacy which afterwards were associated with it.

Quaestorship

But the important change made in the year 333 in respect to the quaestorship amply compensated for this success of the patrician party. The patricio-plebeian assembly of the tribes —perhaps taking up the ground that at least the two military paymasters were in fact officers rather than civil functionaries, and that so far the plebeian appeared as well entitled to the quaestorship as to the military tribuneship—carried the point that plebeian candidates also were admitted for the quaestorial elections, and thereby acquired for the first time the privilege of eligibility as well as the right of election for one of the ordinary magistracies. With justice it was felt on the one side as a great victory, on the other as a severe defeat, that thenceforth patrician and plebeian were equally capable of electing and being elected to the military as well as to the urban quaestorship.

Attempts at Counterrevolution

The nobility, in spite of the most obstinate resistance, only sustained loss after loss; and their exasperation increased as their

power decreased. Attempts were doubtless still made directly to assail the rights secured by agreement to the commons; but such attempts were not so much the well-calculated manoeuvres of party as the acts of an impotent thirst for vengeance. Such in particular was the process against Maelius as reported by the tradition—certainly not very trustworthy—that has come down to us. Spurius Maelius, a wealthy plebeian, during a severe dearth (315) sold corn at such prices as to put to shame and annoy the patrician store-president (-praefectus annonae-) Gaius Minucius. The latter accused him of aspiring to kingly power; with what amount of reason we cannot decide, but it is scarcely credible that a man who had not even filled the tribunate should have seriously thought of sovereignty. Nevertheless the authorities took up the matter in earnest, and the cry of "King" always produced on the multitude in Rome an effect similar to that of the cry of "Pope" on the masses in England. Titus Quinctius Capitolinus, who was for the sixth time consul, nominated Lucius Quinctius Cincinnatus, who was eighty years of age, as dictator without appeal, in open violation of the solemnly sworn laws.[33] Maelius, summoned before him, seemed disposed to disregard the summons; and the dictator's master of the horse, Gaius Servilius Ahala, slew him with his own hand. The house of the murdered man was pulled down, the corn from his granaries was distributed gratuitously to the people, and those who threatened to avenge his death were secretly made away

[33] II. II. The Valerio-Horatian Laws

with. This disgraceful judicial murder—a disgrace even more to the credulous and blind people than to the malignant party of young patricians—passed unpunished; but if that party had hoped by such means to undermine the right of appeal, it violated the laws and shed innocent blood in vain.

Intrigues of the Nobility

Electioneering intrigues and priestly trickery proved in the hands of the nobility more efficient than any other weapons. The extent to which the former must have prevailed is best seen in the fact that in 322 it appeared necessary to issue a special law against electioneering practices, which of course was of little avail. When the voters could not be influenced by corruption or threatening, the presiding magistrates stretched their powers —admitting, for example, so many plebeian candidates that the votes of the opposition were thrown away amongst them, or omitting from the list of candidates those whom the majority were disposed to choose. If in spite of all this an obnoxious election was carried, the priests were consulted whether no vitiating circumstance had occurred in the auspices or other religious ceremonies on the occasion; and some such flaw they seldom failed to discover. Taking no thought as to the consequences and unmindful of the wise example of their ancestors, the people allowed the principle to be established that the opinion of the skilled colleges of priests as to omens of birds, portents, and the like was legally binding on the magistrate, and thus put it into their power to cancel any state-act—whether

the consecration of a temple or any other act of administration, whether law or election—on the ground of religious informality. In this way it became possible that, although the eligibility of plebeians had been established by law already in 333 for the quaestorship and thenceforward continued to be legally recognized, it was only in 345 that the first plebeian attained the quaestorship; in like manner patricians almost exclusively held the military tribunate with consular powers down to 354. It was apparent that the legal abolition of the privileges of the nobles had by no means really and practically placed the plebeian aristocracy on a footing of equality with the clan-nobility. Many causes contributed to this result: the tenacious opposition of the nobility far more easily allowed itself to be theoretically superseded in a moment of excitement, than to be permanently kept down in the annually recurring elections; but the main cause was the inward disunion between the chiefs of the plebeian aristocracy and the mass of the farmers. The middle class, whose votes were decisive in the comitia, did not feel itself specially called on to advance the interests of genteel non-patricians, so long as its own demands were disregarded by the plebeian no less than by the patrician aristocracy.

The Suffering Farmers

During these political struggles social questions had lain on the whole dormant, or were discussed at any rate with less energy. After the plebeian aristocracy had gained possession of the tribunate for its own ends, no serious notice was taken either

of the question of the domains or of a reform in the system of credit; although there was no lack either of newly acquired lands or of impoverished or decaying farmers. Instances indeed of assignations took place, particularly in the recently conquered border-territories, such as those of the domain of Ardea in 312, of Labici in 336, and of Veii in 361—more however on military grounds than for the relief of the farmer, and by no means to an adequate extent. Individual tribunes doubtless attempted to revive the law of Cassius—for instance Spurius Maecilius and Spurius Metilius instituted in the year 337 a proposal for the distribution of the whole state-lands—but they were thwarted, in a manner characteristic of the existing state of parties, by the opposition of their own colleagues or in other words of the plebeian aristocracy. Some of the patricians also attempted to remedy the common distress; but with no better success than had formerly attended Spurius Cassius. A patrician like Cassius and like him distinguished by military renown and personal valour, Marcus Manlius, the saviour of the Capitol during the Gallic siege, is said to have come forward as the champion of the oppressed people, with whom he was connected by the ties of comradeship in war and of bitter hatred towards his rival, the celebrated general and leader of the optimate party, Marcus Furius Camillus. When a brave officer was about to be led away to a debtor's prison, Manlius interceded for him and released him with his own money; at the same time he offered his lands to sale, declaring loudly that, as long as he possessed

a foot's breadth of land, such iniquities should not occur. This was more than enough to unite the whole government party, patricians as well as plebeians, against the dangerous innovator. The trial for high treason, the charge of having meditated a renewal of the monarchy, wrought on the blind multitude with the insidious charm which belongs to stereotyped party-phrases. They themselves condemned him to death, and his renown availed him nothing save that it was deemed expedient to assemble the people for the bloody assize at a spot whence the voters could not see the rock of the citadel—the dumb monitor which might remind them how their fatherland had been saved from the extremity of danger by the hands of the very man whom they were now consigning to the executioner (370).

While the attempts at reformation were thus arrested in the bud, the social disorders became still more crying; for on the one hand the domain-possessions were ever extending in consequence of successful wars, and on the other hand debt and impoverishment were ever spreading more widely among the farmers, particularly from the effects of the severe war with Veii (348-358) and of the burning of the capital in the Gallic invasion (364)It is true that, when in the Veientine war it became necessary to prolong the term of service of the soldiers and to keep them under arms not—as hitherto at the utmost—only during summer, but also throughout the winter, and when the farmers, foreseeing their utter economic ruin, were on the point of refusing their consent to the declaration of war, the senate

resolved on making an important concession. It charged the pay, which hitherto the tribes had defrayed by contribution, on the state-chest, or in other words, on the produce of the indirect revenues and the domains (348)It was only in the event of the state-chest being at the moment empty that a general contribution (-tributum-) was imposed on account of the pay; and in that case it was considered as a forced loan and was afterwards repaid by the community. The arrangement was equitable and wise; but, as it was not placed upon the essential foundation of turning the domains to proper account for the benefit of the exchequer, there were added to the increased burden of service frequent contributions, which were none the less ruinous to the man of small means that they were officially regarded not as taxes but as advances.

Combination of the Plebian Aristocracy and the Farmers against the Nobility— Licinio-Sextian Laws

Under such circumstances, when the plebeian aristocracy saw itself practically excluded by the opposition of the nobility and the indifference of the commons from equality of political rights, and the suffering farmers were powerless as opposed to the close aristocracy, it was natural that they should help each other by a compromise. With this view the tribunes of the people, Gaius Licinius and Lucius Sextius, submitted to the commons proposals to the following effect: first, to abolish the consular tribunate; secondly, to lay it down as a rule that at least one

of the consuls should be a plebeian; thirdly, to open up to the plebeians admission to one of the three great colleges of priests—that of the custodiers of oracles, whose number was to be increased to ten (-duoviri-, afterwards -decemviri sacris faciundis-[34]); fourthly, as respected the domains, to allow no burgess to maintain upon the common pasture more than a hundred oxen and five hundred sheep, or to hold more than five hundred -jugera- (about 300 acres) of the domain lands left free for occupation; fifthly, to oblige the landlords to employ in the labours of the field a number of free labourers proportioned to that of their rural slaves; and lastly, to procure alleviation for debtors by deduction of the interest which had been paid from the capital, and by the arrangement of set terms for the payment of arrears.

The tendency of these enactments is obvious. They were designed to deprive the nobles of their exclusive possession of the curule magistracies and of the hereditary distinctions of nobility therewith associated; which, it was characteristically conceived, could only be accomplished by the legal exclusion of the nobles from the place of second consul. They were designed, as a consequence, to emancipate the plebeian members of the senate from the subordinate position which they occupied as silent by-sitters,[35] in so far as those of them at least who had filled the consulate thereby acquired a title to deliver their opinion

[34] I. XII. Foreign Worships

[35] II. I. Senate,

with the patrician consulars before the other patrician senators.[36] They were intended, moreover, to withdraw from the nobles the exclusive possession of spiritual dignities; and in carrying out this purpose for reasons sufficiently obvious the old Latin priesthoods of the augurs and Pontifices were left to the old burgesses, but these were obliged to open up to the new burgesses the third great college of more recent origin and belonging to a worship that was originally foreign. They were intended, in fine, to procure a share in the common usufructs of burgesses for the poorer commons, alleviation for the suffering debtors, and employment for the day-labourers that were destitute of work. Abolition of privileges, civil equality, social reform—these were the three great ideas, of which it was the design of this movement to secure the recognition. Vainly the patricians exerted all the means at their command in opposition to these legislative proposals; even the dictatorship and the old military hero Camillus were able only to delay, not to avert their accomplishment. Willingly would the people have separated the proposals; of what moment to it were the consulate and custodiership of oracles, if only the burden of debt were lightened and the public lands were free! But it was not for nothing that the plebeian nobility had adopted the popular cause; it included the proposals in one single project of law, and after a long struggle—it is said of eleven years—the senate at length gave its consent and they passed in the year 387.

[36] II. I. Senate, II. III. Opposition of the Patriciate

With the election of the first non-patrician consul—the choice fell on one of the authors of this reform, the late tribune of the people, Lucius Sextius Lateranus—the clan-aristocracy ceased both in fact and in law to be numbered among the political institutions of Rome. When after the final passing of these laws the former champion of the clans, Marcus Furius Camillus, founded a sanctuary of Concord at the foot of the Capitol—upon an elevated platform, where the senate was wont frequently to meet, above the old meeting-place of the burgesses, the Comitium—we gladly cherish the belief that he recognized in the legislation thus completed the close of a dissension only too long continued. The religious consecration of the new concord of the community was the last public act of the old warrior and statesman, and a worthy termination of his long and glorious career. He was not wholly mistaken; the more judicious portion of the clans evidently from this time forward looked upon their exclusive political privileges as lost, and were content to share the government with the plebeian aristocracy. In the majority, however, the patrician spirit proved true to its incorrigible character. On the strength of the privilege which the champions of legitimacy have at all times claimed of obeying the laws only when these coincide with their party interests, the Roman nobles on various occasions ventured, in open violation of the stipulated arrangement, to nominate two patrician consuls. But, when by way of answer to an election of that sort for the year 411 the

community in the year following formally resolved to allow both consular positions to be filled by non-patricians, they understood the implied threat, and still doubtless desired, but never again ventured, to touch the second consular place.

Praetorship—
Curule Aedileship—
Complete Opening Up of Magistracies and Priesthoods

In like manner the aristocracy simply injured itself by the attempt which it made, on the passing of the Licinian laws, to save at least some remnant of its ancient privileges by means of a system of political clipping and paring. Under the pretext that the nobility were exclusively cognizant of law, the administration of justice was detached from the consulate when the latter had to be thrown open to the plebeians; and for this purpose there was nominated a special third consul, or, as he was commonly called, a praetor. In like manner the supervision of the market and the judicial police-duties connected with it, as well as the celebration of the city-festival, were assigned to two newly nominated aediles, who—by way of distinction from the plebeian aediles—were named from their standing jurisdiction "aediles of the judgment seat" (-aediles curules-). But the curule aedileship became immediately so far accessible to the plebeians, that it was held by patricians and plebeians alternately. Moreover the dictatorship was thrown open to plebeians in 398, as the mastership of the horse had already been in the year before the Licinian laws (386); both the censorships were thrown open in

403, and the praetorship in 417; and about the same time (415) the nobility were by law excluded from one of the censorships, as they had previously been from one of the consulships. It was to no purpose that once more a patrician augur detected secret flaws, hidden from the eyes of the uninitiated, in the election of a plebeian dictator (427), and that the patrician censor did not up to the close of our present period (474) permit his colleague to present the solemn sacrifice with which the census closed; such chicanery served merely to show the ill humour of patricianism. Of as little avail were the complaints which the patrician presidents of the senate would not fail to raise regarding the participation of the plebeians in its debates; it became a settled rule that no longer the patrician members, but those who had attained to one of the three supreme ordinary magistracies —the consulship, praetorship, and curule aedileship —should be summoned to give their opinion in this order and without distinction of class, while the senators who had held none of these offices still even now took part merely in the division. The right, in fine, of the patrician senate to reject a decree of the community as unconstitutional—a right, however, which in all probability it rarely ventured to exercise—was withdrawn from it by the Publilian law of 415 and by the Maenian law which was not passed before the middle of the fifth century, in so far that it had to bring forward its constitutional objections, if it had any such, when the list of candidates was exhibited or the project of law was brought in; which practically amounted to a regular

announcement of its consent beforehand. In this character, as a purely formal right, the confirmation of the decrees of the people still continued in the hands of the nobility down to the last age of the republic.

The clans retained, as may naturally be conceived, their religious privileges longer. Indeed, several of these, which were destitute of political importance, were never interfered with, such as their exclusive eligibility to the offices of the three supreme -flamines- and that of -rex sacrorum- as well as to the membership of the colleges of Salii. On the other hand the two colleges of Pontifices and of augurs, with which a considerable influence over the courts and the comitia were associated, were too important to remain in the exclusive possession of the patricians. The Ogulnian law of 454 accordingly threw these also open to plebeians, by increasing the number both of the pontifices and of the augurs from six to nine, and equally distributing the stalls in the two colleges between patricians and plebeians.

Equivalence of Law and Plebiscitum

The two hundred years' strife was brought at length to: a close by the law of the dictator Q. Hortensius (465, 468) which was occasioned by a dangerous popular insurrection, and which declared that the decrees of the plebs should stand on an absolute footing of equality—instead of their earlier conditional equivalence—with those of the whole community. So greatly had the state of things been changed that that portion of the burgesses

which had once possessed exclusively the right of voting was thenceforth, under the usual form of taking votes binding for the whole burgess-body, no longer so much as asked the question.

The Later Patricianism

The struggle between the Roman clans and commons was thus substantially at an end. While the nobility still preserved out of its comprehensive privileges the -de facto- possession of one of the consulships and one of the censorships, it was excluded by law from the tribunate, the plebeian aedileship, the second consulship and censorship, and from participation in the votes of the plebs which were legally equivalent to votes of the whole body of burgesses. As a righteous retribution for its perverse and stubborn resistance, the patriciate had seen its former privileges converted into so many disabilities. The Roman clan-nobility, however, by no means disappeared because it had become an empty name. The less the significance and power of the nobility, the more purely and exclusively the patrician spirit developed itself. The haughtiness of the "Ramnians" survived the last of their class-privileges for centuries; after they had steadfastly striven "to rescue the consulate from the plebeian filth" and had at length become reluctantly convinced of the impossibility of such an achievement, they continued at least rudely and spitefully to display their aristocratic spirit. To understand rightly the history of Rome in the fifth and sixth centuries, we must never overlook this sulking patricianism; it could indeed do little more than irritate itself and others, but this it did to the best

of its ability. Some years after the passing of the Ogulnian law (458) a characteristic instance of this sort occurred. A patrician matron, who was married to a leading plebeian that had attained to the highest dignities of the state, was on account of this misalliance expelled from the circle of noble dames and was refused admission to the common festival of Chastity; and in consequence of that exclusion separate patrician and plebeian goddesses of Chastity were thenceforward worshipped in Rome. Doubtless caprices of this sort were of very little moment, and the better portion of the clans kept themselves entirely aloof from this miserable policy of peevishness; but it left behind on both sides a feeling of discontent, and, while the struggle of the commons against the clans was in itself a political and even moral necessity, these convulsive efforts to prolong the strife—the aimless combats of the rear-guard after the battle had been decided, as well as the empty squabbles as to rank and standing—needlessly irritated and disturbed the public and private life of the Roman community.

The Social Distress, and the Attempt to Relieve It

Nevertheless one object of the compromise concluded by the two portions of the plebs in 387, the abolition of the patriciate, had in all material points been completely attained. The question next arises, how far the same can be affirmed of the two positive objects aimed at in the compromise?—whether the new order of things in reality checked social distress and established political equality? The two were intimately connected; for, if

economic embarrassments ruined the middle class and broke up the burgesses into a minority of rich men and a suffering proletariate, such a state of things would at once annihilate civil equality and in reality destroy the republican commonwealth. The preservation and increase of the middle class, and in particular of the farmers, formed therefore for every patriotic statesman of Rome a problem not merely important, but the most important of all. The plebeians, moreover, recently called to take part in the government, greatly indebted as they were for their new political rights to the proletariate which was suffering and expecting help at their hands, were politically and morally under special obligation to attempt its relief by means of government measures, so far as relief was by such means at all attainable.

The Licinian Agrarian Laws

Let us first consider how far any real relief was contained in that part of the legislation of 387 which bore upon the question. That the enactment in favour of the free day-labourers could not possibly accomplish its object—namely, to check the system of farming on a large scale and by means of slaves, and to secure to the free proletarians at least a share of work—is self-evident. In this matter legislation could afford no relief, without shaking the foundations of the civil organization of the period in a way that would reach far beyond its immediate horizon. In the question of the domains, on the other hand, it was quite possible for legislation to effect a change; but what was done was manifestly inadequate. The new domain-arrangement, by granting the right

of driving very considerable flocks and herds upon the public pastures, and that of occupying domain-land not laid out in pasture up to a maximum fixed on a high scale, conceded to the wealthy an important and perhaps even disproportionate prior share in the produce of the domains; and by the latter regulation conferred upon the domain-tenure, although it remained in law liable to pay a tenth and revocable at pleasure, as well as upon the system of occupation itself, somewhat of a legal sanction. It was a circumstance still more suspicious, that the new legislation neither supplemented the existing and manifestly unsatisfactory provisions for the collection of the pasture-money and the tenth by compulsory measures of a more effective kind, nor prescribed any thorough revision of the domanial possessions, nor appointed a magistracy charged with the carrying of the new laws into effect. The distribution of the existing occupied domain-land partly among the holders up to a fair maximum, partly among the plebeians who had no property, in both cases in full ownership; the abolition in future of the system of occupation; and the institution of an authority empowered to make immediate distribution of any future acquisitions of territory, were so clearly demanded by the circumstances of the case, that it certainly was not through want of discernment that these comprehensive measures were neglected. We cannot fail to recollect that it was the plebeian aristocracy, in other words, a portion of the very class that was practically privileged in respect to the usufructs of the domains, which proposed the new arrangement, and that

one of its very authors, Gaius Licinius Stolo, was among the first to be condemned for having exceeded the agrarian maximum; and we cannot but ask whether the legislators dealt altogether honourably, and whether they did not on the contrary designedly evade a solution, really tending to the common benefit, of the unhappy question of the domains. We do not mean, however, to express any doubt that the regulations of the Licinian laws, such as they were, might and did substantially benefit the small farmer and the day-labourer. It must, moreover, be acknowledged that in the period immediately succeeding the passing of the law the authorities watched with at least comparative strictness over the observance of its rules as to the maximum, and frequently condemned the possessors of large herds and the occupiers of the domains to heavy fines.

Laws Imposing Taxes— Laws of Credit

In the system of taxation and of credit also efforts were made with greater energy at this period than at any before or subsequent to it to remedy the evils of the national economy, so far as legal measures could do so. The duty levied in 397 of five per cent on the value of slaves that were to be manumitted was—irrespective of the fact that it imposed a check on the undesirable multiplication of freedmen—the first tax in Rome that was really laid upon the rich. In like manner efforts were made to remedy the system of credit. The usury laws, which the Twelve

Tables had established,[37] were renewed and gradually rendered more stringent, so that the maximum of interest was successively lowered from 10 per cent (enforced in 397) to 5 per cent (in 407) for the year of twelve months, and at length (412) the taking of interest was altogether forbidden. The latter foolish law remained formally in force, but, of course, it was practically inoperative; the standard rate of interest afterwards usual, viz. 1 per cent per month, or 12 per cent for the civil common year—which, according to the value of money in antiquity, was probably at that time nearly the same as, according to its modern value, a rate of 5 or 6 per cent—must have been already about this period established as the maximum of appropriate interest. Any action at law for higher rates must have been refused, perhaps even judicial claims for repayment may have been allowed; moreover notorious usurers were not unfrequently summoned before the bar of the people and readily condemned by the tribes to heavy fines. Still more important was the alteration of the procedure in cases of debt by the Poetelian law (428 or 441). On the one hand it allowed every debtor who declared on oath his solvency to save his personal freedom by the cession of his property; on the other hand it abolished the former summary proceedings in execution on a loan-debt, and laid down the rule that no Roman burgess could be led away to bondage except upon the sentence of jurymen.

[37] II. II. Legislation of the Twelve Tables

It is plain that all these expedients might perhaps in some respects mitigate, but could not remove, the existing economic disorders. The continuance of the distress is shown by the appointment of a bank-commission to regulate the relations of credit and to provide advances from the state-chest in 402, by the fixing of legal payment by instalments in 407, and above all by the dangerous popular insurrection about 467, when the people, unable to obtain new facilities for the payment of debts, marched out to the Janiculum, and nothing but a seasonable attack by external enemies, and the concessions contained in the Hortensian law,[38] restored peace to the community. It is, however, very unjust to reproach these earnest attempts to check the impoverishment of the middle class with their inadequacy. The belief that it is useless to employ partial and palliative means against radical evils, because they only remedy them in part, is an article of faith never preached unsuccessfully by baseness to simplicity, but it is none the less absurd. On the contrary, we may ask whether the vile spirit of demagogism had not even thus early laid hold of this matter, and whether expedients were really needed so violent and dangerous as, for example, the deduction of the interest paid from the capital. Our documents do not enable us to decide the question of right or wrong in the case. But we recognize clearly enough that the middle class of freeholders

[38] II. III. Equivalence Law and Plebiscitum

still continued economically in a perilous and critical position; that various endeavours were made by those in power to remedy it by prohibitory laws and by respites, but of course in vain; and that the aristocratic ruling class continued to be too weak in point of control over its members, and too much entangled in the selfish interests of its order, to relieve the middle class by the only effectual means at the disposal of the government—the entire and unreserved abolition of the system of occupying the state-lands—and by that course to free the government from the reproach of turning to its own advantage the oppressed position of the governed.

Influence of the Extension of the Roman Dominion in Elevating the

Farmer-Class

A more effectual relief than any which the government was willing or able to give was derived by the middle classes from the political successes of the Roman community and the gradual consolidation of the Roman sovereignty over Italy. The numerous and large colonies which it was necessary to found for the securing of that sovereignty, the greater part of which were sent forth in the fifth century, furnished a portion of the agricultural proletariate with farms of their own, while the efflux gave relief to such as remained at home. The increase of the indirect and extraordinary sources of revenue, and the flourishing condition of the Roman finances in general, rendered it but seldom necessary to levy any contribution from the

farmers in the form of a forced loan. While the earlier small holdings were probably lost beyond recovery, the rising average of Roman prosperity must have converted the former larger landholders into farmers, and in so far added new members to the middle class. People of rank sought principally to secure the large newly-acquired districts for occupation; the mass of wealth which flowed to Rome through war and commerce must have reduced the rate of interest; the increase in the population of the capital benefited the farmer throughout Latium; a wise system of incorporation united a number of neighbouring and formerly subject communities with the Roman state, and thereby strengthened especially the middle class; finally, the glorious victories and their mighty results silenced faction. If the distress of the farmers was by no means removed and still less were its sources stopped, it yet admits of no doubt that at the close of this period the Roman middle class was on the whole in a far less oppressed condition than in the first century after the expulsion of the kings.

Конец ознакомительного фрагмента.