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**POLYBIUS ON THE CONSULS:
AN INTERPRETATION OF *HISTORIES* 6,12,4**

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The Sources for Political Life in the Republic: Introductory Note

Our knowledge of the conditions of political life in republican Rome derives mostly from sources originating in and pertaining to the last decades of the Republic, a short but exceptionally well documented period in Roman history. Scholars devoting their efforts to the history of these years can turn to original documents such as decisions of the popular assemblies (*leges* and *plebiscita*) and *senatusconsulta*, as well as letters and edicts of Roman magistrates. Though most of this epigraphical material is fragmentarily preserved, it does include some quite valuable testimonia. The evidence for the era also comprises material that is close to unparalleled in the sources concerning Ancient Rome. Some of the key protagonists of the political process supply rare first-hand information. We are in possession of Caesar's *commentarii* on the wars he waged as well as a good part of Cicero's extensive production; the speeches the latter delivered before the Senate or the Roman people give us unique insights into the political and judicial matters of his day, whereas his vast correspondence allows us to follow the events at Rome almost on a daily basis over several crucial decades.

In comparison with the rich sources for the post-Sullan period the evidentiary material for earlier periods is very different, in both quantitative and qualitative terms. Epigraphic texts, along with all other kinds of contemporary or near-contemporary written documentation, are exceedingly rare before the beginning of the last century of the Republic. The Roman historiographical tradition, providing the general chronological and contextual frameworks for our data, only commences in the closing years of the third century BC. There is, accordingly, a hiatus of three centuries between the beginning of the Republic

and the first writers setting out to reconstruct the history of the Romans. This obvious problem is further enhanced by the poor survival of the oldest Roman historiography. With the sole exception of Polybius of Megalopolis (c. 200–118 BC), with whose work this paper will be concerned, none of the historians writing on Roman affairs before the late first century BC is known beyond a more or less limited number of quotations, paraphrases or occasional references in later authors. Very little is known about what sources the pioneer historians used, and how they used them. Therefore the relationship between whatever evidence there was and the surviving historical accounts remains unclear.

Our knowledge of Roman history prior to the last century BC rests mainly on literary sources long postdating the events they recount, not rarely even by hundreds of years. The 'annalistic tradition', denoting the knowledge (or, better, notions) concerning the Roman past preserved by a succession of annalistic writers, is practically identical with the information provided by Livy, Dionysius of Halicarnassus, Plutarch and a few other writers of the Late Republic and Early Empire.

Introducing Polybius

As noted above, the extant parts of Polybius' *Histories*, written in the middle of the second century BC, constitute nothing less than the first account of Roman history that survives in substantial form.¹ A former official of the Achaean League, Polybius belonged to a group of one thousand prominent Achaeans who, after the Roman victory at Pydna (168 BC), were deported to Rome as hostages. However, as a tutor to the sons of the victor at that battle, L. Aemilius Paullus, Polybius entered high society at Rome. One of his pupils – and

¹ Of Polybius' work, known to have comprised 40 books, the first five survive in their entirety; of the rest numerous fragments remain. The standard commentary on Polybius' text is F. W. Walbank, *A Historical Commentary on Polybius I–III*, Oxford 1957–1979. Another fundamental study by Walbank is *Polybius* (Sather Classical Lectures 43), Berkeley–Los Angeles 1972 (repr. 1990). Among important surveys of Polybian studies we should note, at least, the following items: D. Musti, "Problemi polibiani (Rassegna di studi 1950–1964)", *Parola del passato* 20 (1965) 380–426; Id., "Polibio nello studio dell'ultimo ventennio", *ANRW* I.2 (1972) 1114–1181; F. W. Walbank, "Polybian Studies, c. 1975–2000", Id., *Polybius, Rome and the Hellenistic World. Essays and Reflections*, Cambridge 2002, 1–28, and J. Thornton, "Polibio e Roma. Tendenze negli studi degli ultimi anni, I–II", *Studi Romani* 52 (2004) 108–139, 508–525.

subsequently a close friend – was Scipio Aemilianus, who became one of the leading members of the Roman aristocracy. From the central vantage point of Scipio's inner circle Polybius witnessed Roman history in the making, *domi* as well as *militiae*.²

The central theme of Polybius' work was, as is expressly stated in the very beginning of the first book, Rome's rise to world dominion. "How and by what kind of constitution" this was accomplished so swiftly, "within a period of not quite fifty-three years", is the big question he proposes to address.³ Recognizing the political system of Rome as a vital factor in explaining the prowess of her arms, Polybius – much like Alexis de Tocqueville visiting the United States in the early 19th-century – was deeply intrigued by a society he came to know in a New World.⁴ His provision of systematic and in-depth analyses of Roman society, typologically rare features in any surviving historiography concerning ancient Rome, adds to the singular worth of Polybius' work. An entire book, the sixth, is dedicated to an analysis of the *πολιτεία* of the Romans; though this book does not survive in its entirety, it does provide a wealth of explicit statements about Roman military and social institutions as well as a lengthy survey of the constitution of Rome.⁵

² The *testimonia* on Polybius' life are collected and discussed, for instance, in Walbank, *Historical Commentary* I, 1–6.

³ Pol. 1,1,5: τίς γὰρ οὕτως ὑπάρχει φαῦλος ἢ ῥάθυμος ἀνθρώπων ὃς οὐκ ἂν βούλοιο γινῶναι πῶς καὶ τίνι γένει πολιτείας ἐπικρατηθέντα σχεδὸν ἅπαντα τὰ κατὰ τὴν οἰκουμένην οὐχ ὅλοις πεντήκοντα καὶ τρισὶν ἔτεσιν ὑπὸ μίαν ἀρχὴν ἔπεσε τὴν Ῥωμαίων, ὃ πρότερον οὐχ εὕρισκεται γεγονός. Actually covering all of the period 264–146 it is evident that Polybius reckoned the formative period of Roman world dominion, finally achieved with the victory over Macedonia in 168, from the outbreak of the Second Punic War.

⁴ A. de Tocqueville, *De la démocratie en Amérique* I–II, Paris 1835–1840.

⁵ For a commentary of book six, see Walbank, *Historical Commentary* I, 635–746. Walbank deals with matters pertaining to this book also in "Polybius on the Roman Constitution", *CQ* 37 (1943) 73–89; "The Sixth Book", Walbank 1972 (n. 1), 130–156; "Polybius' Perception of the One and the Many", in I. Malkin and Z. W. Rubinsohn (eds.), *Leaders and Masses in the Roman World: Studies in Honor of Zvi Yavetz*, Leiden – New York 1995, 211–222 and "A Greek Looks at Rome. Polybius VI Revisited", *SCI* 17 (1998) 45–59; the last two studies have been re-published in F. Walbank, *Polybius, Rome and the Hellenistic World* (n. 1), 212 ff. and 277 ff. Other important studies concerning the testimony of book six include T. Cole, "The Sources and Composition of Polybius VI", *Historia* 13 (1964) 440–486; C. Nicolet, "Polybe et les institutions romaines", *Polybe. Neuf exposés suivis de discussions* (Fondation Hardt: Entretiens sur l'antiquité classique 20), Vandoeuvres—Genève 1974, 209–258 (with discussion, 259–265); L. Troiani, "Il funzionamento dello stato ellenistico e dello stato

It is, first and foremost, as a work of political theory that Polybius' constitutional digression has captured the interest of modern scholarship, which has largely been concerned with the idea of *anacyclosis* (the cyclical nature of constitutional development) (Pol. 6,1–10) and,⁶ above all, the representation of an elaborate system of checks and balances in a mixed constitution (Pol. 6,11–17).⁷ The latter was, as is well known, an important source of inspiration both

romano nel v e nel vi libro delle *Storie* di Polibio", L. Troiani et al., *Ricerche di storiografia antica I. Ricerche di storiografia greca di età romana* (Biblioteca di studi antichi 22), Pisa 1979, 9–19; and A. Lintott, "Polybius and the Constitution", Id., *The Constitution of the Roman Republic*, Oxford 1999, 16–26.

⁶ See, for instance, H. Ryffel, *Μεταβολή πολιτειῶν. Der Wandel der Staatsverfassungen*, Bern 1949 (repr. New York 1973); A. Díaz Tejera, "Análisis del libro VI de las *Historias* de Polibio respecto a la concepción cíclica de las constituciones", *Habis* 6 (1975) 23–34; J. M. Alonso-Nuñez, "The *Anacyclosis* in Polybius", *Eranos* 84 (1986) 17–22; S. Podes, "Polybius and His Theory of *Anacyclosis*: Problems of Not Just Ancient Political Theory", *History of Political Thought* 12 (1991) 577–587; Id., "Polybios' Anakyklosislehre, diskrete Zustandssysteme und das Problem der Mischverfassung", *Klio* 73 (1991) 382–390; W. Blösel, "Die Anakyklosistheorie und die Verfassung Roms im Spiegel des sechsten Buches bei Polybios und Ciceros *de re publica* Buch II", *Hermes* 126 (1998) 31–57; and D. E. Hahm, "Kings and Constitutions: Hellenistic theories", C. Rowe & M. Schofield (eds.), *The Cambridge History of Greek and Roman Political Thought*, Cambridge 2000, 457–476.

⁷ See, for instance, K. von Fritz, *The Theory of the Mixed Constitution in Antiquity. A Critical Analysis of Polybius' Political Ideas*, New York 1954; D. Musti, "Polibio e la democrazia", *Annali della Scuola normale superiore di Pisa* 36 (1967) 155–207; G. J. D. Aalders, *Die Theorie der Gemischten Verfassung im Altertum*, Amsterdam 1968; E. Graeber, *Die Lehre von der Mischverfassung bei Polybios* (Schriften zur Rechtslehre und Politik 52), Bonn 1968; H. H. Schmitt, "Polybios und das Gleichgewicht der Mächte", *Polybe. Neuf exposés suivis de discussions* (Fondation Hardt: Entretiens sur l'antiquité classique 20), Vandoeuvres–Genève 1974, 65–102; W. Nippel, *Mischverfassungstheorie und Verfassungsrealität in Antike und früher Neuzeit* (Geschichte und Gesellschaft 21) Stuttgart 1980; Id., "Ancient and Modern Republicanism: 'Mixed Constitution' and 'Ephors'", B. Fontana (ed.), *The Invention of the Modern Republic*, Cambridge 1994, 6–26; D. E. Hahm, "Polybius' Applied Political Theorie", A. Laks & M. Schofield (eds.), *Justice and Generosity. Studies in Hellenistic Social and Political Philosophy: Proceedings of the Sixth Symposium Hellenisticum*, Cambridge 1995, 7–47; C. Schubert, "Mischverfassung und Gleichgewichtssystem: Polybios und seine Vorläufer", C. Schubert & K. Brodersen (Hrsg.), *Rom und der griechische Osten. Festschrift für Hanno H. Schmitt zum 65. Geburtstag*, Stuttgart 1995, 225–235; A. Lintott, "The Theory of the Mixed Constitution at Rome", J. Barnes & M. Griffin (eds.), *Philosophia Togata II. Plato and Aristotle at Rome*, Oxford 1997, 70–85; P. A. Tuci, "La democrazia di Polibio tra eredità classica e federalismo", C. Bearzot et al. (a cura di), *Gli stati territoriali nel mondo antico*, Milano 2003, 45–86; and L. Polverini, "Democrazia a Roma? La costituzione repubblicana secondo Polibio", G. Urso (a cura di), *Popolo e potere nel mondo antico*, Pisa 2005, 85–96.

for Montesquieu (in *De l'esprit des lois*, 1748) and the drafters of *The United States Constitution* (adopted by the Constitutional Convention in Philadelphia on September 17th of 1787).⁸

As a source for the state machinery of republican Rome Polybius' account has attracted considerably less attention. Certainly, it is not as helpful as one might wish in providing information on technicalities involved in political life. Not only is Polybius' Greek notoriously incapable of rendering adequate equivalents of many Latin technical terms and concepts.⁹ Specifics are consistently lost in his overall endeavour of representing the Roman state as an example of the ideal constitution, that is, as a perfect blend of the three basic types of political systems: monarchy (βασιλεία), aristocracy (ἀριστοκρατία) and democracy (δημοκρατία). In accordance with this perception of the political system Polybius' attention is directed exclusively to the institutions he identified as the chief embodiments of these three systems, i.e. the consuls (ὑπατοί), the senate (σύγκλητος), and the people (δῆμος).¹⁰

⁸ See, in particular, G. Chinard, "Polybius and the American Constitution", F. Shuffelton (ed.), *The American Enlightenment*, Rochester, NY 1993, 217–237 but also, for more general considerations of the impact of Rome and the the Classical World on the US Constitution, R. A. Ames & H. C. Montgomery, "The Influence of Rome on the American Constitution", *CJ* 30 (1935) 19–27; C. F. Mullet, "Classical Influences on the American Revolution", *CJ* (1939) 92–104; R. M. Gummere, "The Classical Ancestry of the Constitution", in Id., *The American Colonial Mind and the Classical Tradition. Essays in Comparative Culture*, Cambridge 1963, 173–190; C. J. Richard, "The Classical Conditioning of the Founders", in Id., *The Founders and the Classics. Greece, Rome, and the American Enlightenment*, Cambridge, MA 1994, 12–38 and M. N. S. Sellers, *American Republicanism: Roman Ideology in the US Constitution*, New York 1994.

⁹ That Polybius' representation of Roman institutions is characterized by "un rejet conscient de la terminologie latine", has been demonstrated by M. Dubuisson, *Le latin de Polybe. Les implications historiques d'un cas de bilinguisme*, Paris 1985. For another important consideration of Polybius' language, focusing on the political vocabulary of book six, see Nicolet, "Polybe et les institutions romaines" (n. 5), 222–231. For Latin political terminology in Greek guise, more generally, see H. J. Mason, *Greek Terms for Roman Institutions* (American Studies in Papyrology 13), Toronto 1974, 126 and Id., "The Roman Government in Greek Sources. The Effect of Literary Theory on the Translation of Official Titles", *Phoenix* 24 (1970) 150–159. D. Magie, *De Romanorum iuris publici sacrique vocabulis sollemnibus in Graecum sermonem conversis*, Lipsiae 1906, is by now largely antiquated; the study of Greek documentary material that has surfaced since Magie's day has brought about significant corrections of detail.

¹⁰ Polybius is himself aware that his survey, on account of the omission of certain details, might seem somewhat imperfect to those familiar with the political system, see Pol. 6,11,3:

There has also been a strong tendency to dismiss Polybius' constitutional digression as a work of abstract political theory with only limited bearing on the actual constitution of republican Rome. Indeed, this stance has become part of current orthodoxy. The scholarly community is largely adhering to Mommsen's view that the political system of Rome, by the end of the third century BC, was essentially an oligarchic regime, in which a small number of consular families (*nobiles*) controlled the major political institutions – including the popular assemblies – by means of networks of personal relationships with individual citizens (*clientelae*) and factional alliances (*amicitiae*).¹¹ Polybius' strong emphasis of the opposite – in stating that the people's share in the government was immense and that the constitution (under certain conditions, obviously) could be perceived as a democratic one (6,14,12: ὥστε πάλιν ἐκ τούτων εἰκότως ἂν τιν' εἰπεῖν ὅτι μεγίστην ὁ δῆμος ἔχει μερίδα καὶ δημοκρατικόν ἐστι τὸ πολίτευμα) – has usually been treated as an awkward piece of evidence.¹² In the period between the appearance of Gelzer's highly influential work of 1912 on *Die Nobilität* and the famous "heretics" of recent years,¹³ there are very few significant examples of scholars professing a belief in the

οὐκ ἄγνοῶ δὲ διότι τοῖς ἐξ αὐτῆς τῆς πολιτείας ὀρμωμένοις ἐλλειπεστέραν φανησόμεθα ποιεῖσθαι τὴν ἐξήγησιν, ἔνια παραλιπόντες τῶν κατὰ μέρος.

¹¹ Good overviews of the current scholarly discussion concerning the nature of the political system of republican Rome are provided by M. Jehne, "Zur Debatte um die Rolle des Volkes in der römischen Politik", Id. (Hrsg.), *Demokratie in Rom?*, Stuttgart 1995, 1–9; E. Gabba, "Democrazia a Roma", *Athenaeum* 85 (n. s. 75, 1997) 266–271, and A. M. Ward, "How Democratic Was the Roman Republic?", *NECJ* 31 (2004) 101–119. See also K.-J. Hölkesskamp, "The Roman Republic. Government of the People, by the People, for the People?" (review article on F. Millar, *The Crowd in Rome in the Late Republic*, Ann Arbor 1998), *SCI* 19 (2000), 203–223 and Id., *Rekonstruktion einer Republik. Die politische Kultur des antiken Rom und die Forschung der letzten Jahrzehnte* (Historische Zeitschrift, Beihefte 38), München 2004.

¹² For a recent example, see H. Mouritsen, *Plebs and Politics in the Late Roman Republic*, Cambridge 2001, 5 ff.

¹³ M. Gelzer, *Die Nobilität der römischen Republik*, Leipzig 1912 (= Id., *Kleine Schriften I*, Wiesbaden 1962, 17–135; note also Id., *Die Nobilität der römischen Republik*, 2. durchges. Auflage mit Vorwort von J. von Ungern-Sternberg, Stuttgart 1983), the views of which were further elaborated by F. Münzer, *Römische Adelsparteien und Adelsfamilien*, Stuttgart 1920. Both works have appeared in English translation: M. Gelzer, *The Roman Nobility*, Oxford 1969 (transl. by R. Seager, repr. Oxford 1975) and F. Münzer, *Roman Aristocratic Parties and Families*, Baltimore 1999 (transl. by T. Ridley).

democratic nature of the Roman Republic.¹⁴ Polybius' representation of the monarchic element in the political system, embodied in the dual consulship, meets with much more general approval. While much effort has been invested to show how mistaken Polybius was in identifying a strong democratic element in Roman politics (or that he in fact was actually describing an aristocratic system),¹⁵ it has not been noted that a statement concerning the role of the consuls, taken at face value, clearly poses a problem that deserves our full attention.

The Problem

In a series of earlier studies I have argued that current views of the political system of republican Rome – which clearly entails an element of historical evolution not always accorded to it in due extent – are based too extensively on sources concerning the last decades of the Republic. It is, of course, no wonder that a material so rich and varied (as we have seen) has continued to exert a strong attraction on scholars, but from a methodological point of view I consider it very unfortunate that it has been allowed to condition, quite excessively, the interpretation of historical data pertaining to earlier periods. It seems to me that far too much weight has been assigned to conditions attested for only in the troubled period witnessing the collapse of the republican system

¹⁴ Among these exceptions we should note, at least, W. Enßlin, "Die Demokratie und Rom", *Philologus* 82 (1927) 313–328; T. R. Glover, *Democracy in the Ancient World*, Cambridge 1927 (repr. New York 1966), 150 ff.; and A. Guarino, *La democrazia a Roma* (Società e diritto di Roma 4), Napoli 1979. The most important exponent of the new "heretic" movement, which seems to have lost some of its initial impetus, is Fergus Millar: "The Political Character of the Classical Roman Republic, 200–151 BC", *JRS* 74 (1984) 1–19; "Politics, Persuasion, and the People before the Social War (150–90 BC)", *JRS* 76 (1986) 1–11; "Popular Politics at Rome in the Late Republic", I. Malkin & Z. W. Rubinson (eds.), *Leaders and Masses in the Roman World. Studies in Honor of Zvi Yavets* (Mnemosyne Supplements 139) Leiden – New York 1995, 91–113 and *The Crowd in Rome in the Late Republic* (n. 11).

¹⁵ See, for instance, C. Nicolet, "Polybe et la 'constitution' de Rome: Aristocratie et démocratie", C. Nicolet (ed.), *Demokratia et aristokratia. A propos de Caius Gracchus: Mots grecs et réalités romaines*, Paris 1983, 15–35 and K.-W. Welwei, "Demokratische Verfassungselemente in Rom aus der Sicht des Polybios", Jörg Spielvogel (Hrsg.), *Res publica reperta. Zur Verfassung und Gesellschaft der römischen Republik und des frühen Prinzipats: Festschrift für Jochen Bleicken zum 75. Geburtstag*, Stuttgart 2002, 25–35 (= Id., *Res publica und Imperium*, Wiesbaden 2004, 139–149).

itself.¹⁶ There is no need here to restate a position set forth in full detail elsewhere, but a short synthesis of my methodological contentions is essential for the purposes of the present paper.¹⁷

Professing a stance that takes consistently into account, firstly, the fact that there are many recorded instances of violations and anomalies in the realm of public law during the final phase of the Republic, and, secondly, the well-known yet much overlooked constitutional reforms of Sulla, I contend that the study of the political system of the pre-Sullan Republic must be more firmly based on the evidence for the period preceding the last century BC. Within this category of sources Polybius holds a special place, being a unique contemporary witness of pre-Sullan conditions. Equally important, Polybius made his observations well before the political turbulence that was heralded by the tribunate of Tiberius Gracchus in 133 BC.

One might observe that Polybius, in dealing with the monarchic and aristocratic elements in the political system, provides data that are generally clear and reasonably self-contained. The two consuls were at the apex of a carefully defined hierarchy of annually elected curule magistrates who, as a group within which there was a strong element of vertical control (*maius imperium*), had inherited the executive powers of the kings.¹⁸ Also the senate, in Polybius' account, constitutes a political element with a natural and clear-cut institutional extension. This cannot be said of the people. His description of popular participation in the political process is, with regard to its institutional structure, notoriously short of detail. Referring to the people as a political entity Polybius almost invariably uses the all-inclusive term δῆμος. There is no allusion to the peculiar co-existence of at least three different popular assemblies, based on the division of the citizenry into *curiae*, *centuriae* and *tribus*.¹⁹

¹⁶ Cf. J. North, "Democratic Politics in Republican Rome", *P&P* 126 (1990) 4.

¹⁷ See, in particular, K. Sandberg, *Magistrates and Assemblies. A Study of Legislative Practice in Republican Rome* (Acta Instituti Romani Finlandiae 24), Rome 2001, 21 f. and Id., "Re-constructing the Political System of Republican Rome. A Re-consideration of Approach and Methodology", *Arctos* 39 (2005) 137–157.

¹⁸ I note that there is nowadays very little support for the view of G. De Sanctis (*Storia dei Romani* I, Torino 1907) – later re-invented by K. Hanell (*Das altrömische eponyme Amt* [Acta Instituti Romani Regni Sueciae II.8], Lund 1946), who is curiously ignorant of the former's work (cf. F. E. Adcock, *JRS* 38 [1948], 105) – that it was a gradual evolution of the kingship, rather than a revolution, that accounts for the emergence of the consulship as we know it.

¹⁹ Laelius Felix ap. Gell. 15,27,5: *Cum ex generibus hominum suffragium feratur, 'curiata' comitia esse; cum ex censu et aetate, 'centuriata'; cum ex regionibus et locis, 'tributa'*. For

Moreover, it is evident that the popular element in Polybius' model cannot be equated solely with the people, formally assembled. The popular vote was essential to the operation of the Roman state; only the people could confer magistracies (and bestow *imperium*), pass judgement on capital crimes, and make law. Yet there was no mechanism by which the people could even convene, let alone make formal decisions, on its own initiative. The popular assemblies had to be summoned, and this could be done only by a magistrate duly invested with the *ius cum populo/plebe agendi*. If the summoner was a tribune of the plebs it can be argued, as it actually has been done, that the tribunate was a subdivision of the popular element in the constitution.²⁰ If the people convened under consular presidency there was, in effect, a fusion of the monarchic and the democratic elements. This imperfection of Polybius' model has not been much noted. This is all the more appalling as this latter practice seems to be indicated by him as the normal way for the people to convene.

In a well-known passage Polybius states that it was the responsibility of the consuls to see to it that the state matters which were subject to popular discretion were put before the people. We are told that it was the consuls who a) summoned the assemblies, b) introduced the propositions and c) executed the people's decisions (6,12,4):

καὶ μὴν ὅσα δεῖ διὰ τοῦ δήμου συντελεῖσθαι τῶν πρὸς τὰς κοινὰς πράξεις ἀνηκόντων, τούτοις καθήκει φροντίζειν καὶ **συνάγειν τὰς ἐκκλησίας**, τούτοις **εἰσφέρειν τὰ δόγματα**, τούτοις **βραβεύειν τὰ δοκοῦντα** τοῖς πλείοσι.

The problem with this passage is that, despite its appearance of being a generalization, it gives a very poor description of actual political practices in mid-republican Rome. It is certainly not true that it was solely the consuls who dealt with the popular assemblies. As is well attested, also the tribunes of the plebs regularly convened the people for various purposes, including legislation.

the *contio*, as opposed to *comitia*, see Messalla ap. Gell. 13,16,2–3: *manifestum est aliud esse 'cum populo agere', aliud 'contionem habere'. Nam 'cum populo agere' est rogare quid populum, quod suffragiis suis aut iubeat aut vetet, 'contionem' autem 'habere' est verba facere ad populum sine ulla rogatione*. The fundamental treatises on the Roman popular assemblies are two older studies: G. W. Botsford, *The Roman Assemblies. From their Origin to the End of the Republic*, New York 1909 (repr. 2005) and L. R. Taylor, *Roman Voting Assemblies. From the Hannibalic War to the Dictatorship of Caesar*, Ann Arbor 1966 (repr. 1990).

²⁰ A. Lintott, "Democracy in the Middle Republic", *ZRG* 104 (1987) 37.

It is, at any rate, evident that the passage quoted above should not be construed as a statement as to the normal conduct of legislation in Rome because, plainly, such a claim would be heavily at odds with a political situation that is amply documented in other sources for the Middle Republic. It is all clear that the bulk of legislation of this period was passed by tribunes of the plebs. This observation, which is also consistent with the fact that it was only after Sulla that the consuls tended to spend their year in office at Rome,²¹ is firmly based on widely recognized facts and requires no additional demonstration here; even if we were to admit into consideration the entire group of poorly known laws that have been attributed to consuls only by modern scholars, and all the consular statutes found among Rotondi's many altogether conjectural laws, it can be easily observed that consular laws are heavily outnumbered by tribunician ones.²² This means that Polybius' statement constitutes a problem that warrants serious attention.

A Possible Solution

Polybius provides remarkably little information on the tribunes of the plebs (δήμαρχοι) in his work. Their invisibility is, of course, mainly due to the work's focus on military history. Their relative absence from Polybius' constitutional digression is more striking. The tribunes are referred to in passing merely a few times. In the account of the consuls' powers it is recorded that all other magistrates (ἄρχοντες), except the tribunes, are under them and take their orders.²³ In dealing with the senate Polybius refers to the obstructive powers of the tribunes, stating that the senators not only are unable to pass a decree, but cannot even hold a meeting, if a single member of the tribunician college

²¹ See, in particular, Sandberg, *Magistrates and Assemblies* (n. 17), 116 ff. Cf. F. Millar, "The Last Century of the Republic. Whose History?", *JRS* 85 (1995) 239.

²² Lists of Roman statutes, with references to classical sources and modern scholarship: G. Rotondi, *Leges publicae populi Romani*, Milano 1912 (repr. Hildesheim 1990); D. Flach, in Zusammenarbeit mit S. von der Lahr, *Die Gesetze der frühen römischen Republik. Text und Kommentar*, Darmstadt 1994 and M. Elster, *Die Gesetze der mittleren römischen Republik*, Darmstadt 2003. Evidence for legislation can also be found with the aid of T. R. S. Broughton, *The Magistrates of the Roman Republic I–II*, New York 1951–1952 (+ *Supplementum*, Atlanta 1986). – For the large presence of conjectural laws in the 'canon' of republican laws, see Sandberg, *Magistrates and Assemblies* (n. 17), 41 ff.

²³ Pol. 6,12,2: οἱ τε γὰρ ἄρχοντες οἱ λοιποὶ πάντες ὑποτάττονται καὶ πειθαρχοῦσι τούτοις πλὴν τῶν δημάρχων.

interposes his veto;²⁴ in the same context it is recorded that the tribunes are always obliged to act as the people decrees and, above all things, to pay heed to its wishes.²⁵ In addition to these three passages, found in the constitutional survey, there is a reference to the constitutional position of the tribunes in book three, where it is reported that all Roman magistrates, except the tribunes of the plebs, are deprived of their powers once a dictator is appointed.²⁶

There are, thus, very few explicit statements about the tribunes in Polybius, but I contend that his silence is a consequence of his theoretical conception of the political system he describes. We already noted that his model is apt to obscure the many details in this system. Polybius no doubt saw the tribunician college as an integral part of the popular assembly with which it was associated. For sure, much of what he says about the people's role in the political system must in effect pertain also to the tribunes – simply because the people could neither convene nor prepare motions independently. But then, again, also the consuls could convene the people and put matters before it.

We would certainly have wanted Polybius to provide details on the division of labour, in the field of legislation, between consuls and tribunes of the plebs. This question, intertwined with the problem of whether there was a distribution of competence between the various assemblies, has been my main concern in a number of earlier studies. The details of my argumentation need not detain us here, but a short re-capitulation of my main contentions is essential for the purposes of the present discussion. It is usually thought that there was no division of competence between the various popular assemblies.²⁷ I have challenged this view and attempted to show that the passage of legislation, just like the election of the various magistrates, was subject to rules and conventions. In a re-appraisal of the significance of the *pomerium* (the sacral city boundary of the city of Rome) for all elements in the political system, and

²⁴ Pol. 6,16,4: τὸ δὲ συνέχον, ἐὰν εἰς ἐνίστηται τῶν δημάρχων, οὐχ οἶον ἐπὶ τέλος ἄγειν τι δύναται τῶν διαβουλίων ἢ σύγκλητος, ἀλλ' οὐδὲ συνεδρεύειν ἢ συμπορεύεσθαι τὸ παράπαν.

²⁵ Pol. 6,16,5: ὀφείλουσι δ' ἀεὶ ποιεῖν οἱ δήμαρχοι τὸ δοκοῦν τῷ δήμῳ καὶ μάλιστα στοχάζεσθαι τῆς τούτου βουλήσεως.

²⁶ Pol. 3,87,8: οὗτος δ' ἔστιν αὐτοκράτωρ στρατηγός, οὗ κατασταθέντος παραχρῆμα διαλύεσθαι συμβαίνει πάσας τὰς ἀρχὰς ἐν τῇ Ῥώμῃ πλὴν τῶν δημάρχων. For the factual inaccuracy of this statement, see Walbank, *Historical Commentary* I, 422.

²⁷ See e.g. E. Meyer, *Römischer Staat und Staatsgedanke*², Zürich 1961, 192; J. Bleicken, *Lex publica. Gesetz und Recht in der römischen Republik*, Berlin 1975, 101 f. and F. P. Casavola, "La legislazione comiziale e l'editto", *Storia di Roma* II.1. *La repubblica imperiale*, Torino 1990, 524.

not merely the magistracies, I have proposed that there was an intrinsic connection between the competence of an assembly and the situation of its meeting place. The two legislative assemblies in regular use in the Middle Republic, were the centuriate assembly (*comitia centuriata*) and the tribal assembly (*plebs, concilium plebis* or *comitia tributa*) – reflected in the phrase *populus plebesque*. The former assembly, which met under consular presidency on the Campus Martius, *extra pomerium*, could decide only upon matters concerning war, peace and foreign relations. All legislation on civil, or intrapomerial, matters was passed by the *plebs*, which was summoned by tribes, *intra pomerium* and, before the last century BC, by none but tribunes of the plebs. This kind of division of labour is consistent with the use of technical terminology in Latin writers; before the last few decades of the Republic only tribunes are associated with the actual technical passage of laws (*promulgatio* and *promulgatio legis*), unless we deal with declarations of war (*leges de bello indicendo*).²⁸

Already a consideration of the fact that most laws of the Middle Republic are certainly tribunician measures permits us to establish that Polybius' statement discussed here cannot be referring primarily to legislation on civil matters. If the only popular assembly at the disposal of the consuls in this period was the *comitiata centuriata*, and if the competence of this body did not comprise civil matters, comitial decisions that had been put to the vote by consuls would indeed be rare – though by no means non-existent. It would have been the consuls' task to take all bills on extrapomerial matters – such as questions concerning war and peace, alliances, terms of peace and treaties – to the *comitia centuriata*. It is interesting to note that all these matters are listed by Polybius himself as examples of the people's legislative powers, but that they

²⁸ K. Sandberg, "The *concilium plebis* as a Legislative Body during the Republic", U. Paananen et al., *Senatus populusque Romanus. Studies in Roman Republican Legislation* (Acta Instituti Romani Finlandiae 13), Helsinki 1993, 74–96; "Tribunician and Non-Tribunician Legislation in Mid-Republican Rome", C. Bruun (ed.), *The Roman Middle Republic. Politics, Religion and Historiography, c. 400–133 BC. Papers from a Conference at the Institutum Romanum Finlandiae, September 11–12, 1998* (Acta Instituti Romani Finlandiae 23), Rome 2000, 121–140 and, in particular, the monograph Sandberg, *Magistrates and Assemblies* (n. 17). I have dealt with the problem also in a work on consular legislation: "Consular Legislation in Pre-Sullan Rome", *Arctos* 38 (2004) 133–162.

are specified separately after the initial, and more general, reference to "the power of approving and rejecting laws".²⁹

The consuls dealt directly with the people also in elections. The *populus*, assembled by *centuriae*, elected all *magistratus cum imperio* and appointed certain military commanders. Of course, the centuriate assembly also convened under consular presidency when it appeared as a judicial body.

It is well documented that the consuls also dealt with the people indirectly, that is, through the formal intermediation of the tribunes of the plebs. There are several instances recorded in which consuls – not infrequently at the instigation of the senate – ask the tribunes to take a measure to the *plebs*, or the *populus*, as the assembly is sometimes (no doubt inaccurately) called.³⁰ I have demonstrated elsewhere that there are compelling reasons to believe that many a similar passage, also when devoid of an explicit reference to tribunician intermediation, is in fact implying the same procedure of co-operation between consuls and tribunes; in such cases it is all clear that *populus* stands for the entire political organization headed by, and inclusive of, the tribunes of the plebs.³¹

²⁹ Pol. 6,14,10–11: ἔχει δὲ τὴν κυρίαν καὶ περὶ τῆς τῶν νόμων δοκιμασίας, καὶ τὸ μέγιστον, ὑπὲρ εἰρήνης οὗτος βουλευέται καὶ πολέμου. καὶ μὴν περὶ συμμαχίας καὶ διαλύσεως καὶ συνθηκῶν οὗτός ἐστιν ὁ βεβαιῶν ἕκαστα τούτων καὶ κύρια ποιῶν ἢ τούναντίον.

³⁰ For a few examples, see Liv. 30.27.3 (202 BC): *consules iussi cum tribunis plebis agere ut, si iis videretur, populum rogarent*, 31.50.8 (200 BC): *senatus decrevit ut ... consules si iis videretur cum tribunis plebis agerent uti ad plebem ferrent*, 39.19.4 (186 BC): *senatus consultum factum est ut ... consul cum tribunis plebis ageret ut ad plebem ... ferrent*, 45.35.4 (167 BC): *mandatumque ... praetori cum tribunis plebis ageret ex auctoritate patrum rogationem ad plebem ferrent*; Val. Max. 7.6.1: *senatus auctore Ti. Graccho consule censuit uti ..., eaque de re per tribunos pl. apud populum lata rogatione*. For discussion of this practice, see Sandberg 1993, 90 and, in particular, Sandberg, *Magistrates and Assemblies* (n. 17), 97 ff.

³¹ A good example is Livy's account of how the Senate in 216 directed the consul designate Ti. Sempronius Gracchus, as soon as he entered office in the following year, to effect a popular vote authorizing Q. Fabius Maximus Verrucosus to dedicate a temple to Venus Erycina (Liv. 23,30,14): *Exitu anni Q. Fabius Maximus a senatu postulavit ut aedem Veneris Erycinae, quam dictator vovisset, dedicare liceret. Senatus decrevit ut Ti. Sempronius consul designatus, cum magistratum inisset, ad populum ferret, ut Q. Fabium duumvirum esse iuberent aedis dedicandae causa*. Not only is there a manifest structural resemblance with the examples cited in the previous footnote; in this particular case there is strong support for the view that the popular decree was obtained through tribunician assistance: we know from Cicero (*dom.* 127) that there was a *lex vetus tribunicia* that prohibited *iniussu plebis aedis, terram, aram consecrari*. For discussion, see Sandberg 1993, 90 f. and Sandberg, *Magistrates and Assemblies* (n. 17), 98 f. In his review of the latter study Michael Crawford (*CR* 54

I contend that the solution to the problem considered here is that Polybius' use of the term δῆμος is very similar to that of Latin writers referring to the *populus* in the non-technical manner suggested above. That is, in providing the details on the consuls' dealings with the people, he is thinking primarily of the consuls' formal contacts with the organization lead by the tribunes of the plebs – and not of their direct dealings with any of the popular assemblies.

Conclusion

Polybius' constitutional digression in book six has been the subject of an immense amount of scholarly attention, but mainly from the point of view of abstract political theory. As a source for the actual operation of the state machinery of republican Rome his account has attracted considerably less interest, because technical details are notoriously difficult to recover from Polybius' Greek and because they are consistently subordinated his overall zeal in representing the Roman constitution as the perfect blend of the three basic political systems that he distinguishes: βασιλεία, ἀριστοκρατία, and δημοκρατία. Moreover, some of Polybius' judgements about the nature of Roman politics have been regarded with scepticism; above all his emphasis of the significance of the people as a strong counterweight to the power of the Senate and the chief magistrates has been vehemently contested. In this study it has been argued that it is not so much his representation of the role of the people, but that of the consuls' formal relationship with the people that is problematic and requires more study. Here it has been suggested that Polybius' δῆμος often denotes the political organization controlled by, and inclusive of, the tribunes of the plebs – as opposed to the people itself formally assembled.

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[2004], 171) rejects this argument on the ground that *consecrare* is not the same as *dedicare*, but this is clearly wrong. Although not the same thing in a strictly technical sense, the *dedicatio* and the *consecratio* were inseparable parts of the ritual by which a temple (or any other object) was made a *res sacra*, see R. Nisbet, *M. Tulli Ciceronis De domo sua ad pontifices oratio*, Oxford 1939, 209–212 (Appendix VI).

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