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VICIT DISCIPLINA MILITARIS, VICIT IMPERII MAIESTAS? LIVY 8,30–35

Ronald Ridley

In 340 BC the Great Latin War broke out. It was a time of great tension, with soothsayers (*haruspices*) declaring that one of the Roman consuls had to devote, that is sacrifice, himself in order to gain victory. It was admitted that ancient discipline had to be enforced. It was ordered that no man leave his place to attack the enemy.

One of the consuls was T. Manlius Torquatus, holding office for the third time; his son was also serving, as one of the cavalry commanders (*turmarum praefecti)*. He rode far beyond his lines and encountered the Tuscan commander Geminus Maecius. There was an exchange of challenges, and next moment the clash occurred. Maecius was thrown and killed by Manlius. The latter gathered his rival's armour and, incredible to say, given that this constituted precisely the proof of the younger Torquatus' having disobeyed his father, presented it to his father. The latter declared that the authority of the consuls and military discipline must be upheld. Manlius the son was beheaded by the lictors, to the horror of the troops, who gave him a funeral with the highest honours. *Manliana imperia* became proverbial (Liv. 8,6,8–7,22).[1]

Fast forward to 325 BC, now in the Samnite wars.[2] A dictator had been appointed, L. Papirius Cursor, who named Q. Fabius Maximus Rullianus[3] as his

[1] Lendon (2005, 177), being much interested in Roman passion for single combat, notes the Manlius story, but omits the much more intriguing Fabian one.

[2] There are six other sources for this famous story: the *elogium* (*CIL* I 2, p.192 = *ILS* 53), Val.Max. 2,7,8; 3,2,9; Frontin. *Str*. 4,1,39 (a good summary); Dio frag. 36,1–7; Eutr. 2,8,1–3; *De vir. ill.* 31,1–3; 32,1, It is noteworthy that Cicero nowhere mentions the episode—or, it seems, Rullianus for that matter. My analysis will focus naturally on Livy's version; for that is the oldest (with only the hardly enlightening fragment of the elogium of similar date), and that is the version which every modern historian of fourth century Rome relies upon in order to reconstruct that history (see below).

[3] Augustus in his new forum made a feature of the two series of heroes, one on either side of the

magister equitum. Already on campaign, at a place called Imbrinium (otherwise unknown),[4] a keeper of the sacred chickens (*pullarius*) alerted Cursor that the auspices were "doubtful".[5] He thereupon determined to return to Rome to take them afresh, warning Fabius—for obvious reasons—not to engage in his absence. Being informed by scouts, however, that the enemy were unguarded, he engaged them and won a brilliant victory, although it is important to note that the cavalry could not break the enemy lines, despite numerous charges, until they threw away their bridles, and only then the infantry gained the advantage.[6] The spoils were extensive, but Fabius burnt them,[7] and sent a despatch not to Cursor but to the senate.[8] The news reached Cursor in that assembly, and he immediately rushed out to return to the camp, asserting that the dictatorship and military discipline were overthrown. Fabius meanwhile convened a meeting (*contio)* of

temple of Mars Ultor, those of the old nobility, and those of the Julian family: statues with inscriptions (elogia) highlighting their deeds and virtues. The *elogium* of Cursor does not, however, come from the Augustan Forum or its copies, from Arretium etc. Gruter in 1603 recorded it as being in the collection of Fulvio Orsini; by 1820 it was owned by Carlo Fea (1820, xxxv); by 1843 it was in the collection of an antiquarian Fossati, whence it passed to Parma. It calls this Fabius Amb[ustus], but that is his father. It uses almost the same words as Livy, claimed its editors Mommsen and Christian Huelsen—apart from this fundamental mistake about the Fabii. Münzer (1949, 1042) judged therefore that they were essentially in agreement. The *elogium,* however, unfortunately breaks off after mentioning only that Cursor had returned to Rome and that Fabius joined battle. It is the sequel which counts, precisely what we do not have. Borghese (1864, 9.101) was interested only in the history of the family. See especially *Inscr. Ital.* (1937, 39–40) for its history and bibliography. Carla Doria (2016) is interested only in the matter from an epigraphical angle.

[4] Eutropius (c.370) states that the war occurred 139 miles from Rome (2,8)

[5] There was a *pullarius* in every camp (Mommsen 1887, 1.85). Oakley (1998, 708) alone tries to fill in the gap in Livy's text and explain the defect: perhaps Cursor left Rome in too great a hurry in his anxiety to engage the Samnites.

[6] Val.Max. 3,2,9 stresses that the battle was saved only by the action of the cavalry. For a sharp summary of the Livian narrative, we turn to Hooke (1771, 3.268): Fabius "found the enemy in less disorder than he had at first expected, and was at once very near losing the day".

[7] Livy here (8,30,8–9 has two versions: that the spoils were burnt in fulfilment of a vow, or out of jealousy, to prevent the dictator claiming the victory as his own. The latter, note, is the interpretation of Fabius Pictor. .

[8] Hooke (1771, 3,269) again: Livy shows that victory made Fabius "insolent". He sent no message to Cursor, "an instance of great disrespect to the general under whose auspices he had fought". Two problems: Cursor at this point had no auspices, having returned to Rome to renew them, and Fabius claimed to fight under his own.

the troops. After asserting that the victory was won under his command and auspices (*ductu auspicioque*, Liv. 8,31,1; a claim repeated by his father, 8,32,1), he urged the troops to protect him, accusing Cursor of jealousy, and even preferring that the enemy had won. When he had dealt with his subordinate, Fabius declared, he would then turn on all the rest. The soldiers promised their protection.

Cursor arrived back in camp, and summoned a *contio* in which he accused Fabius of disobedience. Fabius naturally could not reply, and Cursor bade the lictors strip him and prepare the rods and axes.[9] Fabius managed to escape to the rear,[10] and the clamour infected all: it was almost a mutiny (*seditio*, Liv. 8,32,13).[11] Cursor's lieutenants (*legati*) around the tribunal urged reflection, given the state of the troops. This only aggravated Cursor, who dismissed the officers. A herald was unable to procure silence: night brought an end to the struggle. Fabius was ordered to appear on the morrow. Instead he fled to Rome.[12]

Here he resorted to his father, Fabius Ambustus (three times consul, and once dictator),[13] and convened the senate.[14] Cursor again appeared. The "leaders of the senate and that whole body" (*primoribus partum atque universo senatu*, Liv. 8,33,6) tried to pacify him, in vain.[15] Fabius' father then sought the aid (*appello*) of the tribunes of the plebs, and appealed (*provoco*) to the Roman people. Yet another *contio* was summoned, where finally Fabius the Elder was heard. He accused Cursor of treating his son like an enemy general, and of a new-fangled arrogance (*novam superbiam*, Liv. 8,33,13). He quoted historical examples of "moderation": Cincinnatus (Liv. 3,26–29) and Camillus (Liv. 6,22–25). No defeated general had ever been executed, but this penalty was now threatened against a general who had won the right to a triumph![16] Cursor replied by invok-

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[9] According to Jane Chaplin (2000, 109), Cursor "prepares to have him beaten". She has missed the whole point.

[10] Here the *triarii* were placed, observing in a *contio* the same formation as in battle: Oakley (1998, 724). Valerius Maximus 2,7,8 changes this vital episode: Fabius offered himself to the lictor's lashes.

[11] Eutropius 2,8 goes much further than Livy, suggesting that Cursor could have been killed at this point: noted by Pais (1928, 5.14).

[12] Again Valerius Maximus 2,7,8 distorts events: the army enabled him to flee to Rome.

[13] A point also emphasized by Valerius Maximus 2,7,8.

[14] Hooke (1771, 3.281) suggested that his father convened the senate: This makes far more sense.

[15] Eutropius 2,8 mentions the support of soldiers and people, but omits the senate.

[16] Mommsen (1887, 2.179) noted that, although the *magister equitum* could command an army

ing Manlius' example, and insisted on upholding military discipline, now being undermined by the tribunes and people. Cursor vividly depicted a resultant total breakdown of discipline. The tribunes were confounded, but the people asked for mercy for Fabius, for their sake. Cursor was thereupon satisfied that Fabius' guilt was acknowledged and, given that the tribunes were powerless to help, granted Fabius as a boon to the people and tribunes (*donatur populo Romano, donatur tribuniciae potestati*) (Liv. 8,30–35).[17]

Within fifteen years there was thus a total reversal in the traditional history of military discipline at Rome. Two young men disobeyed an order not to engage the enemy. Both won considerable victories. One was executed—by a consul, his own father; the other was spared—by a dictator. This latter commander held the highest power (*summum imperium*), obeyed even by consuls with their "royal power" (Liv. 8,32,3); the dictator's edict was always observed as divine (Liv. 8,33,2). And "the Romans believed that *disciplina militaris* was one of the corner-stones of their success".[18]

It is to be noted that the following analysis will include scholarship going back to the Renaissance; for these were matters which concerned the earliest "modern" scholarship. As historians, devoted to reconstructing the past, we can under no circumstances disregard the work of our predecessors, on whose shoulders we stand. They will be seen to offer much—and we do not want to be guilty of reinventing the wheel or to be thought so arrogant as to think that all problems have been solved only in our own time.

The fundamental matter of method here is one with which historians of the early Roman state are confronted daily. Our main source is Livy—and he is the first to warn us of the problems he encountered. Deciding that we are unable to separate Livy's account from "what actually happened", we could admit defeat and leave the page(s) a blank, or we can use the historical methods evolved since the beginning of history with the Greeks to subject Livy's text to analysis on

(citing Liv. 8,31,2 and 8,33,22), none ever triumphed (*ibid*, 1.128)—for obvious reasons—but makes no reference to this text. Fabius had no right to a triumph: Beck and Walter (2001, 120), citing Mommsen.

[17] Valerius Maximus 2,7,8 agrees that Fabius' life wa saved by the entire citizen body and the tribunes, and that his punishment was remitted (*poenam concedere*). *De viris illustribus* 32,1 attributes his saving to the tears of his father and the entreaties of the people.

[18] Oakley (1998, 705–706).

grounds such as possibility, plausibility, internal consistency and so on. This is what is first attempted here, in order to show that *Livy's interpretation is undermined by his narrative.*[19] Then, a representative selection of modern historians will be examined to see what they have made of the story.

The first thing to note is Livy's clear indication that all is not well. Fabius fought the Samnites and won a brilliant victory: so stated the earliest historians.[20] Some writers claimed that he fought two such battles.[21] Certain annals omitted the story altogether (Liv. 8,30,7). The reader has been warned. Fundamental events in this story are told very differently in the Roman historiographical tradition.

Livy is aware, of course, that this story does not stand unique in the annals of the Republic. He has both Cursor and Fabius the Elder cite what they consider to be parallels, one of *severitas*, the other of *clementia*. That of Manlius, which opened this paper, was naturally cited (twice) by Cursor (Liv. 8,30,13; 34,2). Fabius in reply referred to two cases: Cincinnatus, dictator in 458, rescued the consul Minucius, whose army was surrounded by the Aequi. Since this was apparently due to Minucius' own incompetence, the dictator then reduced him to the rank of lieutenant (Liv. 3,26–29). Fabius' second example was Camillus, military tribune in 381, now very old, given charge of the Volscian war; attached to him was the young L. Furius, also military tribune. The latter ridiculed the clever caution of his colleague, insisted on joining battle, and was soon in dire trouble. From this he was saved by the intervention of Camillus, but when Camillus was appointed to command the war against Tusculum, he especially requested a lieutenant—and chose Furius (Liv. 6,22–25).

What is instantly apparent is that none of these examples matches Cursor and Fabius: we need a dictator and *magister equitum*, and a disobedient *magister* who wins a battle.[22] The closest is Manlius, cited therefore by Cursor. Manlius

[19] Compare the revolution in Thucydidean studies in the 1950s when Geoffrey de Ste Croix showed that Thucydides' interpretation of relations between Athens and the allies did not accord with his evidence.

[20] Almost certainly a reference to Fabius Pictor, and perhaps to Fabius alone: Oakley (1998, 711).

[21] Accepted by Paribeni (1954, 222) as a balance to Cursor's subsequent double victory.

[22] Hooke (1771, 3.272): Ambustus' precedents are "not much to the purpose". He "clamoured, he brangled, he complained, he called upon Gods and men for help". This is far more useful than Jane Chaplin's (2000, 111) uncritical statement that Ambustus "strings together exempla to support his case".

the younger wins a battle, but is a *praefectus*. Cincinnatus, on the other hand, was dictator, but Minucius neither disobeyed him nor won any success. The least applicable parallel is the two tribunes, Camillus and Furius, the latter also unsuccessful. Precedent does *not* favour Fabius.

There are a number of fundamental questions here. The first is the source of this strange story. Everyone agrees that the source named by Livy is the obvious answer: Fabius Pictor (Liv. 8,30,9).[23] The story is, however, more complicated than that. A little earlier (8,30,7), Livy noted disagreement over Fabius' victory among *three* groups of sources: in the oldest historians (*apud antiquissimos scriptores*), Fabius fought one battle; but "he knew of sources" (*auctores habeo*) that gave two battles (for what purpose one wonders), and "certain annals" (*in quibusdam annalibus*) omitted the whole episode. At least here, at the beginning of the story, then, Livy followed Pictor (*antiquissimos scriptores*), but he did not follow Pictor alone. He had at least three sources, and we do not know, in fact, what exactly he was doing with them at any point, except that he later contaminates the divergent versions by having Fabius' father refer to his son's *two* victories (Liv. 8,33,21).[24]

The second question is how Fabius, knowing that the dictator had returned to Rome precisely because there were concerns about the auspices, could join battle with the enemy.[25] Livy realized this question and offered some suggestions: scouts informed Fabius that the Samnites were unguarded, but adds that Fabius resented the monopoly of power by the dictator, and lastly that he thought he had a chance to strike a successful blow (Liv. 8,30,4). None of this makes any sense: if the auspices are uncertain, the condition of the enemy is irrelevant, and

[23] Niebuhr (1828–42, 3.194) asked: does "the tragic dispute become more authentic" being related by a Fabius? Of course not. Such a family source makes the story all the more worrying. For acceptance of Pictor as the source: Soltau (1897, 120) (from a *laudatio*, which it would suit very well); Cornell (1989, 369); Forsythe (1997, 295): Pictor witnessed the events of 217 at first hand! Weissenborn-Muller (1924, 278): from Pictor, but via a late annalist (!) in keeping with the then-current dogma that Livy was an arch-deceiver over his use of people like Pictor at first-hand. Shuckburgh (1894, 140) went further: the story derived from the archives of both families. It is strange that Peter Bung 1950 offers no analysis of this fragment of Pictor. Linderski (1993, 62), however, laid more emphasis on the "family myths" of the Papirii.

[24] Noted by Forsythe (1997, 296).

[25] Levesque (1807, 1.351) claimed that on hearing about Fabius' victory, Papirius forgot all about the auspices. To the contrary, it was Fabius who forgot the auspices. NB Liv. 8,32,4–5.

there is little likelihood of success. Most irrational of all is the idea that the *magister* should be incensed that the dictator had all power.[26] That is precisely why the dictatorship was instituted, and the *magister,* of all people, understood that. The whole story is then turned topsy-turvy: *despite* the faulty auspices, Fabius wins a victory! How can all this be explained? In the first place, Livy does not explain how Cursor or his *pullarius* realized that something was wrong—or what exactly that was. Secondly, his "explanation" of the contradiction is absurd: the (admitted) flaw in the auspices somehow did not affect the outcome of the battle; the only adverse effect was the madness of the generals (Liv. 8,30,1).

The third question is the exact definition of Fabius' crimes. *No one has even confronted this.* They were, in fact, to begin with, *three,* and the most serious in any military manual.

1. He had disobeyed the precise order of the highest military authority in the Roman constitution not to join battle in the dictator's absence.
2. When charged, he had incited a mutiny (Liv. 8,32,11–12).[27] It should be noted, in addition, that this instigation was based on totally false claims.
3. When cited to appear again on the morrow, he had gone absent without leave, or, in other words, was guilty of *desertion*, and had again disobeyed the explicit command of the dictator, in this case, to present himself on the morrow (Liv. 8,33,3).[28]

Lipovsky draws our attention to a fundamental feature of the narrative: "Neither Livy, nor any person in the narrative, save the irate dictator, even cites [Fabius' evil deeds] as offenses."[29] Livy has presented, in that case, an entirely biased account. No wonder that there are so many modern apologists for Fabius!

[26] Kajanto (1957, 27) nevertheless describes this as "a good psychological explanation". The claim reminds the present author of another ridiculous episode in the history of the Fabii: the terror of the younger Fabia at the sight of a lictor (Liv. 6,34). Phillips (1972, 341) simply restated Livy: Fabius "resented [Cursor's] monopolization of military *gloria*".

[29] Lipovsky (1981, 123).

There is something else, equally important, in another category. Cursor had returned to Rome precisely because the auspices were doubtful, as attested by the *pullarius*. Fabius joined battle not only against the dictator's orders but also in this extremely dangerous religious situation. The battle was doubtful, but eventually the Romans won. This is indeed a paradox, but the oscillating course of the battle seems to demonstrate such doubt. The crucial question is how much did Fabius know before he joined battle. Livy is not precise. Fabius certainly knew that Cursor had to return to Rome, but that could have been for any number of reasons. He knew, on the other hand, that the dictator had forbidden him to fight in the meantime. The most obvious reason for this would be a problem with the auspices. Why would Cursor not have told him? Fabius, knowingly or not, had not only committed three of the gravest military crimes, he had also imperilled the *pax deorum*.

The fourth question is what defence Fabius could make for his disobedience to the precise order of the most powerful magistrate in Rome. The truth is, he had none, as Livy admitted. What he does do is attempt to distract attention from this crime by objecting to his just punishment. He stirs up the troops by involving them in his crime, by extending the dictator's anger to the whole army: Cursor was, he claimed, no angrier with the *magister* than with the military tribunes, the centurions and the soldiers (Liv. 8,31,6); the victory was their achievement; if Cursor could destroy Fabius, he would then punish the soldiers with equal cruelty. To defend him was to defend the freedom of all (Liv. 8,31,7). To such lengths went Fabius' self-serving fantasies.

The fifth and most fundamental question is why Cursor, unlike Manlius, relented. Military discipline and the majesty of *imperium* had been upheld, he claimed (Liv. 8,35,4). This claim is, to say the least, paradoxical. He stated that Fabius had, in fact, been found guilty (*non noxae eximitur Q. Fabius*, Liv. 8,35,5). That the people, the tribunes, and Fabius the Elder begged for Fabius' to be spared proved this. The tribunes were singled out by Cursor as pleading for Fabius, although they could not do anything to help him (Liv. 8,35,5).[30] Cursor's legates, after the first confrontation between dictator and *magister*, suggested that Fabius had been "sufficiently chastened" and his victory "discredited" (Liv. 8,32,15): this after Fabius had defied the dictator and sought refuge with the *triarii,* who were stirring up a riot. The tribunes in Rome used the same argument

[30] See n. 19 above.

(*satis eum poenarum dedisse*: 8,35,2). An obvious puzzle now arises: the exact nature of that "sufficient punishment" to which Fabius had been subjected. Livy himself, at the end, when Fabius is pardoned, asserts that "military power had been upheld no less by Fabius' danger than Manlius pitiful punishment" (Liv. 8,36,9). This is an outrageous comparison, between one young man's brutal execution, and another's escape after the same crime and many others as well. We have specious arguments and desperate claims, in short, on all sides: from Cursor, his officers, the tribunes, and Livy.

There is little doubt about Livy's fundamental personal response to such conflicts. This is shown by his outspoken personal verdict on the Manlian story of 340 (Liv. 8,7,20–22): the father's command was frightful (*atrox*), and the bystanders broke out in laments and curses (*lamentis…execrationibus*). We must not, however, neglect the crucial element in this story which distinguishes it from Fabius': Manlius was executed by his own father.

Moderns have sometimes seen the problem. Hooke admitted that although the appeal to the people was "unprecedented", Cursor "did not think it expedient to dispute the superior authority of the Roman people".[31] Barthold Georg Niebuhr suggested that had he persisted he would have destroyed the dictatorship.[32] A number of scholars have suggested that the punishment was subsequent: Fabius' "sacking" as magister (Liv. 8,36,1): Wilhelm Ihne, Evelyn Shuckburgh, and Fritz Bandel.[33] Livy asserts no such thing: Cursor simply forbade Fabius to "exercise his magistracy in any way" (*Fabio vetito quicquam pro magistrate agere*),[34] and then proceeded to engage with the enemy himself. Henry Liddell declared that the dictator was "obliged to grant a forced and ungracious pardon".[35] Ettore Pais thought that Cursor was satisfied after proving that the dictator was not subject to the tribunes.[36] Stephen Oakley suggested that, although

[31] Hooke (1771, 3.271–272).

[32] Niebuhr (1828–42, 3.195). It should be noted here in Fabius' engagement that an element in battle accounts for which Livy is endlessly pilloried, the cavalry taking off their bridles (8,30,6), is defended by Niebuhr (*ibid,* 1.194): the Turks did that. There is also an example in Polyb. 3,35. The point is stressed by Richardson (2012, 85).

[33] Ihne (1871, 1.390); Shuckburgh (1894, 140); Bandel (1910, 90).

[34] Siber (1952, 109): Cursor could not dismiss him, but incapacitated (*kaltstellen*) him.

[35] Liddell (1902, 176).

[36] Pais (1913–20, 4.7).

the tribunes wavered, "the crowd supports Fabius, and thus Cursor has to give way".[37] One can only ask when had a dictator, whose orders were treated with contempt, given way to the mob. Walter Beck and Uwe Walter thought that "finally the accord of the senate, people and magistrate triumphed".[38] Fred Drogula followed Livy: Cursor "was assuaged by the sustained pleas of the tribunes, senators and citizens alike".[39]

Military crimes are, however, only part of the charge-sheet. There is the equally important religious one: engaging with the enemy in the face of uncertain auspices. This, in Roman terms, could hardly be more serious. There is furthermore a contradiction to explain. The obvious modern authorities let us down, but *Augur Maximus* does not.[40] Jerzy Linderski explains that a commander could take auspices in the field, but the most crucial were those connected with his election (civilian) and those taken before leaving the city (military). On these depended ultimately the "validity and felicity of practically all undertakings in war". To ignore these requirements "would have exposed the republic to the utmost danger". Hence the striking return by Cursor in mid-campaign all the way from the field to Rome. The explanation of the contradiction is there in the account: the auspices were only "uncertain" (*incertis*), and the result of the battle presumably shows that they were after all favourable.[41] Fabius *could not, however, count on that*. His own military crimes affected only himself. His disregard for the gods, however, was far more serious: it imperilled the lives of countless men and exposed Rome to defeat in the most dangerous of all her wars to subdue the Italian peninsula.

A major concern is the constitutional problems raised by the narrative. Livy is constantly derided for his mistakes regarding constitutional law, which are used to undermine his reliability as an historian. Theodor Mommsen, still the founder of our understanding of Roman constitutional history, however, referred again and again to this story for constitutional points, and found it extraordinarily sound.[42] The most basic question is whether the *magister equitum*

[37] Oakley (1998, 729).

[38] Beck and Walter (2001, 120).

[39] Drogula (2015, 121).

[40] It is incredible that neither Altheim (1933), nor Latte (1960) makes any reference to this episode.

[41] Linderski (1993, 62–63).

[42] Mommsen in his *Staatsrecht* has, in fact, some thirty references to this story. Mommsen (1887,

could command an army. Mommsen stated that he could, and Siber agreed, citing these precise passages, as did De Martino: the *imperium* of the magister was connected to his own magistracy, not delegated from the dictator. Giovannini asserted that, in the absence of the dictator, the magister commanded under his own auspices; all magistrates had *auspicium*, including the magister (he cited only Liv. 8,31,1 and 8,33,22).[43] Weissenborn-Muller and Oakley disagreed: Fabius "falsely claims to have fought under his own auspices".[44]All these commentators have missed a vital clue provided by Livy (8,30,9): if Cursor could claim Fabius' spoils as his own, the magister was fighting under the dictator's auspices. Vervaet agreed, accepting the second version as an example of how the *summus imperator* could take credit, whether he physically led the army or not.[45]

Livy's attitude to the story must finally be considered. That can be most securely determined by noting, alongside his direct judgements, his characterisations of Cursor and Fabius. The dictator is overcome with anger and resentment (*iram tristitiamque*),[46] he rushes headlong from the senate house (*ex curia proripuit*), full of threats and anger (*plenus minarum iraeque*) and thirsting to inflict

1.99) cited, for example, Liv. 8,30,2 (also 23,19,2; 23,36,2) for the basic law that the commander had to take the auspices on the Capitol before leaving the city. If auspices proved to be defective, he therefore had to return to Rome to renew them. Other examples of exactness in details include the possibility that the absent Cursor might have used Rullianius' booty for his own triumph (8,30,9), or that Cursor removed private citizens to below the rostra (8,33,10). On the other hand, as one of the Arctos readers observed, it was impossible that a patrician could seek the aid (*auxilium*) of a tribune at this stage of the "Conflict of the Orders". Mommsen (1887, 2.164; 2.292) believed that such aid was available. It was invalid, however, against a dictator: *non iustum auxilium* (8,35,5): Oakley (1998, 743), followed by Drogula (2015, 121): Fabius invoked his "right of provocatio", but the tribunes were "helpless to resist the authority of the dictator". He stresses, on the other hand, that Fabius' story among others (Liv. 4,13–14), illustrates the dictator's use of imperium within the city. A clear nonsensical element is Ambustus' 'appeal' against the dictator. If we seek an excuse, it may be taken as simply a sign of the father's hysteria. He surely knew better in his calmer moments. There was no appeal against a dictator: Lange (1876, 3.70); Mommsen (1887, 1.276; 2.164–65). Levesque (1807, 1.353) already knew that. Against the dictator neither the intercession of the tribunes nor the right of *provocatio* was valid: Meyer (1964, 158). Oakley (1998, 728–29) regarded this passage and 2.55,4–8, and 3,56,5 all as unhistorical.

[43] Mommsen (1887, 2.179); Siber (1952, 109); De Martino (1958, 1.390); Giovannini (1983, 35).

[44] Weissenborn-Muller (1924, 280), quote from Oakley (1998, 705).

[45] Petriucci (1996, 50–51); Vervaet (2014, 121). There is, strange to say, no attention to this episode in *Praeda* (2009).

[46] On *tristitia*, see Oakley (1998, 715).

punishment (*avidum poenae*, Liv. 8,30,11–13); Fabius describes his uncontrollable cruelty (*impotenti crudelitate*), his insanity induced by jealousy (*amentem invidia*), his anger at another's bravery and good fortune (*iratum virtuti alienae felicitatique*), his imputed preference that the Samnites defeat the Romans, and his jealousy of others' bravery (*invidia impedire virtutem alienam voluisse*, Liv. 8,31,1–3; *invidia* again, 8,31,7).When he tries to execute Fabius, he is called cruel (*inclementem*, Liv. 8,32,13). His legates have the audacity to warn Cursor against fanning a mutiny: he alone would be blamed, if, blinded by anger (*occaecatus ira*), he provoked the mass of the soldiers by a "misguided struggle" (*parvo certamine*) to impose his sentence (Liv. 8,32,16–17).[47] Fabius flees to Rome because Cursor will be even more hostile (*infestius*) the next day (Liv. 8,33,3). There he describes to the senate Cursor's violence and injustice (*vim atque iniuriam*, Liv. 8,33,4). When Cursor appears, he is furious (*infensus*, Liv. 8,33,8)—not unnaturally—and the senators cannot deflect his cruel intention (*immitis animu*s, Liv. 8,33,6). At the subsequent *contio*, Fabius the Elder inveighs against Cursor's pride and cruelty (*superbiam crudelitatemque*, Liv. 8,33,11, and again, 8,32,13), his anger and violence (*iram violentiamque,* Liv. 8,33,19). Not even when he pardons Fabius is any kinder epithet bestowed on him.[48] One can only call Livy's antipathy to the dictator unrelenting—and not meant to leave any reader in doubt where his sympathies were to be placed.[49]

The *magister*, by contrast, is introduced as a "wild young man" (*ferox adulescens*, Liv. 8,30,4),[50] who refuses to share credit (*minime cum eo communicantis laudes*, Liv. 8,30,10). Then comes the switch: Cursor's own legates referred to Fabius as a young man without equal (*unico iuveni*, Liv. 8,32,15). [51] They argued that it was not in the interests of the state (*e re publica*, Liv. 8,32,18) to pun-

[47] Lipovsky (1981, 121–122) claims that in Cursor's speech before the army (Liv. 8,32,1–8) "his strict formality gives him the air of a bully"—as if the most formal and personal command had not been disobeyed. Cursor emphasizes his own rights rather than the bad example to others. "Worst of all is his relentlessness in seeking Fabius' execution". Perhaps his mistake, then, was giving Fabius a chance to justify himself, unlike Manlius' father.

[48] Dio *frag*. 36 suggested that Cursor's resistance was to increase Fabius' and his supporters' gratitude. Cursor "is not portrayed in a good light": Oakley (1998, 706). Liddell (1902, 175) knows other things: Cursor was "a man with little education, of great bodily strength".

[49] Lipovsky (1981, 115–116) claims that his characterization in Livy is "idiosyncratic".

[50] *Ferocitas* is the defining trait of the *iuvenis:* Cic. *Sen.* 33.

[51] Indeed, in the annals of Roman military discipline!

ish Fabius. On his return to Rome, despite being absent without leave, he was supported by the senate, the people, and the tribunes (Liv. 8,34,1). Cursor, it is admitted, at the end of the story accused him of disobeying both military discipline and the power of the dictator (Liv. 8,34,2), in sum, of indiscipline (*licentia*, Liv. 8,34,11). The positive view of Fabius is shared by Valerius Maximus, who stressed his bravery, success, and noble birth (Liv. 2,7,8)—all irrelevant to the charges, note.[52]

There is therefore to be no doubt in anyone's mind that Cursor is defined again and again primarily by anger and cruelty. Fabius, on the other hand, despite his disobedience, and insults to his superior, is rarely assigned any critical labels and, to the contrary, gains *everyone*'s support.

A very detailed analysis of Livy here is provided by James Lipovsky.[53] He divides the narrative into four parts: Liv. 8.30,8–33,22; 33,23–35,9; 35,10–36,4 and 36,5–37,2. He shows that Livy is first intent on condemning Cursor for his implacability, and trying to defend Fabius, by disassociating his "offences" from his personal attributes: *virtus nobilitasque* (33,7). In the second section, Cursor appears much more reasonable, emphasizing the importance of military discipline. He then wins the argument. In section (3), however, he reverts to harsh discipline, which results in military reverses. In section (4), Cursor swings about yet again, wins the affection of his army and crushes the Samnites. In sum, a major theme of book 8 is military discipline. The Manlii illustrate its being upheld by severity, Cursor "the effectiveness of mingling *severitas* with *comitas*." This may well be Livy's message, but this paper argues rather that, in that case, Livy has distorted the whole and obvious point of the story.

What have modern scholars made of it all?[54] Nathaniel Hooke summed

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[52] Lipovsky (1981, 116) admits on the one hand (*recte*) that "there ought to be no worse scoundrel on earth, such is the magnitude of his disobedience and of his unrepetance" (the second point is very important), but in the next breath contradicts that entirely :"he is undeniably a sympathetic figure". To the contrary, his final escape is utterly unprincipled. Cornell (2004, 119) asserts that "Livy's artful presentation of the episode is carefully balanced on the substantive issue [...] but is largely favourable to the Fabian side; the intervention of M. Fabius Ambustus [...] turns the dispute into a family affair".

[53] Lipovsky (1981, 115–130).

[54] One would have expected that Machiavelli, of all people, would discuss the meaning of it all in his *Discorsi* (1531), under military discipline (2,16), but there is nothing. And in 3,22 he mentions Manlius' severity, but not Cursor's. Carlo Sigonio, the greatest sixteenth century authority on the Roman constitution (1715, 567) refers to Cursor's dictatorship, but not his *magister* Fabius.

up perfectly: the people and tribunes supported Fabius "not as innocent, not as a just exercise of power, but by their prayers for mercy on a convicted criminal".[55] The greatest scholar of the eighteenth century on the constitution, Louis de Beaufort, noted only the total power of the dictator over the magister, citing Livy 8,32.[56] Niebuhr simply retold the story without drawing any lessons.[57] Mommsen omitted it entirely in his Roman history—in total contrast to the great attention which he paid to it in his *Staatsrecht*. George Cornwall Lewis declared the story "highly characteristic of the Roman notions respecting the maintenance of military discipline".[58] Ihne declared that "the sanctity of military discipline had been solemnly acknowledged by this submission".[59] De Sanctis is interested only in the military details, and declared Fabius' victory "more than suspect".[60] His account is frustratingly short. For Pais the key was *vicit disciplina militaris, vicit imperii maiestas* (Liv. 8,35,4), the "just rigour of military discipline".[61] William Heitland took the whole episode as illustrating "the stern discipline of the Golden Age".[62] Herbert Havell stated that "without impeachment [*sic*—surely impairment] to the majesty of a great office (the dictatorship), a gallant life was saved for the service of the Republic".[63] Fritz Bandel, following Mommsen, thought that the story was all to illustrate that the dictator was not subject to *provocatio.*[64] Karl Elvers gnomically states that the story is "meant to explain the anomaly regarding constitutional law".[65] Bruce Frier identifies the central point: the story was not flattering to Fabius.[66] Betty Radice, translator of Livy, identified the moral as

[55] Hooke (1766, 3.273).

[56] De Beaufort (1766, 403). There is no mention in de Beaufort's *De l'incertitude des cinque premiers siecles de l'histoire romaine,* Utrecht 1734.

[57] Niebuhr (1828–42, 3.192–5).

[58] Lewis (1855, 2.443).

[59] Ihne (1871, 1.390).

[60] De Sanctis (1907, 290).

[61] Pais (1913–20, 4.7; 124)

[62] Heitland (1909, 1.145). He continues: "But while the dictator is abusing his subordinate we feel that his proper place is at the head of his army, and the story as it stands is worthless".

[63] Havell (1914, 108).

[64] Bandel (1910, 90).

[65] Elvers (1978, 4.372).

[66] Frier (1979, 244).

Cursor's command to Fabius, described, indeed, as "today's lesson": "that in war and peace you are able to bow to lawful authority"[67]—only this is precisely what Fabius did not do. According to Oakley, the "moral of the tale is that military discipline can be upheld without resort to needless brutality".[68] This, indeed, is Livy's message, but it does not seem to accord with our standard impression of Roman military law. Hans Beck and Uwe Walter described Livy's account as a "stylized debate about *maiestas imperii*"[69] — "stylized", when it includes threatened executions and mutinies? Beck naturally follows closely, but adds now the vital insight that Pictor illustrates "the inner conflict of the nobility, indeed, to some extent [*sic*] one of the principles of their political culture: conflict".[70] Fabius became "an instant exemplum for others", according to Chaplin, "a pointed foil for Manlius' harshness".[71]An exemplum of, or for, what? For Myles McDonnell it was a close-run but jolly thing: "The daring young officer disobeyed and won a great victory, but nearly forfeited his life for his disobedience".[72] Sara Phang in her study of military discipline tries to downplay the story, which is "rhetorically presented" by Livy and Valerius Maximus: "As authors of the new imperial dispensation, they moralize on the necessity of military discipline".[73] Pat Southern omitted fundamentals: she makes no mention of the essential peg (the doubtful auspices), and Fabius was put on trial "despite his success", whereupon "the soldiers rioted".[74] In sum, as Pais quoted directly, moderns have seized upon Livy's phrase put into Cursor's mouth: *vicit disciplina militaris, vicit imperii maiestas* (8,35,4). All one can say is that this is not what Livy's story tells. A young subor-

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[67] Radice (1982, 18–19). Bloch and Guittard (1997, 1287–1290) devote attention only to the historical precedents and offer nothing on the present case.

[68] Oakley (1998, 707).

[69] Beck and Walter (2001, 121).

[70] Beck (2003, 82–83). So similarly, Uwe (2004, 246). Beck 2005, a study of the aristocracy and the beginnings of the *cursus honorum*, refers to Cursor and booty in 325 (204) and the cumulation of offices by the Fabii (166)—but says nothing of this episode.

[71] Chaplin (2000, 110–111). In Hans Beck's very rich analysis of middle republican politics (2005), his focus is on the third and second centuries, and Fabius' crimes are not mentioned.

[72] McDonnell (2006, 204).

[73] Phang (2008, 122).

[74] Southern (2014, 67). Scopacasa (2015, 135) refers to the story in only two footnotes: the burning of the booty by Fabius, and Cursor's punishment.

dinate of the most powerful office in Rome has committed multiple crimes and been let go scot free, when only a few years before a consul had executed his own son for only one such breach.

The central question is obviously being begged: was Fabius guilty of the crime of disobedience—not to mention the other two military charges? Livy's own most express statement, which becomes rather submerged in all the subsequent emotion, is that on the first reading of the basic charge by Cursor when he returns to camp, it was "far from easy" for Fabius to answer the charges (Liv. 8,32,9); he was, in fact, convicted of the crime (*noxae damnatus*, Liv. 8,35,5). It is a rare modern scholar who confronts this matter. Hooke declared roundly that Fabius had violated "not only the common laws of Military Discipline, but also the express order of the dictator".[75] Pierre Charles Levesque declared Fabius "brave but guilty" ("il valoreux coupable").[76] Wilhelm Ihne implied as much when he stated that Fabius threw himself on "the magnanimity and mercy of the dictator".[77] Roberto Paribeni stated simply that he was guilty ("colpevole").[78] Lipovsky was clear, at least here: "And yet Papirius is in the right. His *magister equitum* did violate orders, flouting military discipline".[79] Oakley wrote that "the young man, his father, the tribunes and the people all turn from argument to entreaty, thereby admitting the guilt of the *magister*…L(ivy) leaves us in no doubt that Fabius Rullianus was legally in the wrong".[80] This much is crystal clear.

The obvious source is Fabius Pictor, the first Roman annalist, writing a little over one century later. Is the story, therefore, to be regarded as historical? Gaetano De Sanctis regarded the very foundation of the story, Fabius' victory, as "more than suspect"; that of Cursor might then have been invented as a counterbalance:[81] invention leading to invention. Friedrich Münzer first discussed the matter in his *RE* article on Fabius in 1909. The story was unhistori-

[75] Hooke (1771, 3.270).

[76] Levesque (1807, 1.352).

[77] Ihne (1871, 1.390).

[78] Paribeni (1954, 223).

[79] Lipovsky (1981, 121) – as is usual with modern scholars, one out of four crimes is noticed.

[80] Oakley (1998, 70).

[81] De Sanctis (1907, 305).

cal, simply a paradigm for the supremacy of military discipline and the majesty of command (Liv. 8,35,4). It was based on events of 217 involving Fabius and Minucius (Polyb. 3,101–3, Liv. 22,24–26), not to mention the Manlii in 340.[82] By 1920 Münzer admitted, however, that "the background is provided by a real enmity between the two clans".[83] Fritz Bandel could accept nothing: the victory, the enmity, the "trial": it was all a product of Fabian family bias. He therefore deleted Fabius' magistership, and accepted only Cursor's dictatorship and victory.[84] Ettore Pais explained the clash as a reflection of the enmity between Papirii and Fabii, citing 310 (Liv. 9,38,9–14), but also reflecting the clash between Fabius and Minucius in 217.[85] Karl Julius Beloch was suspicious of even the triumph of Cursor, despite its appearance in the *Acta Triumphalia*. The derivation of the story from Pictor similarly did not prove its authenticity. He regarded the episode as a duplicate of the victory of the same Fabius in 322 (Liv. 8,40,1–3 and *Acta*).[86] Frank Adcock followed the now orthodox view: that all was modelled on 217.[87] Howard Scullard noted only Cursor's subsequent victory.[88] In his *RE* article on Cursor in 1949, Münzer declared the story unhistorical, in contrast to his certainty about Cursor's victory.[89] Luigi Pareti differentiated Cursor's victory, recorded in the *Acta,* from that of Fabius: a doublet of 315—meaning 310 (Liv. 9,38,9–14).[90] L. Halkin noted an often overlooked detail: Fabius as consul a mere three years later, and operating in Apulia, celebrated a triumph for victories over both Samnium and Apulia.[91] Roberto Paribeni agreed with Münzer. The epi-

[82] Münzer (1909, 1800).

[83] Munzer (1999, 105).

[84] Bandel (1910, 91).

[85] Pais (1913–20, 4.124). By the time of Pais' contribution to Georges Glotz's *Histoire generale, Histoire romaine* in 1940, any detail in the account of the Samnite wars was eschewed: there were too many contradictions and doublets. Cornell (1995, 353) avoided the whole fascinating episode, mentioning only a victory at Imbrinium, but no commander.

[86] Beloch (1926, 396).The victory is ascribed to *both* consuls Fabius and Fulvius Curvus in a one line variant.

[87] Adcock (1928, 598).

[88] Scullard (1935, 120).

[89] Münzer (1949, 1042).

[90] Pareti (1952, 1.689).

[91] Halkin (1953, 17–18), cited by Bloch and Guittard (1987, 76).

sode provided "a dramatic and risky beginning" to Fabius' career, to enhance his later deeds.[92] Togo Salmon was interested only in the military history of the wars against the Samnites, but suggested a connection with 217.[93] Marta Sordi went so far as to declare even Fabius' victory an invention of Pictor—but then he had burned all the booty![94] Bruce Frier tried to explain the connection with Pictor. He may have constructed this parallel for 217 because it involved his cousin Verrucossus, but at the same time he admitted the existence of *litterae* (Liv. 8,30,10), which may have come from a family archive.[95] Lukas Grossmann pointed out that the account of the wars 326–320 was very summary, but this episode receives six chapters in Livy; that it was one of few from the Samnite wars found in authors after Livy (the others being the Caudine Forks and Sentinum). This episode, however, has no comparable importance. It owes the attention given it to the fact that it appeared already in Fabius Pictor, and that it concerned the two leading generals in the Samnite wars. Grossmann's most important observation, however, is that it is "principally of an internal political character".[96] The resolution of the conflict was certainly fought out at Rome, because of Fabius' desertion, but that does not confront the fundamental questions. James Richardson, in a specialist study of the Fabii, adduced more ingenious parallels. He seized on the involvement of Rullianus' father, and drew parallels with events of 391: Q. Fabius, the ambassador (Diod. Sic. 14,113), and with Rullianus' own son, Gurges in 192 (Liv. *Per*. 11). He goes on to stress patterns in Roman aristocratic family behaviour as depicted by the sources, with Cunctator as the exemplum—but that seems applicable to Rullianus' later career.[97]

There have been exceptions to this scepticism. According to the famous critic George Cornwall Lewis, the story "contains nothing improbable". He then went on, however, to deny that it could be derived from a contemporary source.[98]

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[92] Paribeni (1954, 223).

[93] Salmon (1967, 220).

[94] Sordi (1969, 45–46).

[95] Frier (1979, 244; 269). He claimed that Salmon argued that Pictor invented the incident—but Salmon makes no such statement; he also mistakes Mommsen's reference for the fact that the magister could not triumph: Mommsen (1871, 1.128, not 3.128).

[96] Grossmann (2009, 54).

[97] Richardson (2012, 88–89; 95).

[98] Lewis (1855, 2.443–444).

Another exception is Filippo Cassola, who argued that the annalists may have embellished the story, but they started from the two offices held by Cursor and Fabius and a tradition of enmity, which could hardly have been invented by Pictor only a century later.[99] E. Phillips also stated that the story had been doubted "without sufficient reason and may be accepted as basically true". This is because Fabius "never forgave Papirius for this affront to his *dignitas*", and its repercussions played out by later senatorial differences over foreign and economic policy.[100] Beck and Walter gave two reasons why they did not think the story an invention of Fabius: the reason he gave explicitly for Fabius' burning of the spoils was not a credit to him, and the source seemed to be a document in the Fabian family archives.[101] Tim Cornell defended Livy's Samnite narrative as depending not on late annalistic fiction, but a reliable version from Fabius.[102]

It is agreed, therefore, almost unanimously that the whole story is an invention, devised as a precedent for events of 217. We have demonstrated above that the parallels supposedly drawn by Fabius the Elder do *not* fit. It is time to examine the famous episode of 217. We may begin deliberately with the more elaborate Livian version (Liv. 22,14; 22,24–29). Fabius Maximus (Cunctator) has been appointed dictator, Minucius Rufus is his *magister*. Rufus is violent and hasty. Fabius has to return to Rome "for religious reasons" (*sacrorum causa*, Liv. 22,18,8). He "commands, counsels and almost begs" Rufus to exercise caution (*non imperio modo, sed consilio etiam ac prope precibus agens*). Rufus engages the Carthaginians, claiming victory (in fact the losses on both sides are heavy), and sends a letter to Rome, producing uproar. The tribune Metilius moves a bill to make the *ius* of the *magister* equal to that of the dictator (Liv. 22,25,10). Fabius confronts Rufus for engaging against his orders. The outcome is not his punishment, but the division of the army in two. Rufus engages the enemy again, by himself, and suffers total rout (Liv. 22,28,10–14), and has to be rescued by Fabius. He then totally collapses and begs forgiveness (Liv. 22,29,7–30,6). Polybios (3,94–105) tells the story without any moralising. Fabius returned to Rome

[99] Cassola (1962, 141–143), noting that it is unlikely that it was Cursor in Apulia who nominated Fabius as dictator in 315.

[100] Phillips (1972, 341–342).

[101] Beck and Walter (2001, 121).

[102] Cornell (2004).

to perform certain sacrifices,[103] ordering Rufus to avoid disaster. The result of the first engagement is given without casualty figures (Polyb. 3,101–102). The second engagement, the rout, and Rufus' being saved by Fabius are recorded without Livy's extended emotional conclusion.

What exactly are the elements of 217 which are reflected in 325? The only connection is that there is a dictator and a *magister*, and the latter is told not to engage in the dictator's absence. The Fabius in 217 is not the *magister* but the dictator. The dictator is absent for quite different religious reasons. The order not to engage could not be given in more different ways. The *magister* engages first with dubious success, not brilliant and worthy of a triumph. Most importantly, however, the central features of the story of 325 are totally absent: first, the dictator takes no action against the disobedient *magister*; rather he is *rewarded* by being given powers equal to those of the dictator. Second, the *magister* then as 'co-dictator' engages for a second time, with disastrous results. Third, the most important element of the story, the conclusions, bear no resemblance one to another: in 325 the *magister* is saved from capital punishment by the combined pleas of the Romans of all classes, in 217 he is saved from military defeat and death by the kindness of the dictator himself. The most fundamental difference, perhaps, is that in 325 the arrogant young Fabius simply walks away, whereas in 217 the co-dictator offers a lengthy and humiliating apology. In short, the two dictators could not be more contrasting. One further final divergence: the dispute in 325 is between two patricians, in 217 between a patrician and a plebeian.[104]

In sum, it is difficult to imagine how anyone could argue that the story of 325 was modelled on that of 217. It is indeed amazing that even Münzer[105] could make such a claim; no wonder, however, that Pais, always on the search for 'doublets', would seize upon this as an example. Since then such claims have been accepted, incredible to say, without murmur.[106]

As proof of the desperation of modern scholars to dismiss the story by any means, Beloch claimed another parallel, in 322 (Liv. 8,40,1–3). Pais and Pareti also suggested a parallel in 310 (Liv. 9,38,9–14). In 322, in the Samnite wars,

[103] This perfectly suits what we know of the religious duties of the Fabii; cf. Dorsuo during the Gallic invasion (Liv. 5,46)

[104] Richardson (2012, 88) stressed the important divergences.

[105] The scholar, it should never be forgotten, who wrote all the biographical articles in RE from C to P.

[106] A rare exception is Cassola (1962, 141–142).

Rullianus was consul, and his father Ambustus (!) was *magister equitum*, and supposedly won a great victory over the enemy (Liv. 8,38–39). There is no clash with the dictator, no disobedience. The Romans in 310 had suffered a defeat in Samnium under consul Marcius Rutulus. A dictator was to be appointed by the other consul, none other than Rullianus. The senate nominated Papirius Cursor, his old superior commander, the leading general of his time. Fabius opposed this out of private enmity (*infestus privatim*)—presumably the events of fifteen years before. It required a delegation of ex-consuls to convince Fabius to make the appointment. One can see at a glance that there is no parallel at all.

The parallels adduced in ancient and modern times, therefore, are *totally inappropriate*. The episode cannot therefore be swept aside as an invented "doublet". The claims of modern scholars simply prove one thing: the desperation that the story would go away. Livy's narrative of 325 is, on the other hand, constitutionally sound—and this must be stressed. There is, as well, so much that is anomalous in the story: it is totally subversive of the dominant themes of Roman military history: despite Cursor's claims, it is crystal clear that great damage has been done to Roman command and discipline. Intervention from powerful quarters *can* save one from penalties for the most serious crimes. Most suggestive of all, perhaps, is the fact that this story, drawn from Fabian family sources, shows Fabius Rullianus in a most unattractive light[107]—*ferox adulescens*—at the beginning of his career. In the system of Roman aristocratic values, Rullianius' dangerous and selfish behaviour finds no context.[108] A strong case may be made, therefore, for the authenticity of the episode.

Some might be tempted, *if they believed the story*, to set it in the context of Roman aristocratic military *mores*. The Roman aristocracy was a military ruling class, and *virtus* was its highest virtue. Young men were expected to prove themselves, especially by some great deed of valour, as soon as possible.[109] Our account of Fabius Rullianus does not at all fit this paradigm. There was no deed of personal valour, and no young Roman aristocrat could expect to find renown

[107] See Frier, above.

[108] Rosenstein (2006). Nota bene: "Service to the Republic remained the focus of aristocratic life and seeing to it that deviations were suppressed" (*ibid.,* 373).

[109] Rosenstein (2007, 133–138), who cites Old Cato's son and the recovery of his lost sword (Plut. *Cat. Mai., Min.* 20, 7–8), Marcellus saving his brother's life (Plut. *Marc.* 2,1–2), and Scipio Aemilianus killing an enemy soldier in a duel (Appian *Iber.* 53).

by the gravest contraventions of both military discipline and religious ritual.

An explanation of these anomalous events is required. Those conversant with the brilliant second chapter in Münzer's *Römische Adelsparteien und Adelsfamilien* can never forget the picture which he paints of the greatness and dominance of the Fabii, three generations of *principes civitatis*, whose power in this way was unparalleled, before and after. Ambustus was three times consul, as was Gurges.

"Both were linked to and surpassed by the second [our Rullianus], who began his career in 331, still in his father's lifetime, and pursued it beyond his son's [Gurges'] beginnings, beyond 292, during which time he acquired five consulships, two dictatorships, and the censorship."[110]

Evelyn Shuckburgh alone detected something: "a Fabius was sure to have powerful friends".[111] He obviously remembers his Livy: the disobedient *magister* was supported in Rome most notably by the *primores patrum* and the *universus senatus* (Liv. 8,33,6). Cursor might be intransigent, but this was a baulk hard to ignore. Livy, however, gave most credit to the people for saving Fabius' life (Liv. 8,33,8; 34,6; 35,5–6). We may sort out the apparent contradiction. Most weight should be placed on the highest orders.

There is nothing to contradict and everything to support the picture of the young Fabius, an impetuous and ambitious young man imbued with the pride of his illustrious family, now given the highly important traditional post of *magister equitum* and seeing his chance for fame, heedless of the grave risk from the uncertain auspices. Against all odds, he wins a desperate victory, only to be confronted by his most severe commanding officer. He again with utter recklessness twists and turns, but has not a leg to stand on. He commits the second crime of inciting mutiny to save himself. That does not suffice. He then commits the third crime of deserting the camp. In this way, he manages to shift the location of the story from the camp where he is under the strictest code of obedience—although he seems for the most part to be oblivious of such duties—to the capital where, although the dictator can exercise his *imperium*, the now dominant Fabian influence can be brought to bear. Being a Fabius, son of a father who has held three consulships and who was a leading figure in public life from 360 to 322, it is no surprise that support can be mustered from all sides—despite

[110] Münzer (1999, 55).

[111] Shuckburgh (1894, 140).

the fact that everyone knows that there is no legal argument which can save him. It is this extraordinary, indeed paradoxical, situation which is finally accepted by Cursor. In truth, power and status have triumphed, as usual.[112]

If this is a convincing interpretation, we have won two new insights: a further striking and suggestive example of the dominance of the Fabii in the early Republic, and a most revealing example of the character of the young Fabius Rullianus. The rejection by Münzer is paradoxical; for the episode would have constituted one of the most powerful pages in his second chapter to illustrate that Fabian dominance. How many young aristocrats have had an undisciplined early career, but have finally settled down and risen to their responsibilities? Rullianus had, indeed, a somewhat varied career, despite all those consulships, before he appears finally to have come to understand the importance of military discipline, winning with Decius the battle of Sentinum in 295, which decided the destiny of the peninsula.[113] A human question, however, hangs over all: did Fabius in later life ever reflect on the fact that a young man a little older than himself had been brutally beheaded for crimes far less than his own, the penalty for which he himself had so shamelessly avoided?

There is no way that the events of 325 can be conceived as the upholding of military discipline. The all-powerful dictator[114] was forced to climb down in the face of the most shameless and partisan civilian and familial pressure. Military discipline had been entirely *subverted*. It would have been of the greatest interest to see how the official eulogists in the Augustan forum, where Cursor featured, manipulated this fact. The true nature of the story, properly understood, is the strongest evidence that it cannot have been invented.

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[112] As a reader has suggested, the story boils down to the point in Livy that Papirius could not carry out his punishment. What this paper has attempted to analyse is what explanation Livy gives for this.

[113] Even Cornell (2004, 125) admits that "the Battle of Sentinum, in particular, can justly be seen as the event that made the Romans' domination of the entire peninsula inevitable", in an important contribution that revises the way the Samnite wars are presented and rightly absolves the Samnites from a desire to rule the whole of Italy.

[114] He was the sole exception to the principle of collegiality in the Roman constitution, and there was no appeal against his commands. This was an office created precisely to give one man total control in a crisis.

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