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Along the Path Towards *Exaequatio*

Auctoritas Patrum and *Plebisscita* in the Republican Age

I. Introduction

Roman jurists of the 1st and 2nd century AD provided numerous, yet similar, definitions of *plebisscitum*, depicting a legal reality that – it has been assumed – was current from the beginning of the 3rd century BC[1].

On the one hand, Capito and Gaius – who shared ideas that are implicitly represented in the works of Laelius Felix – focus on the existing differences between the Roman people, as a whole, and plebeian society as a part of this whole. Consequently, these jurists are inclined to further emphasise in their definitions of *plebisscitum* the composition of the tribal assemblies of the *plebs*, as opposed to the popular assemblies: if *lex est quod populus iubet atque constituit*, so *plebisscitum est quod plebs iubet atque constituit*[2]. In other words, the noted resolution of the *plebs* refers to a bill (*rogatio*) brought before the *plebs* (i. e. an *aliqua pars* included in the

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1 Gell. 10.20.5 (*'Plebisscitum' … est … lex, quam plebes, non populus, accipit* [Ateius Capito]); Gell. 15.27.4 (*ita ne 'leges' quidem proprie sed 'plebisscita' appellantur quae tribunis plebis ferentibus accepta sunt. plebes autem ea dicatur in qua gentes patriciae non insunt* [Laelius Felix]); Gai. 1.3 (*lex est quod populus iubet atque constituit. Plebisscitum est quod plebs iubet atque constituit. plebs autem a populo eo distat, quod populi appellatione universi cives significantur, connumeratis etiam patriciis; plebis autem appellatione sine patriciis ceteri cives significantur*); Pomp. *l. s. ench*. D. 1.2.2.12 (*ita in civitate nostra … plebi scitum, quod sine auctoritate patrum est constitutum*). Cf. Fest. s. v. *scita plebei* (Lindsay 293: *scita plebei appellantur ea, quae plebs suo suffragio sine patribus iussit, plebeio magistratu rogante*).

2 This definition implies a clear-cut distinction between *plebs* and *populus* (see De Martino, *Storia della costituzione romana* I 1972², 371); on the contrary, in the literary sources, there is no consistency in the use of these two denominations, which often appear to be interchangeable (see Maddox, *The binding plebiscite* 1984, 88; Biscardi, *'Auctoritas patrum'* 1987, 99 f.; Sandberg, *The concilium plebis* 1993, 78).

totum), voted for, and finally accepted: the patricians thus remained debarred from participation in such 'fractional assemblies', which were accordingly labelled as *concilia* and not as *comitia*[3].

On the other hand, the jurist Verrius Flaccus uses as a source for his entry on *scita plebis*, like Laelius Felix, introduces a further proviso. The process aimed at passing plebiscites, in fact, was initiated by the proposal of a tribune, and was carried out under the presidency of the same plebeian magistrate, that is, an officer who was not entitled to summon the patricians to vote on such matters[4].

As such, Pomponius, listing the 'formants' of the Roman legal system in the 2nd century BC – so long as one does not conceive of the term *auctoritas* as a synonym for *iussus* (that is 'final vote', 'final resolution', 'approval of *rogatio*'), which seems rather unpersuasive – appears to add an interesting element to this process: Pomponius records that plebeian statutes would come into force – as the jurist wants to make it clear – without the authorisation (*auctoritas*) of the patrician senators (*patres*)[5].

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3 Gell. 15.27.4. Indeed, Cicero and Livy do not use these two terms (*comitia* and *concilia*) in accordance with the idea expressed by the imperial jurist, as already demonstrated by Botsford, *The Roman Assemblies* 1968, 119 ff., and Farrell, *The Distinction between Comitia and Concilium* 1986, 407 ff. Thus, either we must suppose that there was a tradition which preserved the strict distinction between *comitia* and *concilium*, as mirrored in Laelius Felix's definition, or agree that this jurist makes a mistake, at least, as the quotation stands (see Taylor, *Roman Voting Assemblies* 1966, 60 ff. and 138, nt. 5; Develin, *Comitia tributa plebis* 1975, 306 ff.; Sandberg, *The concilium plebis* 1993, 78 ff.; Pelloso, *Ricerche sulle assemblee quiritarie* 2018, 329 ff.).

4 Such nuance implies that assemblies were not autonomous actors in Rome, but totally dependent on those who were given *ius agendi*. The people and the *plebs* could accomplish their (judicial, legislative, electoral) tasks only on the initiative of a curule magistrate or, respectively, of an officer of the *plebs*. Accordingly, even if law-making was formally a popular or plebeian prerogative, in practice it substantially consisted in a magisterial and tribunician activity, since assemblies could neither initiate, nor could they answer the *rogationes* other than by providing a 'yes or no' answer (see Mommsen, *Römisches Staatsrecht* III.1 1887, 303 f.)

5 In these terms, see Biscardi, *'Auctoritas patrum'* 1987, 101 f. (but see also p. 238); against this reading, see the persuasive remarks of Guarino, *L'"exaequatio legibus' dei 'plebisscita'* 1951, 460: "l'interpretazione è troppo azzardata. Se anche ad essa non si rifiuta il termine *auctoritas*, isolatamente preso, vi si ribella, considerata nel suo complesso, la locuzione *auctoritas patrum*, che è, sino a prova contraria, squisitamente tecnica". Even if the passage from Pomponius' Enchiridion, as it stands, is deeply interpolated and, at some point, even syntactically incorrect (cf. *Index interpolationum* ad h. l.), much of the information can be considered authentically classic and part of a consistent narrative (see Bretone, *Tecniche* 1982, 226 ff., even if this author agrees with Biscardi and states that "la frase *quod sine auctoritate patrum est constitutum* significa che il *plebisscitum* 'è stato creato', come fonte di produzione giuridica, senza il consenso dei patrizi, non che la procedura necessaria per porlo in essere prescinda dall'intervento senatorio").

However, most of these sources, while covering the current legal status of the *plebisscita* from different perspectives, fail – at least as they stand – to include in their definitions any reference to a particular feature which diachronically played a fundamental role in the history of the struggle of the orders and, thus, in the subsequent political relationship of the *patricii* and *plebei* during the 5th, 4th, and 3rd centuries BC. I refer, of course, to the problem of the extent of the binding force of the rules which were enacted solely by the plebeians. If the *plebs* flourished and stood as a distinct civic group (*ordo*) within the republic, it is natural to assume that, initially, *plebisscita* were binding only to those who accepted the rules as proposed by the bill at stake. However, this does not appear to have been the legal status, as implied by the jurists: any enactment by the *plebs* – as can be gathered from context, as opposed to the legal definitions of *plebisscitum* provided during the era of the Principate – was binding for the Roman community at large.

As far as the issue of plebiscitarian validity is concerned, general consensus – albeit articulated into varying degrees – seems to exist among modern scholars only with regard to the last step on the path which led to the final *exaequatio*: ever since the dictator Q. Hortensius forced the centuriate assembly to pass his famous *rogatio de plebisscitis*, the resolutions of the *plebs* were given *per se* a legal status which they continued to enjoy in the later Republic and the early Empire[6], with the exception of the period in which Sulla's reform was valid[7]. It was only in 287 BC that the tribal councils of the plebeians, gathered and presided over by their chiefs, obtained the power to introduce measures without conditions, which had automatic general validity and, accordingly, endowed a binding force among the *universus populus*. In other words, due to the acceptance of Hortensius' reform by the entire *populus Romanus*[8], the resolutions of the *plebs* had the same standing as the *leges populi Romani*. As Gaius himself maintains, when describing the events that led up to that which occurred in 287 BC, prior to the enactment of the *lex Hortensia,* the *patricii* could refuse to recognise the *plebisscita "quae sine auctoritate eorum facta essent"* ('which were passed without their approval'). However, as a result of the *exaequatio* introduced by law, from 287 BC they could no longer challenge

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6 See Gell. 15.27.4 (*quibus rogationibus ante patricii non tenebantur, donec Q. Hortensius dictator eam legem tulit, ut eo iure, quod plebs statuisset, omnes Quirites tenerentur* [Laelius Felix]); Gai. 1.3 (*unde olim patricii dicebant plebisscitis se non teneri, quae sine auctoritate eorum facta essent; sed postea lex Hortensia lata est qua cautum est ut plebisscita universum populum tenerent: itaque eo modo legibus exaequata sunt*); Pomp. *l. s. ench*. D. 1.2.2.8 (*mox cum revocata est plebs, quia multae discordiae nascebantur de his plebis scitis, pro legibus placuit et ea observari lege Hortensia: et ita factum est, ut inter plebis scita et legem species constituendi interesset, potestas autem eadem esset*); see, moreover, Liv. *perioch*. 11; Plin. *nat*. 16.37; *Inst*. 1.2.4.

7 See App. *bell. civ.* 1.266.

8 See Vassalli, *La plebe romana nella funzione legislativa* 1906, 131.

the general validity of what the *plebs "iussit atque constituit"* ('had approved and decided')[9].

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9 Gai. 1.3. According to Mommsen's interpretation of this passage (who reads *quia*, instead of *quae*), the patricians refused to recognise any *plebisscitum*, because such enactments were not eligible for a grant of *auctoritas patrum* (i. e. the formal approval of the patrician senators): Mommsen, *Römische Forschungen* I 1964, 157; Id., *Römisches Staatsrecht* III.1 1887, 155, nt. 3; cf. Rotondi, *Leges publicae populi Romani* 1912, 43; Botsford, *The Roman Assemblies* 1968, 280; Magdelain, *De l'auctoritas patrum* 1990, 397; see, moreover, Biscardi, *'Auctoritas patrum'* 1987, 238. Differently, Staveley, *Tribal Legislation before the lex Hortensia* 1955, 21, believes that Gaius proves just what Mommsen thought him to deny, i. e. the grant of patrician sanction as a *condicio sine qua non* of the validity of a *plebisscitum*: "whether or not we read the alternative *quae* for *quia*, Gaius can be taken to mean something very different, namely that the patricians in the years immediately preceding the *lex Hortensia* had refused to recognize certain unsavoury *plebisscita* on the ground that they had not afforded them the required *auctoritas*". Also, Develin, *Comitia tributa plebis* 1975, 321, considers it more reasonable "to assume that before 287 there was a distinction between plebiscites with and without the *auctoritas*, since the phrase *plebisscitis … quae sine auctoritate eorum facta essent* must be given the meaning "such plebiscites as were made without *patrum auctoritas*": this author shares the idea that the reading *quae* – in Gai. 1.3 used to introduce a restrictive clause, rather than a non-restrictive or parenthetical clause – gives more natural Latin than *quia* (see Beseler, *Beiträge* 1920, 109; David, Nelson, *Gai Institutionum Commentarii* 1954, 13; Amirante, *Plebiscito e legge* 1984, 2035; Sandberg, *Magistrates and Assemblies* 2001, 134; cf. Mannino, *L'"auctoritas patrum'* 1979, 97 f., who reaches the same conclusions, even if he opts for the reading *quia*). According to Biscardi, *'Auctoritas patrum'* 1987, 85 and nt. 253, as well as to Guarino, *L'"exaequatio legibus' dei 'plebisscita'* 1951, 464 and nt. 37, Gaius used the term *auctoritas* improperly to mean something like 'participation (in the assembly)': in other words, the passage would suggest that once the patricians would say that they were bound by no *plebisscita*, since such enactments by the plebeians only, i. e. without their participation and acceptance (*iussus*), but once the *lex Hortensia* was passed, *plebisscita* were made equal to *leges* since it was stipulated that *plebisscita* should be bestowed with general validity for the whole *populus*. Once again, both authors conceive of the causal clause *quia sine auctoritate eorum facta essent* as non-restrictive, alluding to all *plebisscita*, as Mommsen did. Against this view, I remind the reader that, firstly, the particle *quia* regularly introduces a fact and rarely takes the subjunctive (i. e. the mode which expresses a reason given to the authority of someone different from the writer), and, secondly, that *facta essent* shows that Gaius is referring to a limited number of plebiscites which had been voted before 287 BC., whether *auctoritas* here hints at the 'approval by the patrician Senate', or more generally at any form of patrician 'approval'. To conclude: maintaining that the choice between *quia* and *quae* is irrelevant (see Siber, *Plebs* 1951, 67; Humbert, *La normativité des plebiscites* 1998, 211, nt. 1) is not persuasive, since the former would better fit the allusion to all *plebisscita* in general, while the latter would introduce a restrictive clause; the use of the pluperfect subjunctive and, thus, the implicit reference to a limited number of plebiscites, rules out the view that gives *auctoritas* the vague and general meaning of 'patrician participation' (since this aspect is already implied in the definition and since no plebiscite can be voted with the participation of patricians); the pronoun *quae* must be preferred to the particle *quia*.

The crucial point here, however, is that Livy, alongside Dionysius, attests to two statutes enacted prior to 287 BC: both appear to be identical in content and in form with the *lex Hortensia*, and to include measures which sought the same goal, that is, to make *plebisscita* binding for the entire community. The former was a *lex Valeria Horatia,* passed in 449 BC before the centuriate assembly *"ut quod plebs tributim iussisset populum teneret"*[10]; the latter was a *lex Publilia Philonis* proposed by the dictator *Publilius* in 339 BC before an unspecified assembly *"ut plebis scita omnes Quirites tenerent"* (Liv. 8.12.15–16).

Taking into consideration the period after the *lex Valeria Horatia* (449 BC) and prior to the *lex Hortensia* (287 BC), a question arises which is twofold: what was the legal status enjoyed by plebiscites? And what was the role played by the Senate regarding the general validity bestowed upon such plebeian resolutions?

II.1 'Rejecting the past': a view which only credits the *lex Hortensia*

The most radical approach rejects these two earlier laws as unauthentic, consequently supposing that no reliable change was effected in the legal standing of the plebeian resolutions prior to 287 BC[11].

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10 Liv. 3.55.3: *Omnium primum, cum velut in controverso iure esset tenerenturne patres plebi scitis, legem centuriatis comitiis tulere 'ut, quod tributim plebes iussisset, populum teneret': qua lege tribuniciis rogationibus telum acerrimum datum est.*

11 Meyer, *Untersuchungen über Diodor's Römische Geschichte* 1882, 610 ff.; Id., *Der Ursprung des Tribunats* 1895, 1 ff.; Binder, *Die Plebs* 1909, 371, 476, 485; Baviera, *Il valore dell''exaequatio legibus' dei 'plebisscita'* 1910, 369; Beloch, *Römische Geschichte* 1926, 350, 477 f.; Siber, *Die plebejischen Magistraturen* 1936, 39 ff.; de Francisci, *Storia del diritto romano* I 1943, 303 ff. (but see also Id., *Storia del diritto romano* I 1943, 94); von Fritz, *The Reorganisation of the Roman Government* 1960, 18 ff.; Id., *Plebs* 1951, 61 ff.; Bleicken *Das Volkstribunat der klassischen Republik* 1955, 13 ff.; Id., *Lex Publica* 1975, 85 f., 95; Orestano, *I fatti di normazione* 1967, 266, nt. 3; Ridley, *Livy and the concilium plebis* 1980, 337 ff.; Maddox, *The binding plebiscite* 1984, 85 ff.; Hölkeskamp, *Die Entstehung der Nobilität* 1987, 163 ff.; Drummond, *Rome in the Fifth Century* 1989, 223; Magdelain, *De l''auctoritas patrum'* 1990, 385 ff.; Humbert, *La normativité des plébiscites* 1998, 211 ff.; Id., *I plebiscita* 2012, 307 ff.; Lanfranchi, *Les Tribuns de la Plèbe* 2015, 232 ff. The following authors consider the *lex Hortensia* the only historical measure that changed the status bestowed on plebiscites and gave them equal status to the *leges*, professing a sceptic *non liquet* with regard to the first two statutes (449, 339 BC): see Rotondi, *Leges publicae populi Romani* 1912, 65; Vassalli, *La plebe romana nella funzione legislativa* 1906, 111 ff.; Grosso, *Storia del diritto romano* 1965, 110 f.; Capogrossi Colognesi, *Diritto e potere* 2007, 148. See, also, Herzog, *Geschichte und System der römischen Staatsverfassung* I 1884, 190 ff., 193, nt. 1, 254, nt. 3, who accepts the tradition, but fails to distinguish between the measures of 339 and 287 BC.

According to Siber[12], whose work further advanced the theory presented by Meyer, the two earlier *leges* did not make the plebeian resolutions applicable to the general populace, and must be considered as mere inventions, i. e. unhistorical attempts to explain, in general terms, the extraordinary *erga omnes* validity bestowed on certain *plebisscita,* that were voted on prior to the *lex Hortensia*. Due to such general and ideologically rooted premises, the author at issue seeks to demonstrate that every *scitum* passed by the plebeian tribes before 287 BC was ratified by a vote of the *comitia centuriata*, so as to affect the whole people. In other words, to acquire general validity, the measures stated by a given *plebisscitum* were converted

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12 Siber, *Die plebejischen Magistraturen* 1936, 39 ff., 44 ff.; Id., *Plebs* 1951, 61 ff.; Meyer, *Römischer Staat und Staatsgedanke* 1964, 69; cf. Hennes, *Das dritte valerisch-horatische Gesetz send seine Wiederholungen* 1880, 5 ff., who gives the *lex Valeria Horatia de plebisscitis* the same effect Siber supposes existed prior to the *lex Hortensia*: according to this scholar it was under the *lex* passed in 449 BC that plebiscites were bestowed general validity, only on the condition that they were converted into statutes. Likewise, see Guarino, *L'"exaequatio legibus' dei 'plebisscita'* 1951, 458 ff.; Id., *'Novissima de patrum auctoritate'*, 117 ff., who considers as unhistorical the *lex Valeria Horatia*. This author focuses on a difficult passage of Appian (*bell. civ.* 1.59.266: εἰσηγοῦντό τε μηδὲν ἔτι ἀπροβούλευτον ἐς τὸν δῆμον ἐσφέρεσθαι, νενομισμένον μὲν οὕτω καὶ πάλαι, παραλελυμένον δ' ἐκ πολλοῦ, καὶ τὰς χειροτονίας μὴ κατὰ φυλάς, ἀλλὰ κατὰ λόχους, ὡς Τύλλιος βασιλεὺς ἔταξε, γίνεσθαι, νομίσαντες διὰ δυοῖν τοῖνδε οὔτε νόμον οὐδένα πρὸ τῆς βουλῆς ἐς τὸ πλῆθος ἐσφερόμενον οὔτε τὰς χειροτονίας ἐν τοῖς πένησι καὶ θρασυτάτοις ἀντὶ τῶν ἐν περιουσίᾳ καὶ εὐβουλίᾳ γιγνομένας δώσειν ἔτι στάσεων ἀφορμάς), and reads it in the following sense. In 88 BC "i consoli Cornelio [Silla] e Pompeo [Rufo] proposero probabilmente ai comizi di ripristinare sotto la veste moderna di un *consultum* di tutto il *senatus* (organismo nobiliare di loro piena fiducia) l'*auctoritas patrum* preventiva per le *leges centuriatae*", so re-enacting the system supposedly laid down by the *leges Publiliae Philonis*; such provisions, passed in 339 BC and in force up to 287 BC, provided that "il popolo tutto era vincolato in definitiva, *patribus auctoribus*, solo dalle *leges centuriatae*" and that "i magistrati titolari del *ius agendi cum populo* furono tenuti, su richiesta dei *tribuni plebis,* a convertire i *pebiscita* in proprie *rogationes* ed a sottoporli, previo parere favorevole dei *patres* e con i propri auspici, ai *comitia centuriata*" (see, likewise, Lanfranchi, *Les Tribuns de la Plèbe* 2015, 35: "si la loi de 339 eut une certaine réalité, ce ne put être, au maximum, que celle que lui confère A. Guarino: une loi stipulant que les magistrats devaient soumettre aux comices les plébiscites dont les tribuns réclamaient l'application, comme s'il s'agissait de leurs propres *rogationes*. Rien de plus"). Yet, neither Livy, nor Appian seem to confirm Guarino's hypothesis: there is no case of such a conversion attested after 339 BC; no mention of such conversion is made in the short text of the *lex Publilia Philonis de plebisscitis* quoted by Livy; Sulla's law, as paraphrased by Appian seems to affect the resolutions of the *plebs* only, as one can infer from the word πλῆθος (mass) used to specify the meaning of δῆμος (people), and above all from the mention, made by the historian, of a rule providing the previous consent of the Senate that, first repealed or abrogated, was then re-established by Sulla and his colleague (which, clearly, only makes complete sense if one excludes any reference to the *leges centuriatae* since, as everybody knows, these provisions even prior to 88 BC never ceased to be *ex lege* previously authorised by the *patres*): see, on this topic, Biscardi, *'Auctoritas patrum'* 1987, 83 f., 150 ff., and ntt. 490–491, 237 ff.; De Martino, *Storia della costituzione romana* III 1973², 70.

into a *lex centuriata*: conversely, within the framework of the *civitas*, any plebeian enactment would merely represent a political wish, a non-binding programme, even for those who had passed it[13].

Despite approaching this problem from a radically different perspective, Mommsen *grosso modo* achieved similar results, at least as concerns the impact finally produced by the *lex Hortensia* on the previously existing *status quo*[14]. First, he believes that the so-called *comitia populi tributa* carried out legislation as early as the second half of the 5th century BC, and that such a fundamental reform could not be overlooked by the Roman annalists in their records[15]. Consequently, he maintains that the Valerio-Horatian law, and the Publilian law alike, were not

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13 In other words, in the period prior to 287 BC the *plebisscita* were resolutions "die öfters zur Erwirkung von Komitialgesetzen und zu anderen Regierungsmaßnahmen … führten, die aber als solche für niemanden, auch nicht für die *Plebs* verbindlich waren" (Siber, *Plebs* 1951, 67; cf., in similar terms, Bleicken *Das Volkstribunat der klassischen Republik* 1955, 15 f.). See also Lanfranchi, *Les Tribuns de la Plèbe* 2015, 239: "à l'exception des plébiscites concernant la plèbe, s'il n'y avait pas intervention des consuls ou du Sénat, tout plébiscite – en particulier ceux qui souhaitaient modifier l'architecture institutionnelle de la cité – ne pouvait rester qu'un 'vœu'. Ils n'étaient porteurs d'aucune valeur normative hors de la plèbe et ne pouvaient, en théorie, modifier les structures fondamentales de Rome. C'était un appel, un moyen de pression".

14 Mommsen, *Römische Forschungen* I 1864, 163 ff.; Id., *Römisches Staatsrecht* III.1 1887, 157, nt. 1, 159 f.; cf., moreover, Cuq, *Institutions Juridiques des Romains* I 1891, 458; Krüger *Geschichte der Quellen* 1912, 17 ff.

15 The idea of two distinct tribal assemblies dates back to Mommsen, *Römische Forschungen* I 1864, 151 ff. (who also assumes that patricians were debarred from the assemblies summoned by plebeian tribunes in the later years of the Republic). It then gains a general support among scholars. See, for the view supporting the existence of two distinct assemblies based on a common tribal system that coexisted in the early Republic (as of 471 or 449 BC) and that, after the supposed *exaequatio*, tended to coalesce into one single body, Liebenam, *Comitia* 1900, 700 f.; Ogilvie, *Commentary on Livy's Books 1–5* 1965, 381; Taylor, *Roman Voting Assemblies* 1966, 6 ff., 60 ff.; Botsford, *The Roman Assemblies* 1968, 474. Others believe that the emergence of the patricio-plebeian tribal assembly dates after the enactment of the *lex Hortensia* (287 BC), when plebiscites were made directly binding on all *Quirites*, and accordingly the patricians started to participate in the voting process of the plebeians: see De Martino, *Storia della costituzione romana* I 1972², 330 e *Storia della costituzione romana* II 1973², 154 ff. (mainly at p. 182: where the scholar argues that after the "parificazione dei plebisciti alle leggi", it would be "assurdo pensare che i patrizi potessero continuare ad essere esclusi dalle assemblee, nelle quali ora si adottavano deliberazioni di interesse generale"). *Contra*, as supporters of the theory that inclines to deny that patricians had ever a vote in any form of tribal assembly, see Ihne, *Die Entwicklung der römischen Tributcomitien* 1873, 353 ff.; Kahrstedt, *Die Patrizier und die Tributkomitien* 1917–1918, 258 ff.; see also Develin, *Comitia tributa plebis* 1975, 302 ff.; Id., *Comitia tributa again* 1977, 425 ff.; Sandberg, *The concilium plebis* 1993, 74 ff.; from a different perspective, cf. Mitchell, *Patricians and Plebeians* 1990, 221 ff., who shares the view that there was only one tribal and tribunician assembly, even if he fails to regard it as an exclusively plebeian body.

concerned directly with the problem of plebiscites *per se*: the former concerning the legislative activity of any tribal assembly in general[16]; the latter introducing the power of the *praetor* to summon the Roman people as tribes[17]. Secondly, he claims that the grant of the *auctoritas patrum*, being a requirement of the *leges publicae populi* and affecting the comitial processes only (i. e. being "das Complement des Comitialbeschlusses"), was neither used to enact laws passed by a purely plebeian body (*concilium tributum*)[18], nor was it exactly overlapping with the *senatus consultum* that was required to precede any popular vote ("Vorgängige Zustimmung des Senat")[19]. At the same time, Mommsen acknowledges the existence of a legal principle, established at some point prior to the XII Tables (451–450 BC), which, remaining untouched by the 449 and 339 BC reforms, allowed plebiscites to take general force, provided that the "Vorbeschluss des Senats" had taken place[20], until the *lex Hortensia* was enacted. Such *lex*, Mommsen maintains, would finally have removed the ancient 'vestige' of the senatorial grant, so appearing to have operated along similar lines to the reform concerning the anticipation of *auctoritas patrum* with respect to the *centuriae*'s vote, which took place around 50 years earlier[21].

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16 Mommsen, *Römische Forschungen* I 1864, 154 ff.; Staveley, *Tribal Legislation before the lex Hortensia* 1955, 12, tends to support this view. *Contra* see: Ihne, *Die Entwicklung der römischen Tributcomitien* 1873, 370 ff.; Lange *Römische Altertümer* II 1876, 573 f.; Soltau, *Die Gültigkeit der Plebiszite* 1885, 8, 113 ff.; Roos, *Comitia tributa – concilium plebis, leges – plebiscita* 1940, 22 ff.

17 *Contra*, see Staveley, *Tribal Legislation before the lex Hortensia* 1955, 12: "Mommsen's view … that the law concerned the right of the praetor to summon the *populus* by tribes is quite unsubstantiated".

18 See Mommsen, *Römische Forschungen* I 1864, 157, 233 ff.; Id., *Römisches Staatsrecht* III.1 1887, 155, nt. 3, 159; Id., *Römisches Staatsrecht* III.2 1888, 1037 ff.; see, moreover, Madvig, *Verfassung und Verhaltung des römischen Staates* I 1881, 233; de Francisci, *Storia del diritto romano* I 1943, 271; De Martino, *Storia della costituzione romana* I 1972², 270 ff.; cf. Rotondi, *Leges publicae populi Romani* 1912, 43; Botsford, *The Roman Assemblies* 1968, 280. *Contra*, see, among others, Soltau, *Die Gültigkeit der Plebiszite* 1885, 79; Staveley, *Tribal Legislation before the lex Hortensia* 1955, 20 f.

19 Mommsen, *Römische Forschungen* I 1864, 241 ff.; Id., *Römisches Staatsrecht* III.1 1887, 156 ff.; cf. De Martino, *Storia della costituzione romana* II 1973², 152.

20 Mommsen, *Römische Forschungen* I 1864, 215. See, on the *lex Cornelia* of 88 BC, which revived such pre-Hortensian rule, Id., *Römische Forschungen*, I, 206 f.; Id., *Römisches Staatsrecht*, III.1 1887, 158, 160.

21 Mommsen, *Römisches Staatsrecht* III.1 1887, 159 f. To be more precise, even if Mommsen believes that after the *lex Publilia Philonis de patrum auctoritate* "Praktische Bedeutung aber kommt der antizipierten Bestätigung gar nicht", he denies that the change introduced in 339 BC was itself the reason for such decadence: "nicht weil die Anticipirung diese Befugnis denaturierte, was keineswegs der Fall ist, sondern weil dieselbe, als beschränkt auf den patricischen Theil des Senats, wohl geeignet war die patricischen Reservatrechte zu schützen, aber ihre Bedeutung verlor, seit es solche effektiv nicht mehr gab und an die Stelle des Patriciats die patricisch-plebejische Nobilität getreten war" (Mommsen, *Römisches Staatsrecht* III.2 1888, 1043). In other words, it was under this law (but not due to this law), that the 'previous *auctoritas*' became purely a formality within the legislative process before

More recently, however, Humbert has reconstructed the Republican history of Rome, in the belief that the data found in the sources are an artificial representation of the facts, and expressions of "inévitables déformations infligées par l'annalistique": which would deny "credit aux deux lois de 449 et de 339, posant par anticipation une *exaequatio* qui ne trouve sa place qu'en 287"[22]. However, this scholar does not go so far as to radically deny a large part of the normative acts prior to 287, as others, following Siber, have tended to[23]. According to Humbert, as for the period prior to 339 BC, "contraint de refuser à des programmes de revendication l'efficacité normative que les sources démentaient, mais à laquelle le conduisait un préjugé initial, Tite-Live a dû supprimer les plébiscites, mettre en doute leur existence, les bloquer au niveau de projets immatures et inermes"[24]. As for the period following this, "tout se passe comme si le plébiscite avait acquis valeur normative, car, en général, les preuves d'une tension entre la plèbe et le Sénat ont disparu"; yet "c'est un leurre", since "la source de la norme se trouve, juridiquement, dans la décision sénatoriale de réformer la constitution et d'appliquer la réforme que la

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the *centuriae*, whereas, almost fifty years later, the *lex Hortensia* abolished the 'previous *senatus consultum*' required to bring proposals before the *plebs*. In general terms, the following authors support the view that, as far as the legislative and electoral processes are concerned, the *auctoritas patrum*, to be granted before the vote and not afterwards, amounted to a formality: Humbert, *Auctoritas patrum* 1877, 546 f.; Rotondi, *Leges publicae populi Romani* 1912, 115; de Francisci, *Storia del diritto romano* I 1943, 271 and Id., *Sintesi storica* 1968, 126; Scherillo, Dell'Oro, *Manuale di storia del diritto romano* 1950, 92; Arangio-Ruiz, *Storia del diritto romano* 1957, 41; Tondo, *Profilo di storia costituzionale romana* I 1981, 237; for a rather different approach, see also De Martino, *Storia del diritto romano* II 1973², 151 ff.

22 Humbert, *La normativité des plébiscites* 1998, 237.

23 See Bleicken, whose view proves to be one of the more extreme: according to this author, "das Plebisscit erzeugte daher kein geltendes Recht; es stand außerhalb der Rechtssphäre, es war politisches Programm" (Bleicken, *Lex Publica* 1975, 77); yet, he dismisses almost all information provided by the annalists with regard to the period prior to 287 BC, rejecting "mindestens 22 Plebiscite … Übertragungen später politischer Gedanken auf die Frühzeit", and finally considering authentic only the following seven *leges* on the one hundred and forty-two quoted by Rotondi (Bleicken, *Lex Publica* 1975, 77): *lex de clavo pangendo* (509), XII Tables, *lex Valeria militaris* (342), *lex Publilia Philonis de patrum auctoritate* (339), *lex Publilia Philonis de censore plebeio creando* (339), la *lex Maenia de die instauraticio* (338), *lex Valeria de provocatione* (300), *lex Hortensia* (287). Here, suffice it to say that "tribunician legislative initiative is so well documented in so many areas that it is surprising that modern scholars discount, qualify, or declare unreliable or illegal *plebisscita* passed before the *lex Hortensia* of 287 rather than develop an alternative historical explanation" (Mitchell, *Patricians and Plebeians* 1990, 190; see, moreover, Lanfranchi, *Les Tribuns de la Plèbe* 2015, 230: "si les prémisses de J. Bleicken sont correctes, la façon dont il évacue la quasi totalité de la législation antérieure à 287 ne peut qu'appeler de vives reserves").

24 Id., *La normativité des plébiscites* 1998, 237.

plèbe a simplement souhaitée, acceptée, formulée"[25]. Finally he notes, "a partir de 287, la plèbe devient la source formelle de la norme – et le Sénat adopte le rôle à la fois plus discret et plus significatif d'inspirateur"[26].

In other words, Humbert suggests that according to the general (and historically false) scheme built up by the Roman annalists, either the plebiscite, once voted on, had to be considered immediately valid and, thus, binding for the whole community, or the tribunician proposal was described as incapable of reaching the final stage of voting and approval by the tribes. This 'historiographic' artifice was intended to conceal both the true ('political', and not legal) nature of the *plebisscitum* (i. e. "un vœu, adressé aux organes de la cité – en particulier au Sénat – une injonction"), and the (once again 'political') determination to rewrite the earliest *monumenta* of the Roman tradition, i. e. "faire croire que la plèbe fut intégrée dans la cité et récupérée par le droit au terme de concessions et de reconnaissances, toutes aussi apocryphes les unes que les autres"[27].

II.2 Some critical remarks

In my opinion, such different branches of the same scholarly course share a number of common flaws.

First of all, it is undeniable that Livy's account of the plebeian activity, carried out in the period between 449 and 287 BC, lends no direct support to the above-mentioned interpretations. The tradition preserved in the sources is no doubt afflicted with numerous anachronisms, yet it certainly presents data of high value, so that systematically interpreting the course of events as always at odds with an admittedly consistent tradition sounds, in general terms, quite unpalata-

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25 Id., *La normativité des plébiscites* 1998, 237, who continues in these words: "la résolution de la plèbe ne crée pas une règle contraignante. La source de la norme se trouve, juridiquement, dans la décision sénatoriale de réformer la constitution et d'appliquer la réforme que la plèbe a simplement souhaitée, acceptée, formulée". Supporting this assumption would require us to either rewrite the data emerging from some sources or propose a completely partisan reading of others. For instance, as far as the so-called *lex Ogulnia* (Liv. 10.6.1–6; 10.7.1, 10.9.1–2) is concerned, claiming "que le projet ait été voté par la plèbe, n'y a pas de doute" (Id., *La normativité des plébiscites* 1998, 230) means going beyond Livy's text, in which the only mention of a *promulgatio* is made. Moreover, with regard to Liv. 10.22.9, claiming that the phrase *ex senatus consulto et scito plebis* implies that "la décision relève du Sénat; la plèbe n'apporte qu'une confirmation" (Id., *La normativité des plebiscites* 1998, 233) means not reading the sources to discover their meaning, but reading them to attribute a pre-established meaning.

26 Id., *La normativité des plébiscites* 1998, 237.

27 Id., *La normativité des plébiscites* 1998, 238. Cf., also, Bleicken, *Lex Publica* 1975, 85: the *plebisscitum* is "ein politisches Programm".

ble. It, in fact, involves systematically rephrasing, or worse, totally dismissing, all opposing sources, as being conceived of as unreliable, mistaken, or forgeries.

Many claim that to be binding for the *populus Romanus* as a whole, every plebeian resolution passed in the period prior to the *lex Hortensia* had to be endorsed by a vote of the people, gathered as *comitia* by *centuriae,* and yet, it is clear from our sources that there were several *plebisscita* which were applicable to the general populace without mention of any further recourse to a popular assembly. As such, so as not to weaken, or completely undermine this widely held scholarly interpretation outlined above, these relevant testimonia are usually dismissed by such scholars as being unhistorical, re-read as simple recommendations to the magistrates, or taken as examples of erratic exceptions to the general rule. Let us suppose, for a moment, that all the sources which attest to plebiscites with general applicability are immaterial or untrustworthy. How then, do we explain that, among all our sources, there is evidence for only one possible (and indeed questionable) case of transformation of a 'plebiscite' into a 'centuriate law'?[28] This clearly indicates that those who champion this approach have not adequately considered the extant body of evidence and, above all, have failed to discharge their burden of proof.

There remain concerns with the view that – even despite the data provided by the annalistic tradition – plebiscites before 287 BC were never granted immediate validity *per se*, unless the entailed provisions only affected the plebeian organisation[29]. The following list of doubts shall attempt to further deconstruct against the stance advocated by those scholars who give credits the *lex Hortensia* only.

(1) Why should it be considered absurd or unthinkable for a tribunician *rogatio* to not lead to a specific outcome, as our sources often attest? If one admits that, for instance, even within the plebeian order there would have existed different opinions and interests, as well as a variety of objections and mutual misunderstandings, then it is no longer necessary to consider that all reports pertaining to the multiple failed attempts of *rogationes agrariae* placed between 441 and 386 BC were wholesale unreliable[30].

(2) Why should the historiographic accounts that highlight, through a variety of frameworks, the contrast between patricians and plebeians in the phase imme-

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28 Cf. Liv. 3.53–55 (Id., *La normativité des plébiscites* 1998, 212, nt. 9; Rotondi, *Leges publicae populi Romani* 1912, 203).

29 This approach shares the distinction between 'internal' and 'external' plebiscites advocated by Soltau, *Die Gültigkeit der Plebiszite* 1885, 132 ff. and Siber, *Plebs* 1951, 67: yet our sources concerning plebiscites do not support it. For instance, any resolution regulating the tribunate itself (e. g., the manner of election; the increase of number; their major power) closely, even if indirectly, affects the patrician order; similarly, statutes passed by the *plebs* on land distribution and interest rates, although fundamental to the *plebeii* and their estates, strikes the core of patrician economy.

30 See Table n. 3.

diately before the vote of the *plebs*, be seen as unreliable? If one believes that the patrician order wished to portray the *plebs* as divided among themselves, and to obstruct the very foundation of its political regime, then there is nothing to prevent us from accepting both the extremely intricate course of events in which the *rogationes Terentiliae* (461–454 BC) were placed by the annalists[31], and the non-linear context of the *rogatio Canuleia* (445 BC)[32].

(3) If the main purpose of Roman annalists was to rewrite history, by creating forgeries which confirmed that after 449 BC no plebiscite was granted general validity in the absence of patrician approval, why then did the Roman historians not simply describe the *rogationes,* which were voted for by the *plebs* but not approved by the patrician *civitas,* in terms of proposals which were not implemented through the *auctoritas*? Tribunician vetoes, wars, mutual menaces, opportunistic synergies, represent, as is the case with the *rogationes Terentiliae*, the background to the *rogationes Liciniae Sextiae* (367 BC). Without denying that some annalistic exaggerations necessarily exist, accepting such a complicated and controversial picture seems to be a more plausible option than considering this episode an annalistic creation, which sought to establish fictitious facts in order to shape an erroneous historiographical model[33].

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31 See Table n. 3. See Cascione, *Il contesto storico* 2018, 2, nt. 14.

32 Liv. 4.1.1–4.6.3; Cic. *rep*. 2.63; Flor. 1.17; Ampel. 25.3. At the beginning of the year Canuleius promulgated a *rogatio* on intermarriage, but levies were ordered for war. As a result, the tribune proclaimed that he would obstruct the military operations until the *plebs* approved his proposal, and accordingly called a *contio.* At which point, despite the fact the Senate had seriously threatened him, he spoke at length to the *plebs* to support his proposal; the consuls also intervened, but their speeches antagonised the challenging order. Finally, since the *patres* were *victi* (due to the fact either that the patricians ended up supporting the intermarriage, or that the plebeians posed too serious a threat), the Canuleian measure was voted on. Suffice it to say, that even Guarino, *La rivoluzione della plebe* 1975, 217, admits that "la tradizione relativa a questo provvedimento è troppo piena di particolari per poter essere radicalmente contestata. È giusto credervi" (even if he immediately adds: "ma non sino al punto di ammettere con essa che il divieto di *connubium* fosse stato esplicitamente confermato [o addirittura odiosamente sancito *ex novo*] dalle Dodici tavole, in una delle due tavole 'inique' del secondo decemvirato, e nemmeno sino al punto di credere che il plebiscito Canuleio sia stato seguito dalla sanzione di una legge comiziale, votata cioè dai soliti improbabilissimi comizi centuriati").

33 See Table n. 3. Ten years of continuous conflicts preceded the passing of the *rogationes Liciniae Sextiae* in 367 BC, after a successful Gallic war (vetoes, obstruction of elections for curule magistrates, appointment of dictators, withdrawal of *auctoritas patrum*, deferral of vote due to Appius Claudius' speech). Yet, alongside the plebeian threats (a strategy that had not been successful enough to make the Senate accept the measures proposed by Licinius and Sextius), the sources describe some leading plebeians collaborating with their patrician counterparties for mutual benefit (as we know Fabius Ambustus, when military tribune, came out openly in support of the reforms): there is nothing to suggest that, after a

(4) Moreover, given the several cases of approval of tribunician *rogationes* concerning the organisation of the plebeian order, which at the same time produced undeniable effects on the patrician order, how can these be explained in line with the supposed annalistic scheme?[34] An authentic "nucleo essenziale della tradizione"[35] cannot be dismissed and replaced with 'metaphysical' notions that either silence the ancient authors, or anachronistically give them modern voices.

(5) If, by means of the *lex Hortensia* (which is conceived of as a statute that in the 3rd century BC expressly renewed the *iter plebissciti*), the senatorial approval was abandoned with regard to the plebiscitarian processes only, how can one explain the connection, clearly emerging from the sources, between this reform and the *exaequatio*? In other words, why do classical jurists not present the *lex Hortensia* as the statute that changed the method of bringing forward plebiscitarian proposals, by removing a requirement that, on the contrary, still remained for the *leges publicae populi*?

III.1 Relying on the tradition: the view supporting a step-by-step *exaequatio*

Conversely, there is a course of thought which attempts to give a precise legal meaning to the three identical measures, recorded in the sources. By denying that the laws of 449 and 339 BC merely amounted to measures which anticipated the *lex Hortensia*, i. e. inventions by the annalistic tradition, or to actual measures but

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decade of a pointless struggle, the *rogationes* were not finally passed as a result of a responsible and forward-looking patricio-plebeian cooperation.

34 Liv. 2.56.1, 2.57.1, 2.57.4, Dion. Hal. 9.43.4 (in 471 BC V. Publilius brought in his law to the effect that henceforth, the plebeian tribunes should be elected by the *tributa* assemblies; initially the *rogatio* was opposed by the *patres* until Ap. Claudius conceded); Livy 3.30.5; Dion. Hal. 10.30.2 (in 457 BC, a plebiscite to the effect that the number of *tribuni plebis* increased was passed since the *patres* eventually approved); Liv. 3.65.1–4 (in 448 BC, L. Trebonius brought before the *plebs* a *rogatio* to prohibit the co-optation of the *tribuni plebis*); Liv. 7.16.8 (in 357 BC a *plebisscitum*, or rather a *lex sacrata, de populo non sevocando* passed). All of these cases should be presented in a radically different way, to be consistent with the supposed annalistic scheme indeed, the plebiscites at issue should be approved without any intervention by the Senate (if conceived of as vested with particular validity, as Humbert himself is erroneously persuaded), or be described as failed attempts (if conceived of as having universal validity, since according to Humbert, *I plebiscita* 2012, 310, "tutti i plebisciti il cui ricordo è stato conservato dagli annalisti …, tutti i plebisicti che portano un nome e che hanno tentato di introdurre una riforma conforme all'ideologia plebea: tutti questi plebisicti sono falliti, sono stati abortiti, sono nati morti"). Sources do not attest to this at all.

35 de Francisci, *Storia del diritto romano* I 1943, 228; cf. Wieacker, *Römische Rechtsgeschichte* I 1988, 289.

not ones which were concerned with the status of *plebisscita*, the historical development that led to the legislative plebeian enactments obtaining equal status to those enjoyed by the universally binding popular *leges,* is explained in terms of a 'step-by-step emendation'[36].

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36 See Cornell, *The Beginnings of Rome* 1995, 278: "the law of 449 conceded the general principle that the plebeian assembly could enact legislation, but in some way restricted its freedom to do so unilaterally, for instance by making plebiscites subject to the *auctoritas patrum* or to a subsequent vote of the *comitia populi,* or indeed to both … On this view the supposed restrictions on plebeian legislation would have been partly removed by the law of 339, and completely abolished by that of 287. This explanation, that the laws of 339 and 287 did not replicate that of 449, but re-enacted it while introducing specific modifications, is the only one that fits the facts as we know them". Other scholars, primarily in the past, considered reliable the Livian tradition *en bloc*: cf., e. g., Séran de la Tour, *Histoire du tribunat à Rome* I 1774, 14 f., 103, 261; Hoffmann, *Der römische Senat* 1847, 132; Ihne, *Die Entwicklung der römischen Tributcomitien* 1873, 353; Nocera, *Il potere dei comizi* 1940, 284 f. Yet, being unable to distinguish between the three measures (of 449, 339 and 287 BC), they believed that the last two laws were mere 'repetitions' of the first, even if this had not been repealed or had not been made obsolete (see, more recently, Develin, *The Practice of Politics* 1985, 22). Accordingly, each enactment deserved a political explanation. See, moreover, Mitchell, *Patricians and Plebeians* 1990, 186 ff., 229 ff., who finds unconvincing any attempt "to create a plebeian assembly", and considers the struggle of the orders to be a fiction which should be dismissed as a forgery. Accordingly, he assumes that: only one tribal assembly (considered an element of the original system of Rome) existed; only one form of legislation was known, i. e. the *plebisscitum*; tribunes of the *plebs* (considered officials of the Republic from its beginning) presided over legislative activity carried out *tributim*; there was no actual distinction between *comitia* and *concilium*; plebiscites were granted universal validity, from the establishment of the tribunate. Against such a backdrop, as far as the measures enacted in 449 and 339 BC are concerned, he claims that "the *formulae* in all these laws are suspiciously similar in phrasing to the *lex Hortensia*, but it is unlikely that an inventive annalist created them to demonstrate an ancestor at work or to prove plebeians always had what they were struggling to obtain"; in Mitchell's opinion, "the solution to the problem is contained in the *formula* itself and in another Livian passage in which a Twelve Table law was recited by the *interrex* of 355 B. C., M. Fabius Ambustus", that is "*ut quodcumque postremum populus iussisset, id ius ratumque esset; iussum populi et suffragia esse*". All in all, "all the passages in question are versions of the rule that, for any law, the most recent enactment, creation, or change … was the last pronouncement on the subject and therefore current law". It is not necessary to take a position on the author's subversive view concerning the original binding force of plebiscites. As for the ingenious hypothesis concerning the aim pursued by the measures enacted in 449, 339 and 287 BC, leaving aside the fact that Mitchell does not explain the different wording existing between the principle laid out in the XII Tables (*ut quodcumque postremum populus iussisset, id ius ratumque esset*) and the subsequent statutory rules *de plebisscitis* (*ut quod tributim plebs iussisset populum teneret*; *plebisscita omnes Qurites tenerent*; *quod plebs iussisset omnes Quirites teneret*), this reconstruction cannot be shared, to the extent that it fails to properly explain which supposed conflict between laws the *leges Valeria Horatia*, *Publilia Philonis* and *Hortensia* would respectively resolve (cf. Cic. *Att.* 3.23.2; Liv. 9.34; Tituli

Willems, in the second volume of his extensive work on the Roman Senate, expounds some of the theories already advocated by authors in the 19th century[37]. For instance, he assumes that the *lex Valeria Horatia*, the *lex Publilia Philonis*, and the *lex Hortensia* alike, were concerned with the whole tribal system and not with the plebeian *concilia* alone (so that labelling these statutes merely *de plebisscitis* would be a 'misrepresentation')[38].

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ex corp. Ulp. 3; D. 50.16.102). See, among those who – in general terms – are inclined to trust the tradition as such, Frezza, *Corso di storia del diritto romano* 1974, 130 f.; Amirante *Plebiscito e legge* 1984, 2025 ff.; Id., *Una storia giuridica di Roma* 1991, 139 f., 186 f.; Serrao, *Classi, partiti e legge* 1974, 39 ff. Id., *Lotte per la terra* 1981, 94, 130 ff.; see, moreover, Kunkel, Wittmann, *Staatsordnung und Staatspraxis der römischen Republik* II 1995, 608 ff., 616.

37 Willems, *Le Sénat de la République romaine* II 1883, 80 ff. See Karlowa, *Römische Rechtsgeschichte* I 1885, 118 ff., who recognises – like Willems – that the *lex Valeria Horatia* could be referred to both *leges* and *plebisscita*, but believes – unlike Willems – that the *lex Publilia Philonis* (as well as the *lex Hortensia*), concerning the resolutions of the *plebs*, was intended to remove the requirement of the senatorial ratification. See, moreover, for a similar approach, Soltau, *Die Gültigkeit der Plebiszite* 1885, 1 ff., and Platschnick, *Die Centuriatgesetze von 305 und 415 a. u. c.* 1870, 497 ff.: both believe that the *lex Valeria Horatia* afforded the plebiscites general validity on the condition that the previous senatorial assent was granted; yet, if the latter supports the view that the *lex Publilia Philonis* was, in 339, barely reproducing the provisions already passed in 449, since they had become obsolete, the former maintains that under the *lex* passed in 339, tribunes, for the first time, were allowed to *dicere cum senatu*. Likewise, see Madvig, *Verfassung und Verhaltung des römischen Staates* I 1881, 242 ff., who sees in the *lex Valeria Horatia* a measure directed to equate *leges* to *plebisscita,* on the condition that the latter were approved by the *voluntas* of the *patres* (whatever form the senatorial approval took); in the *lex Publilia Philonis* the resolution which removed such senatorial intervention and, finally, in the *lex Hortensia* a mere 'repetition' of the second law. Yet, as Botsford notes, it is not possible that the laws on the status of plebiscites had become obsolete and, thus, worthy of reiterating, since *plebisscita* were being passed under the *lex Valeria Horatia* (as, for instance, the *plebisscitum Genucium*). Accordingly, this author suggests that the *lex Valeria Horatia* bestowed validity to *plebisscita* on the condition of a prior senatorial approval, whereas, he explains, the law passed in 339 was the final response to the question concerning the patrician participation in the assemblies summoned by tribunes: in other words, this law is suggested to be explained by the objection arisen by the *patres* against the *plebisscitum Genucium* due to their absence in the voting assembly (Botsford, *The Roman Assemblies* 1968, 277, 299 ff.).

38 "Les *comitia tributa* étaient régis par les mêmes conditions légales que les *concilia tributa plebis*. Si d'une part les lois tributes étaient soumises aux mêmes conditions que les plébiscites, si d'autre part la tradition ne mentionne pas les lois qui ont réglé ces conditions, on est amené naturellement à conclure que les mêmes lois qui, d'après la tradition, concernaient les plébiscites, se rapportaient aussi aux lois tributes, et qu'elles ont subordonné aux mêmes règles toute loi votée *tributim*, soit par la plèbe, soit par le *populus*" (Willems, *Le Sénat de la République romaine* II 1883, 91).

If, initially, "les décisions votées par la plèbe n'étaient pas soumises à la *patrum auctoritas*"[39], the first *lex* changed the current legal status of the plebiscites (and in so doing, confirming a use already well established in the 5th century BC), by bestowing the plebeian resolutions universal validity on condition that the vote expressed by the tribes was ratified by a (subsequent) sanction given by the *patres*-senators. Almost a century after, the second *lex* provided a similar regulation: only now the *auctoritas patrum* was to be afforded *ante initum suffragium* (before, and not after, the vote), as was the case with the proposals of *leges* brought before the centuriate assembly by curule magistrates under the simultaneous *lex Publilia Philonis de patrum auctoritate*. After which, the preliminary *auctoritas patrum* both "se confond avec le *senatus consultum* préalable"[40], and continues to function as a binding requirement[41].

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39 Id., *Le Sénat de la République romaine* II 1883, 74.

40 Id., *Le Sénat de la République romaine* II 1883, 92: "les anciens, parlant de l'autorisation préalable, se servent indifférentement des termes: *patrum auctoritas*, *senatus auctoritas*, *patrum consilium*, *senatus consultum*, *senatus sententia*"; cf., *amplius*, Id., *Le Sénat de la République romaine* II 1883, 33 ff., 93 ff., 222 f. On the connection (if not identification) between *auctoritas patrum* and preliminary *senatus consultum* and on the meaning of the phrase *senatus auctoritas*, see, for instance, Nocera, *Il potere dei comizi* 1940, 271 f.; Grosso, *Storia del diritto romano* 1965, 202 f.; De Martino, *Storia della costituzione romana* II 1973², 152 f., e III 1973², 313 f.; Mannino, *L'"auctoritas patrum"* 1979, 121 ff.; Tondo, *Profilo di storia costituzionale romana* I 1981, 237; Biscardi, *'Auctoritas patrum'* 1987, 41 ff., 70 f., 106 ff., 230 ff.; Magdelain, *De l'"auctoritas patrum"* 1990, 385 ff.; Cascione, *Consensus* 2003, 80, nt. 112.

41 The preliminary *auctoritas patrum* granted to proposals relating to legislation (so that no draft could be brought before the voting assembly until it had been approved by the *patres*) is usually seen as a restriction of the powers of the patrician Senate, as the final decision shifts from the most eminent representatives of this body to the assembly, and therefore the *auctoritas* would lose its original and fundamental role. On the contrary, according to Willems, *Le Sénat de la République romaine* II 1883, 72 ff. (who develops his thesis specifically dealing with the topic of *leges centuriatae*), it seems more likely that the *leges Publiliae Philonis* strengthened (or at least did not weaken) the position of the Senate. In Willems's view, in other words, from 339 BC on, the assemblies – both mixed and plebeian – were only allowed to take resolutions that, in substance, turned out to be the result of a previous agreement between magistrates (elected from the *nobilitas*) and the Senate, so that, only at the last stage the assembly was involved: "le droit que le Sénat perd en théorie à l'égard du peuple, il l'obtient à l'égard des magistrats: en fair, l'influence du Sénat est plus étendue, plus efficace qu'antérieurement". Cf., *amplius*, Zamorani, *Plebe Genti Esercito* 1987, 130 f.; Id., *La lex Publilia del 339 a. C. e l'auctoritas preventiva* 1988, 3 ff.; see, moreover, *Di Porto, Il colpo di mano di Sutri* 1981, 333; Amirante, *Plebiscito e legge* 1984, 2035, nt. 21; Mannino, *Ancora sugli effetti della lex Publilia Philonis de patrum auctoritate e della lex Maenia* 1994, 114; Humbert, *La normativité des plebiscites* 1998, 229; Graeber, *Auctoritas patrum* 2001, 27 ff. For an approach that ultimately is not so different from Zamorani's, see Guarino, *'Novissima de patrum auctoritate'* 1988, 140 f., who not only assumes that under the regulation passed in 339 BC plebiscites were bestowed general validity, only on the condition that they were converted into

Finally, due to the *lex* passed in 287 BC, the legislative process which sought to pass plebiscites was completely dispensed with the requirement of the "*patrum auctoritas* préalable"[42], until "Sulla rétablit la *senatus* ou *patrum auctoritas* comme

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comitial statutes, first approved by the Senate and then voted on by the *centuriae*, but also denies "che con la *lex Publilia* la *auctoritas patrum* si sia di colpo ridotta, quanto alle leggi comiziali, ad una mera formalità, o anche … ad un parere obbligatorio, ma non vincolante, reso dai *patres* sulle *rogationes*". Conversely, in Biscardi's view, under the *leges Publiliae Philonis*, the role played by the senatorial pre-approval varied depending on the type of voting assembly (Biscardi, *'Auctoritas patrum'* 1987, 43, 87 ff.; 236 ff., 248 f.; see, in a similar way, Mannino, *L'"auctoritas patrum'* 1979, 83, 104, 121).

42 "Les patriciens prétendaient qu'à défaut de la *patrum auctoritas* les plébiscites ne les obligeaient pas. Depuis la *lex Hortensia* la controverse a cessé, parce que cette loi a aboli la *patrum auctoritas* comme condition nécessaire de la force obligatoire du plébiscite", since "depuis cette époque l'histoire mentionne des plébiscites qui ont été votés et exécutés, malgré l'opposition du Sénat, partant, sans la sanction préalable ou subséquente de la *patrum auctoritas*" (Willems, *Le Sénat de la République romaine* II 1883, 80 f.). See, for a similar view, Beseler, *Beiträge* 1920, 109 (who, anyway, does not deal at length with the issue), and, above all, Niccolini, *Il Tribunato della plebe* 1932, 54 f. (who, as far as the *lex Valeria Horatia de plebiscitis* is concerned, argues that, if "le leggi che venivano approvate dal popolo nei comizi dovevano esser confermate dall'*auctoritas patrum*", it was "logico quindi che i plebissciti, se dovevano acquistare valore di leggi, dovessero per lo meno essere sottoposti ad un senatoconsulto"; as for the resolutions proposed by Publilius Philo in 339 BC, the scholar believes that, if, through these measures, "si vuole … mettere perfettamente alla pari patrizi e plebei nei poteri legislativi", thus, "i plebisciti devono … essere sottoposti al medesimo trattamento: anch'essi già vincolati dal senato-consulto successivo devono, analogamente, essere sottoposti al senato-consulto preventivo"). Accepting the Livian tradition almost literally and rewriting Willems's thesis with a personal touch, Tondo also assumes that, if the *lex Valeria Horatia* required the granting of the subsequent *auctoritas patrum* (in addition to the "senatoconsulto preventivo") for the *plebisscita* to be universally binding, under the reforms enacted in 339 BC the *auctoritas patrum* became *ex lege* a requirement to be fulfilled *ante initum suffragium* for both *leges comitiales* and *plebisscita*. At the same time, any tribunician proposal ceased *de iure* to be required to meet the binding consent given by all senators, as, on the contrary, was customary before (this would amount to a requirement that Sulla and his colleague decided to revive in 88 BC, by reintroducing the προβούλευμα); on the other hand, since the use of the "senatoconsulto preventivo" still remained with regard to the *leges comitiales*, this implied that the previous *auctoritas* – which was granted by the patrician senators only – started to serve as a mere "autorizzazione in bianco". It was only under the *lex Hortensia* that such *auctoritas* was removed from any legislative process, making equal the resolutions of the *plebs* to that of the *leges populi* and overcoming the attacks mounted by the patricians (see Tondo, *Profilo di storia costituzionale romana* I 1981, 237; Id., *Presupposti ed esiti dell'azione del trib. pl. Canuleio* 1993, 44 ff.; see, moreover, Mannino, *Ancora sugli effetti della lex Publilia Philonis de patrum auctoritate e della lex Maenia*, 1994, 95 ff., who appears inclined to espouse such reconstruction; but see also Id., *L'"auctoritas patrum'* 1979, 60 ff., 103 f., who, on the one hand, claims that "in teoria, esistono talune difficoltà ad ammettere anche per i plebisciti un'*auctoritas* preventiva", and, on the other hand, intends to point out that,

condition préalable au vote de toute loi", and henceforth "interdit aux tribuns … de soumettre aux *concilia plebis* des *rogationes* qui n'étaient pas approuvées préalablement par le Sénat"[43].

Sharing many features with previous reconstructions[44], Staveley's innovative model follows a rather conservative approach to the sources. According to this scholar, in the period before the 449 BC reform, any plebiscite had to be reintroduced by a consul as a proposal before the *comitia* and consequently approved by the majority of *centuriae* as a general law. In this model, the *lex Valeria Horatia* would have thus given all of the enactments carried by each of the two tribal systems of voting – whether plebeian (*in concilio*), or mixed (*in comitiis*) – equal standing, by conferring general validity as a result of the senatorial ratification (*auctoritas patrum*); the *lex Publilia Philonis* would then have freed the *comitia tributa* from such patrician sanctions, while the *scita* enacted by the plebeians in their tribal assemblies would have continued to be subject to the ratification of the *patres*[45]. Finally, always within Staveley's scheme, since the *plebisscita* would have, once again, assumed a status inferior to that of *leges,* and tension between the two orders would have followed, in 287 BC (i. e. when Rome had reached a point of no return and there was a real risk of a tragic rupture within the city and a fratricidal war) the dictator Hortensius, as a result of passing his law, released the *concilium plebis* from any senatorial (or rather patrician) control, thus giving unconditional validity to the tribal enactments of the *plebs*.

Salisbury's contribution is one of the last attempts to explain the historiographic tradition and to attribute Livy's account attesting to two separate laws

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prior to the passing of the *lex Hortensia*, "i plebisciti necessitavano di un assenso preventivo").

43 Willems, *Le Sénat de la République romaine* II 1883, 104 f.

44 Staveley, *Tribal Legislation before the lex Hortensia* 1955, 3 ff.: the author shares with Mommsen and Willems the view that the Valerio-Horatian, as well as the Publilian legislation, primarily concerned the tribes, rather than the plebeian councils; with Willems the view that after 449 BC *plebisscita* could be binding for the entire *populus,* only by the granting of *auctoritas patrum* (ratification); with Roos the view that there had "at one time been two distinct assemblies, one comprising plebeians alone, the other the entire *populus,* but from at least the second century BC no efforts were made to exclude the patrician vote in any *comitia*".

45 Staveley, *Tribal Legislation before the lex Hortensia* 1955, 31: "the consul, Publilius Philo, attempted to adapt the constitution to the recent change in the composition of the governing class. The right of the patricians to veto legislation carried in the *comitia populi tributa* was withdrawn as being anomalous and of little value to the new *nobilitas*". See Arangio-Ruiz, *Storia del diritto romano* 1957, 40 ff., and Humm, *Appius Claudius Caecus* 2005, 427 f.: both support the theory that after 339 BC the plebiscites were binding for the whole community, only if, *ex post,* ratified by the *patres* through their mandatory and binding approval.

de plebisscitis enacted prior to the final reform of 287 BC, as reliable[46]. According to this author, all *plebisscita* unofficially recognised by the *patres* before 449 and, as such, enjoying "a quasi-*lex* status" would be definitively and formally afforded general validity due to the *lex Valeria Horatia*[47]. Salisbury thus suggests that, within the context of the increasingly aligning interests of the leading plebeians and the patrician oligarchy, after approximately a century, the *leges Publiliae Philonis* would have changed the status of plebiscites in two different ways: *de futuro*, by labelling the '*auctoritas patrum*' requirement as the approval to be given by the *patres,* in order to pre-validate any general measure that a tribune was going to bring before the *concilium plebis*; *de praeterito*, by giving legal validity to the *plebisscita* that had been recognised by the Senate in the time frame between 449 and 339 BC (that is, by imitating the precedent of the Publilian *lex*)[48]. Finally, Salisbury notes that the *lex Hortensia* would have allowed the *concilium plebis* to enact general resolutions: thereafter, such measures would become equal in status to *leges*, and as for the requirements of the legislative process, the constraint of the *auctoritas patrum* would be removed[49].

III.2 Some critical remarks

Willems's and Staveley's attractive and ingenious theories – which, as already noted, tend to read the tradition literally – do rest on the assumption that a patricio-plebeian assembly which voted on *leges* by tribe, existed as of the the mid-5th century BC: something that, to the best of our knowledge, is impossible to conclusively demonstrate[50]. Suffice it to say that, with reference to Publilius' second law,

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46 Salisbury, *The Status of Plebisscita* 2019, 1 ff. A further recent reconstruction that believes in the historicity of all three laws *de plebisscitis* has been suggested, albeit in less detailed terms, by Petrucci, *Corso di diritto pubblico romano* 2017, 40 ff.: according to this scholar the law of 339 would require, as did the contemporary law on legislative procedure, the preventive *auctoritas patrum* in order to bring a proposal before the *plebs*. However, as will be better seen, the sources concerning the period between 449 and 339 already seem to attest for plebiscites the requirement of *auctoritas ante initum suffragium*. This makes the supposed historical development unlikely.

47 Id., *The Status of Plebisscita* 2019, 6 f.

48 Id., *The Status of Plebisscita* 2019, 12 f.

49 Id., *The Status of Plebisscita* 2019, 14 f. See, for a similar approach, Cerami, Corbino, Metro, Purpura, *Ordinamento costituzionale* 2006, 39 f.: "nel 339 una legge *Publilia Philonis* potrebbe avere rinnovato il provvedimento che era stato già della *lex Valeria Horatia* e riconosciuto così tutti i precedenti plebisciti già votati. Nel 287 una *lex Hortensia* dispose in ogni caso la piena efficacia per tutti i *cives* delle delibere che da quel momento in poi sarebbero state assunte dal concilio plebeo".

50 The *lex Manlia de vicesima manumissionum* (a law passed *tributim* and outside Rome, i. e. at Sutrium, in 357 BC) would be "the strongest indication that *comitia tributa* were employed

which placed *auctoritas patrum* before the voting of centuriate laws only, it sounds quite unreasonable that such an adjustment (*ut legum quae comitiis ceniuriatis ferrentur ante initum suffragium patres auctores fierent*) was not conceived of as applying to all laws voted by the *populus*. Accordingly, the *centuriae* still seem to be the only legislative units into which the *populus* was divided in preparation for the vote at that time, i. e. 339 BC.

Yet, even if one believed that from the 4th century BC onward the entire Roman *populus* was permitted to vote by tribe (in order to pass a *lex*, besides electing minor magistrates) and that, at some date, perhaps between 357 and 304 BC, the resolutions of such assembly had ceased to be subject to the (subsequent) *auctoritas patrum*, the statutory measure which effected this change could not be identified with the first *lex Publilia Philonis*. Indeed, such *lex* was directed, in the words of Livy, *ut plebisscita omnes Quirites tenerent*. How does a measure supposedly concerning the relation existing between the procedural requirement of the *auctoritas patrum* and the vote of the so-called *comitia populi tributa* (if not in any tribal assembly, no matter if mixed or plebeian, according to Willems) be expressed in terms of universally binding plebiscites? Why would such provision expound a simple and clear notion (i. e. 'removing the *auctoritas patrum*' in Staveley's opinion; 'preponing the *auctoritas patrum*', in Willems's) through wording which directly linked to a totally different aspect (i. e. the universal validity of the resolution voted by the plebeian tribes)? Finally, why would Livy – or his source – refer to *plebisscita* alone,

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by consuls for the purpose of carrying legislation in the 4th century", and more precisely prior to 339 BC (see Staveley, *Tribal Legislation before the lex Hortensia* 1955, 10; cf. Botsford, *The Roman Assemblies* 1968, 303). Yet, some authors refuse to recognise the use of the *comitia populi tributa* for carrying out legislation in that period, claiming that Manlius' procedure was exceptional and irregular (Di Porto, *Il colpo di mano di Sutri* 1981, 318, nt. 11, 332 f.; Graeber, *Auctoritas patrum* 2001, 49). Others maintain, even if following different interpretative paths, that, on that occasion, the *centuriae* were summoned to vote (Biscardi, *'Auctoritas patrum'*, 1987, 29 f., 231 f.; Guarino, *'Novissima de patrum auctoritate'* 1988, 119). Others suppose the vote of the *plebs* (Develin, *Comitia tributa plebis* 1975, 326 f.). Independent of the problem of the existence of such popular assemblies as opposed to the plebeian councils as of the 5th century BC, Staveley's thesis remains irremediably flawed in terms of the interpretation of the ancient sources. As Arangio-Ruiz, *Storia del diritto romano* 1957, 414 f., points out, how can the law of 449 BC be supposed to have related, at the same time, both to *quod populus tributim iussisset* and to *quod plebs tributim iussisset*, if in the Livian text the key-words – contrary to what Staveley claims – are *plebs*, *populus* and *tributim* (*ut quod plebs tributim iussisset populum teneret*)? Moreover, it is not true that the presence of the adverb *tributim* can only be explained on the condition that, as Staveley supposes, the original measure at issue was somehow concerned with the same body, i. e. the *populus*, which at times voted by centuries, at times by *tribus*: such a term could plainly work, in the text of the *lex Valeria Horatia*, as a reference to the reform enacted in 471 BC and therefore it could simply reaffirm that, with regard to the plebeian councils, only the votes of the tribes (and not of other plebeian voting units) could be considered as binding.

instead of mentioning either *leges* brought before the so-called *comitia populi tributa* or, more generally, all tribal enactments?[51]

As concerns Salisbury's thesis, it further raises many questions. If the *lex Valeria Horatia de plebisscitis* is to be credited with the aims suggested by this scholar, what possible stipulations could the *lex Valeria Horatia de tribunicia potestate* have included, since this statute is expressly credited with recognising as sacrosanct magistrates of the city the tribunes, i. e. an office introduced in 494 BC by means of a *lex sacrata* approved without the *patres*? Moreover, if a vote by the *plebs* was, *de facto* and *de jure*, binding on all Romans, due to the adhesive intervention of the *patres*, in the frame of the 'fluid' constitution of the Republic, what was the practical function pursued by the laws of the years 449 and 339, if not that of unnecessarily reaffirming the same binding force? Why, contrary to the identical formulation the sources show, would the three different laws have produced different kinds of effects, the first one concerning the past, the second both the past and the future, the third only the future? How can we combine the view that, after the *lex Hortensia* plebiscites ceased to be subject to the preliminary *auctoritas patrum* introduced by the *lex Publilia Philonis,* and Gaius' reading that before 287 BC patricians claimed that they were not bound by *plebisscita* 'as (*quia* and not *quae*) they were created without their *auctoritas*'?

IV.1 Rejecting the past and relying on the tradition: the view that champions a 'two-stage equalisation'

An intermediate theory – which, in the last few decades, has received many, albeit not always accurately motivated, adhesions – takes a less conservative line and assumes that only the Valerio-Horatian laws enacted in 449 BC amount to an annalistic forgery, being they an attempt to explain the validity of certain plebiscites passed by the tribal council prior to the passing of *lex Publilia Philonis* and of the *lex Hortensia*[52].

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51 See Develin, *Comitia tributa plebis* 1975, 322, nt. 89: "the sources say quite clearly that the laws concerned plebeian decisions and to make them say anything else is unsubstantiated conjecture".

52 See Arangio-Ruiz, *Storia del diritto romano* 1957, 42: "a parte l'inverosimiglianza della triplice disposizione, la prima datazione è in sé inaccettabile: che appena qualche decennio dopo l'istituzione del tribunato, ed oltre un secolo prima che la plebe fosse ammessa alle magistrature curuli, essa ottenesse il privilegio, quant'altro mai risolutivo, di vincolare con le sue leggi tutto il popolo, è fuori di ogni verisimiglianza. Se a base della tradizione relativa alla legge Valeria Orazia è un qualche nocciolo di verità, si deve trattare esclusivamente di un diverso nome dato al riconoscimento (attribuito, come vedemmo, ad altra legge degli stessi consoli) del carattere sacrosanto dei tribuni: la legge avrebbe conosciuto il valore delle elezioni che la plebe faceva nei suoi concilii, e gli annalisti avrebbero riferito il riconosci-

Biscardi has developed one of the most in-depth version of this scholarly trend. This scholar accepts as true that in the course of the 5th and 4th centuries BC (i. e. prior to, and after, the XII tables) the plebeian resolutions recorded by the tradition need only be explained as 'extraordinary cases' (i. e. as plebiscites that would become laws by a vote of the *comitia centuriata*), or as 'centuriate laws' which the annalists, either erroneously or intentionally, presented under the veil of enactments by the *plebs*[53]. Against such a background, Biscardi gives the term *auctoritas patrum,* in connection with the process directed to pass a *plebisscitum,* two fundamentally different legal meanings[54]: after the *lex Publilia Philonis*[55], this

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mento alla legislazione" (see Id., *Storia del diritto romano* 1957, 42, 52, 220); cf., following a similar line of thought, Costa, *Storia* 1925, 85 f.; Scherillo, Dell'Oro, *Manuale di storia del diritto romano* 1950, 92, 115, 168 f., 206 ff.; De Martino, *Storia della costituzione romana* I 1972², 374 f., 391 ff., and III 1973², 69 ff.; Cassola, Labruna, *I concilia plebis* 1989, 216 ff.; Nicosia, *Lineamenti* 1989, 245 ff.; Graeber, *Auctoritas patrum* 2001, 28, nt. 69; Humm, *Appius Claudius Caecus* 2005, 426 ff. See also Lintott, *The Constitution* 1999, 114, who believes that plebeian resolutions "at first … seem to have been only binding on the plebeians themselves, but the *lex Publilia* of 339 seems to have made it possible for them to be validated for the whole *populus Romanus*, through ratification either by the senate or by another assembly", and that "the *lex Hortensia* of 287 made *plebisscita* equivalent to *leges* passed in the *comitia centuriata* or *tributa*".

53 See Biscardi, *'Auctoritas patrum'* 1987, 81 f., where, as regards the *lex Valeria Horatia*, some of the ideas already suggested by Pais and Arangio-Ruiz are reaffirmed: this statute, according to Biscardi, "appartiene a un'età rispetto alla quale tutta la tradizione è fallace", and at most can be considered an altered version "di quello che è il carattere sacrosanto della magistratura tribunizia".

54 More precisely, he recognises four different nuances: "*auctoritas*-ratifica politico-religiosa delle deliberazioni comiziali", "*auctoritas patrum* preventiva dissociabile in formalità liturgica riservata ai senatori patrizi ed in parere preliminare non vincolante dell'intero senato sulla *rogatio* del magistrato alle assemblee plenarie del popolo Romano"; "*auctoritas patrum* concernente le *rogationes tribuniciae*, nel senso di nulla-osta senatorio per la loro presentazione ai *concilia plebis*"; "*auctoritas patrum* preventiva, applicabile ai *plebissicita* come alle altre *leges populi Romani* … nel senso di senatoconsulto preliminare non vincolante" (Biscardi, *'Auctoritas patrum'* 1987, 248 f.).

55 See Biscardi, *'Auctoritas patrum'* 1987, 82 f., 87 f., where this author draws the reliability of the *lex* enacted in 339 BC, from the account Appian (*bell. civ.* 1.59.266) sketches with regard to the Sullan reform that, in 88 BC, was directed to overcome the discipline introduced by Hortensius in 287 BC and to revive the preceding system: "il ricordo della norma già abrogata concernente le *rogationes tribuniciae* non può non riferirsi alla *lex Publilia Philonis*"; according to such a law, revived by Sulla, any tribunician rogation was required to be implemented by a προβούλευμα, that is the "approvazione preventiva di una proposta, sulla quale l'organo deliberante deve ancora esprimere il suo voto", *pace* Arangio-Ruiz, *Storia del diritto romano* 1957, 40, 50, 192 (who, against the *littera* of the account written by Appian, believes that under the *lex Publilia Philonis* it was the plebiscite already voted on, and not the rogation, that needed to be ratified by the patrician Senate; see, as implicitly adhering to Arangio-Ruiz's view, the recent pages written by Humm, *Appius Claudius Caecus* 2005, 121,

term would indicate a mandatory and binding measure, which had to be sanctioned by the *patres* before the *suffragium* (voting) of any plebeian resolution which sought general validity (whereas, on the contrary, the legislative bills, after the reforms passed in 339 BC, would be subject to a mandatory, yet non-binding, prior 'advisement' by the *patres*). From the enactment of the *lex Hortensia* to the Sullan 'reforms' *de comitiis centuriatis* and *de tribunicia potestate* – or rather 'restorations', since they merely revived some neglected features of Roman public law[56] – the *auctoritas patrum* would, in this model, map onto a preliminary and non-binding *senatus consultum*, changing into a 'mere formality' within the processes aimed at the enactment of plebiscites and comitial statutes alike[57]. In other words, the

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190 f., 426 ff., 454). Likewise, see De Martino, *Storia della costituzione romana* I 1972², 391 f. (mainly p. 394), who claims that "il Senato potesse esplicare anche sui plebisciti quel controllo preventivo, che in seguito all'altra legge Publilia esercitava sulle rogazioni comiziali, un controllo che derivava dalla prassi consuetudinaria formatasi già prima del 339, di sottoporre preventivamente al Senato le proposte tribunicie al fine di attribuire ai plebisciti, mediante l'adesione dei *patres*, quella forza obbligatoria, che ad essi mancava". In other words, according to this author, the (historical) *lex Publilia Philonis de plebisscitis* in 339 BC would recognise a practice that had been well established in previous centuries; on the contrary, Biscardi *'Auctoritas patrum'* 1987, 82 ff., argues that the *plebisscita*, prior to 339 BC, were bestowed general validity by means of senatorial approval as exceptional and isolated cases. In similar terms, see Graeber, *'Auctoritas patrum'* 2001, 254, 256: "das zweite publilische Gesetz *de plebisscitis* brachte wahrscheinlich nicht, wie Livius irrtümlich gemeint hat, die gleiche Regel wie die des Jahres 287 *(lex Hortensia)*", since "wird es die in diesen Jahren noch immer offene Frage nach der Allgemeinverbindlichkeit der *plebisscita* dahingehend geregelt haben, diese von einer durch die Volkstribune vorher einzuholenden Willensäußerung des Gesamtsenats abhängig zu machen; in 339 BC, "zum erstenmal wurden diejenigen *plebisscita*, die für den *populus* bindend sein sollten, einer Vorberatung des Gesamtsenats unterstellt"; yet, unlike Biscardi, this author believes in "eine nachträgliche *auctoritas*-Erteilung" given in isolated and exceptional cases prior to 339 BC ("dagegen wurden vor 339 die licinisch-sextischen Rogationen erst nachträglich durch die *auctoritas patrum* für allgemeinverbindlich erklärt": Id., *'Auctoritas patrum'* 2001, 102).

56 Cf. Sandberg, *Magistrates and Assemblies* 2001, 130: "it is certainly reasonable to assume that Sulla did not want to appear as a radical reformer introducing something entirely new. The conservative leader of the *optimates* would rather emphasize that he restored an older, neglected constitution, thus giving his actions the justification of ancestral practice".

57 Biscardi,*'Auctoritas patrum'* 1987, 92 ff., 105 ff.: "i plebisciti, escluso con la *lex Hortensia* il requisito del preventivo assenso senatorio, rimangono peraltro sottoposti ad una previa consultazione del senato, sostanzialmente come le vere e proprie leggi dopo la *lex Publilia de patrum auctoritate*". In other words, according to this author, the *lex Hortensia* would have allowed the *exaequatio,* not in the sense of no longer requiring a binding prior pre-ratification, but in the sense of requiring a previous, mandatory and non-binding *auctoritas patrum* for the plebeian resolutions and the *leges* alike (cf. Nocera, *Il potere dei comizi* 1940, 284 ff., who believes that, even prior to the enactment of the *lex Hortensia* the grant of the senatorial approval, to be given before the rogation was voted on, amounted to a mandatory requirement). *Contra*, see Guarino, *'Novissima de patrum auctoritate'* 1988, 133: "se anche la *lex*

final *exaequatio*, as supposed by this scholar, would affect the modalities of both proposing and voting on the *rogationes* before the *concilia plebis*, rather than directly involving the binding force bestowed upon the *plebisscita*.

IV.2 Some critical remarks

According to this view, as already noted, during the first phase of the republican era, the *plebisscita* could only be granted general validity in exceptional circumstances (as long as they were converted into *leges centuriatae* and ratified by the *patres*); thus, prior to 339 BC, each plebeian enactment merely amounted to a non-binding political programme. However, such scheme is not persuasive in light of the source evidence.

On the one hand, the sheer number of plebiscites recorded between 449 and 339 BC which were passed without senatorial opposition, or with explicit senatorial approval[58], makes it very difficult to believe that there was a process of constant falsification, or systematic mistakes rooted in the annalistic tradition. What is more, the alleged conversion into *leges*, as already highlighted, finds almost no concrete testimonia in the sources.

On the other hand, the exclusion of the general validity of a plebiscite in the event of senatorial obstruction during the same period, as confirmed by Livy, seems to suggest the opposite[59]. However, Biscardi contends that after 339 BC, the patrician *auctoritas* that was required for the proposals of *leges populi* suddenly became a non-binding "parere preliminare" (if not a formality), while the corresponding act which granted the voting of *plebisscita* remained a binding "nulla-osta". As such, it can be suggested that, due to the reform enacted by Publilius Philo, the *exaequatio* turned out to be incomplete. Indeed, given that ancient au-

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Publilia Philonis de plebisscitis altro non è che una invenzione annalistica, cosa che sarebbe davvero eccessivo affermare, è chiaro che il suo contenuto non può essere stato lo stesso della ben posteriore *lex Hortensia de plebisscitis* del 287 a. C.: la vera legge, quest'ultima, che promosse pienamente i *plebisscita*, senza bisogno di *auctoritas patrum,* al livello delle *leges populi*"; likewise, see Magdelain, *De l'"auctoritas patrum"* 1990, 385 ff., 398 f., who, adhering to Mommsen's notion (Mommsen, *Römisches Staatsrecht* III.1 1887, 155, nt. 3), rejects the view that, both before and after 287 BC, plebiscites were *per se* subject to the grant of the senatorial authorisation; on the contrary, Graeber, *Auctoritas patrum* 2001, 27 ff., 94 f., 103 ff., 254 ff., denies that, once the *lex Hortensia* was enacted, the *auctoritas patrum* was removed: more precisely, this scholar assumes that "in der historischen Deutung bedeutete diese *lex* zwar den Abschluss der Ständekämpfe", even if "das Gesetz diente der Lösung eines konkreten politischen Problems" and "rechtlich gesehen sollte sich nichts grundlegendes ändern", as "die *lex Hortensia* die *auctoritas patrum* für Plebiszite künftig als generell gegeben ansah".

58 See Table n. 3.

59 Liv. 3.63.9.

thors point out that, at least regarding the former type of general resolutions, as of 339 BC the senatorial *auctoritas* came before the final decision made by the *comitia,* not after, on what textual bases does Biscardi's construction rest?[60] Finally, why would the jurists describe the *lex Hortensia* as the statute that gave the *plebisscita* the same status as that granted to the *leges*, if, in reality, such a result had already been achieved in 339 BC? Furthermore, this would mean that in 287 BC the dictator Hortensius, through his well-known law (which Biscardi conceives of as relating to the *iter plebissciti,* rather than to the general validity of the plebeian resolutions), would have merely transformed the *auctoritas patrum* into a "previa consultazione del senato … non vincolante"[61].

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60 See Guarino, *'Novissima de patrum auctoritate'* 1988, 133, who, in part, follows Zamorani, *La 'lex Publilia' del 339 a. C.* 1988, 6 ff. On the grounds of his general idea, Biscardi, unlike Guarino, believes that App. *bell. civ.* 1.266 focuses only on plebiscites, since for the "rogazioni legislative curuli … non era mai stato prescritto il requisito del preventivo assenso senatorio, dato che infatti l'anticipazione dell'*auctoritas* aveva determinato immediatamente la sua trasformazione da ratifica in senatoconsulto non vincolante". The conclusion is generally persuasive (i. e. it is likely that Appian mentions the plebeian resolutions in this passage, making it clear that δῆμος means πλῆθος); however, the author's reasoning is unconvincing: indeed, in 339 BC the *lex Publilia de auctoritate* did not change the *auctoritas*-ratification into an *auctoritas*-advice, but – as Livy attests – it simply required *auctoritas*-ratification to follow, not the vote (as it was before), but the magisterial proposal.

61 To be more precise, according to Biscardi, *'Auctoritas patrum'* 1987, 93, 106, some of the plebiscites voted for after 287 BC passed "nonostante il voto contrario del senato" (implying that the senatorial advice was not binding); moreover, it is his firm belief that the annalistic tradition proves "l'obbligo per il magistrato proponente di far precedere la votazione dalla consultazione del senato" (implying that the senatorial advice amounted to a formal requirement). Such a picture does not seem to me sufficiently accurate. On the one hand, many sources relating to the period after the enactment of the *lex Hortensia,* attest to some cases where the plebiscites were voted and enacted at times despite the Senate's vote against them (which means that the tribunes addressed the Senate for its advice, before bringing forward their proposals), at times without the Senate's prior consent (which means that, under some circumstances, the tribunes did not call on the Senate at all). On the other hand, Livy makes it clear that – no matter what the *lex Hortensia* concretely established – after 287 BC a high number of tribunician proposals seem to have been submitted before the *plebs* (… *tulit ad plebem* …) at the request (… *ex auctoritate / ex consulto* …) of the Senate or of the *patres*, rather than being voted only after the Senate's "previa consultazione non vincolante". In other words, as far as the period after 287 is concerned, the unitarian feature thought by Biscardi (i. e. the *auctoritas* conceived of as "senatoconsulto preliminare non vincolante" or "parere espresso dal Senato … non giuridicamente vincolante") must be replaced with a more subtle and multifaceted picture.

V. Interim considerations

In the light of the fundamental issue on which this contribution is based, I will briefly summate some of the main results achieved in my critical analysis thus far. After the *lex Valeria Horatia* (449 BC) and before the *lex Hortensia* (287 BC), what was the legal status enjoyed by plebiscites and, as far as their general validity is concerned, what was the role played by the Senate? Such questions, as already emphasised, have been addressed and discussed so intensively and widely, that it is almost impossible to comprehensively enumerate each single attempt here[62].

Against such a bulk of varied pictures, on the one hand, there is still room for a re-examination of the issues, and for a fresher analysis of the sources. On the other hand, some preliminary and brief remarks, stemming from the results shown above, are necessary to frame the personal reconstruction which the remainder of this paper will focus on.

Firstly, it has been argued that the sources do not demonstrate that, in order to be binding on the community as a whole, the plebeian resolutions, passed in the period prior to the *lex Hortensia,* had to be endorsed by a vote in the *comitia centuriata*. Roman historians present a good number of *plebisscita* as enactments directly vested with general validity and which were in the interest of the patricio-plebeian nobility, without mentioning any further recourse to the popular assembly (even if, as clearly emerges, the support of both patricians and plebeians was constantly required).

Secondly, it is ungrounded to claim that, in the period between the 1st century of the republican age and the occurrence of the full *exaequatio* in 287 BC, resolutions of the *plebs* were never granted immediate validity *per se*, unless they only affected the plebian organisation. *Plebisscita* regularly pertain to aspects relating to the entire community and, as already noted, quite a number of passages drawn from the annalistic sources – far from being isolated exceptions – reliably show the binding force granted to tribunician proposals, as voted by the plebeian council with the approval of the Senate[63].

Thirdly, as for the third *lex Valeria Horatia*[64], the sources referring to the period between the years 449 and 287 BC are replete with numerous examples of

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62 Accordingly, Table n. 1 is intended only as an example of the multifaceted variety of views that scholars, taking different approaches, have put forward to depict the scenarios of the period between the mid-5th and the beginnings of the 3rd centuries BC.

63 As Cornell, *The Beginnings of Rome* 1995, 277, claims, arguing "that only the third and latest of these laws is historical" amounts to a sceptical interpretation that "cannot possibly be correct, because a number of plebiscites are recorded in the period before 287 BC which obviously did have the force of law"; moreover even if "some of these may be doubtful … it would be hypercritical to deny the historicity of such fundamental measures as the *Leges Liciniae-Sextiae* (367 BC), or the *Lex Ogulnia* (300 BC)".

64 App. *bell. civ*. 2.453, 4.65; Cic. *rep*. 2.54; Dion. Hal. 11.45; Liv. 3.55.3–7, 3.56.12–13.

plebiscites that, in one way or another, find recognition in the formal decision of the Senate. Accordingly, rather than thinking of these as being an invention by the annalists, to justify exceptional cases, it is more reasonable to see in the third Valerio-Horatian provision a *lex centuriata* regulating the due plebiscitarian process. Considering the historical context behind the (pro-plebeian) Valerio-Horatian reforms[65], nothing prevents us from assuming that, from then on, the plebeian assembly not only elected the *tribuni plebis* as authentic 'officers of the *civitas*', but also passed general rules. In other words, it is possible to suggest that a statute was laid down *"ut, quod tributim plebes iussisset, populum teneret"*, even if such an ability – which was for the first time recognised in favour of the *plebs* – was necessarily subject to certain restraints: what is more, this reform does not seem to clash with the historical context, being introduced after the dreadful events which occurred during the second decemvirate (450 BC), and a few years before permission was granted for intermarriage (445 BC), in addition to the general recognition of the *sacrosancta potestas* of the plebeian chiefs and to the ban on the creation of civic officers *sine provocatione* (that is, not subject to a sort of 'appeal before the people')[66].

Fourthly, as for the *exaequatio* supposedly accomplished in 339 BC, the first of the *leges Publiliae Philonis* was directed, as we already know, *"ut plebisscita omnes Quirites tenerent"* (i. e. 'to bestow universal validity to the plebeian enactments')[67]. Even if we accept that in the 4th century BC the Roman people were permitted to vote on legislative *rogationes* in the so-called *comitia tributa*, it is unlikely that this *lex* removed the *auctoritas*-ratification from the process which sought to enact resolutions taken by the people divided into tribes. Similarly, it is unlikely that this resulted in the necessary approval of the particians for the plebeian resolutions, being brought in at an early stage of the process. Indeed, the wording of this *lex,* proposed by the dictator Q. Publilius Philo, a plebeian so inspired by 'democratic ideas' as to adopt a Greek surname, seems to focus – as it is quoted by Livy – on the validity granted to the plebiscites, rather than on the stages of the process designed to bring in, and vote on, tribunician *rogationes*. Conversely, the second of his laws is clearly imbued with a procedural rationale, requiring that the *auctoritas patrum* be given before a proposal is voted on, rather than afterwards[68].

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65 As Cornell, *The Beginnings of Rome* 1995, 276, rightly claims: "if the downfall of the Decemvirs and the Second Secession are regarded as broadly historical events, the restoration must have been accompanied by some kind of settlement", in order to "cement the alliance of convenience that the *plebs* and the patriciate had formed in order to get rid of the Decemvirs".

66 See Pelloso, *Provocatio ad populum* 2016, 219 ff.

67 Liv. 8.12.14–16.

68 Drawing on the Livian text, one can claim that the *lex Publilia Philonis de plebisscitis* focuses on the validity granted to the plebiscites, and not on the procedure for voting on a tribunician *rogatio; however, a different 'procedural' meaning can also be argued, if* one believes that the form quoted by Livy consists only in the 'title' of the *lex*, rather than reproducing

Finally, taking into account the *exaequatio* achieved in 287 BC, jurists commonly describe the *lex Hortensia* as concerning the binding force directly bestowed upon the *plebisscita,* without the participation of the patricians in the voting *concilia plebis*, rather than as a measure affecting the modalities of the process of proposing tribunician *rogationes*[69]. The sources, in other words, say neither that, in 287 BC the requirement of the patrician *auctoritas* was removed from the plebiscitarian process, nor that such a requirement was kept as a formality. Indeed, each of these alternative readings of the *lex* can be seen as being a corollary derived from the historical reconstruction of the rules previously in place, concerning the voting procedure and the conditional general validity of the *plebisscita*[70]. As argued by Gaius, *eo modo* (i. e. 'that way') the plebiscites were given equal stature to the laws: the plebeian Hortensius, once appointed as a dictator in order to deal with a secession caused by a problem arising from debts, accomplished the final *exaequatio* by granting the former type of enactment the same status enjoyed by the latter. At the same time, it is worth noting that his important reform kept the plebiscitarian process in the hands of the 'patricio-plebeian *nobilitas*', since, in most cases after 287 BC, *plebisscita* were still proposed by the tribunes of the *plebs* on behalf of, or with the support of, the Senate, and seldom did they openly neglect the patrician interests by by-passing the Senate's authority[71].

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its content (*ut plebisscita omnes Quirites tenerent*; cf. *ut, quod tributim plebes iussisset, populum teneret* in the *lex Valeria Horatia*): "but this only increases our puzzlement at what Livy understood by them" (Ridley, *Livy and the concilium plebis* 1980, 346, nt. 33). According to Cornell, *The Beginnings of Rome* 1995, 278, "it is no good objecting that there is no clear evidence for any restriction in the *Lex Valeria Horatia*, or for its removal by the *Lex Publilia* or the *Lex Hortensia* … since our sources do not set out the detailed provisions of these laws". This line of reasoning is persuasive merely as regards the 449 law. Indeed, on the one hand, if one compares the *lex Publilia Philonis de plebisscitis* with the *lex Publilia Philonis de patrum auctoritate*, then it becomes clear that the former, unlike the latter, can be conceived of as pertaining to validity; on the other hand, as far as the *lex Hortensia* is concerned, the jurists themselves seem to exclude the direct relevance of such a measure in terms of 'procedure'.

69 Gai. 1.3 (*cautum est, ut plebisscita universum populum tenerent: itaque eo modo legibus exaequata sunt*); cf. Liv. *perioch*. 11; Gell. 15.27.4; Plin. *nat*. 16.37; *Inst*. 1.2.4; D. 1.2.2.8.

70 See Drummond, *Rome in the Fifth Century* 1989, 223.

71 A) See Liv. 26.21.5 (*tribuni plebis ex auctoritate senatus ad populum tulerunt ut M. Marcello quo die urbem ovans iniret imperium esset*); Liv. 27.5.6–7 (*Muttines etiam civis Romanus factus, rogatione ab tribunis plebis ex auctoritate patrum ad plebem lata*); Liv. 27.7.6 (*dictator causam comitiorum auctoritate senatus, plebis scito, exemplis tutabatur: namque Cn. Servilio consule cum C. Flaminius alter consul ad Trasumennum cecidisset, ex auctoritate patrum ad plebem latum plebemque scivisse ut, quoad bellum in Italia esset, ex iis qui consules fuissent quos et quotiens vellet reficiendi consules populo ius esset*); Liv. 27.11.8 (*duo censores ut agrum Campanum fruendum locarent ex auctoritate patrum latum ad plebem est plebesque scivit*); Liv. 27.33.12–14 (*L. Atilius tribunus plebis ex auctoritate senatus plebem in haec verba rogavit: omnes Campani, Atellani, Calatini, Sabatini, qui se dediderunt in arbitrium dicionemque populi Romani Q. Fulvio proconsuli, quosque una*

It is now possible, in light of these debates, to consider the *plebisscita* with a view to attempting a new solution to the riddle of their validity, in connection to the issue of the relations between tribunes and Senate.

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secum dedidere, quaeque una secum dedidere, agrum urbemque, divina humanaque, utensiliaque sive quid aliud dediderunt, de iis rebus quid fieri velitis vos rogo, Quirites. plebes sic iussit: quod senatus iuratus, maxima pars, censeat, qui adsient, id volumus iubemusque); Liv. 34.53.1 (*exitu anni huius Q. Aelius Tubero tribunus plebis ex senatus consulto tulit ad plebem, plebesque scivit, uti duae Latinae coloniae una in Bruttios, altera in Thurinum agrum deducerentur*); Liv. 35.7.4–5 (*inde postquam professionibus detecta est magnitudo aeris alieni per hanc fraudem contracti, M. Sempronius tribunus plebis ex auctoritate patrum plebem rogavit, plebesque scivit, ut cum sociis ac nomine Latino creditae pecuniae ius idem quod cum civibus Romanis esset*); Liv. 39.19.3–7 (*eo referente de P. Aebutii et Hispalae Feceniae praemio, quod eorum opera indicata Bacchanalia essent, senatus consultum factum est, uti singulis his centena milia aeris quaestores urbani ex aerario darent; utique consul cum tribunis plebis ageret, ut ad plebem primo quoque tempore ferrent, ut P. Aebutio emerita stipendia essent, ne invitus militaret neve censor ei invito equum publicum adsignaret; utique Feceniae Hispalae datio, deminutio, gentis enuptio, tutoris optio item esset, quasi ei vir testamento dedisset; utique ei ingenuo nubere liceret, neu quid ei qui eam duxisset ob id fraudi ignominiaeve esset; utique consules praetoresque, qui nunc essent quive postea futuri essent, curarent, ne quid ei mulieri iniuriae fieret, utique tuto esset. id senatum velle et aequum censere, ut ita fieret. ea omnia lata ad plebem factaque sunt ex senatus consulto; et de ceterorum indicum impunitate praemiisque consulibus permissum est*); Liv. 42.21.4–7 (*hoc consensu patrum accensi M. Marcius Sermo et Q. Marcius Scilla, tribuni plebis, et consulibus multam se dicturos, nisi in provinciam exirent, denuntiarunt, et rogationem, quam de Liguribus deditis promulgare in animo haberent, in senatu recitarunt. sanciebatur, ut, qui ex Statellis deditis in libertatem restitutus ante kal. Sextiles primas non esset, cuius dolo malo is in servitutem venisset, ut iuratus senatus decerneret, qui eam rem quaereret animadverteretque. ex auctoritate deinde senatus eam rogationem promulgarunt. priusquam proficiscerentur consules, C. Cicereio, praetori prioris anni, ad aedem Bellonae senatus datus est. is expositis, quas in Corsica res gessisset, postulatoque frustra triumpho, in monte Albano, quod iam in morem venerat, ut sine publica auctoritate fieret, triumphavit. rogationem Marciam de Liguribus magno consensu plebes scivit iussitque. ex eo plebisscito C. Licinius praetor consuluit senatum, quem quaerere ea rogatione vellet. patres ipsum eum quaerere iusserunt*); Liv. 45.35.4–5 (*paucos post dies Anicius et Octavius classe sua advecti. tribus iis omnibus decretus est ab senatu triumphus mandatumque Q. Cassio praetori, cum tribunis plebis ageret, ex auctoritate patrum rogationem ad plebem ferrent, ut iis, quo die urbem triumphantes inveherentur, imperium esset*). B) See, moreover, Liv. 35.20.9–10 (*sed his duobus primum senatus consulto, deinde plebei etiam scito permutatae provinciae sunt: Atilio classis et Macedonia, Baebio Brutti decreti*); Liv. 35.40.5 (*eodem hoc anno Vibonem colonia deducta est ex senatus consulto plebique scito*). C) See, finally, Cic. *Sen.* 4.11 (*qui consul iterum, Sp. Carvilio collega quiescente, C. Flaminio tribuno plebis, quoad potuit, restitit agrum Picentem et Gallicum viritim contra senatus auctoritatem dividenti*; see Val. Max. 5.4.5; Cato *or.* 2.10; Cic. *Brut.* 14.57; *inv.* 2.17.52; *acad. prior.* 2.13; *leg.* 3.8.20; Plb. 2.21,7–8); Liv. 21.63.3 (*invisus etiam patribus ob novam legem, quam Q. Claudius tribunus plebis adversus senatum atque uno patrum adiuvante C. Flaminio tulerat, ne quis senator cuive senator pater fuisset maritimam navem quae plus quam trecentarum amphorarum esset haberet – id satis habitum ad fructus ex agris vectandos, quaestus omnis patribus indecorus visus*); Liv. 38.36.7–9 (*de Formianis Fundanisque municipibus et Arpinatibus C. Valerius Tappo tribunus plebis promulgavit, ut iis suffragii latio – nam antea sine suffragio habuerant civitatem – esset. huic roga-*

VI. *Auctoritas* and *plebisscita* between 449 BC and 339 BC

In considering the years between the *leges Valeriae Horatiae* (449 BC) and the *leges Publiliae Philonis* (339 BC), three different features (α, β, γ) composing of a unitary scheme emerge from the great number of the plebiscites enacted by tribes and from the scant number of rules aimed at the process to bring in, and vote on, plebeian resolutions[72].

α) In two cases, the previous patrician sanction is described in general terms and conceived of as a procedural requirement in order submit tribunician proposals to the *plebs*.

441 BC: the tribune Poetelius drew up some proposals for the so-called agrarian reforms; yet, the consuls did not want to bring the matter before the Senate. This behaviour, and the motivation behind it, seem to imply that, even prior to 339 BC some form of senatorial approval was required before the vote of a plebiscitarian bill[73].

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tioni quattuor tribuni plebis, quia non ex auctoritate senatus ferretur, cum intercederent, edocti, populi esse, non senatus ius suffragium, quibus velit,impertire, destiterunt incepto rogatio perlata est, ut in Aemilia tribu Formiani et Fundani, in Cornelia Arpinates ferrent; atque in his tribubus tum primum ex Valerio plebisscito censi sunt); see, moreover, Plut. *Flam.* 18.2 (ἐξέβαλον δὲ τῆς βουλῆς τῶν οὐκ ἄγαν ἐπιφανῶν τέσσαρας, προσεδέξαντο δὲ πολίτας ἀπογραφομένους πάντας, ὅσοι γονέων ἐλευθέρων ἦσαν, ἀναγκασθέντες ὑπὸ τοῦ δημάρχου Τερεντίου Κουλέωνος, ὃς ἐπηρεάζων τοῖς ἀριστοκρατικοῖς ἔπεισε τὸν δῆμον ταῦτα ψηφίσασθαι); Liv. 34.1.2, 8 (*M. Fundanius et L. Valerius tribuni plebi ad plebem tulerunt de Oppia lege abroganda … nulla deinde dubitatio fuit quin omnes tribus legem abrogarent. viginti annis post abrogata est quam lata*); Cic. *Sest.* 48.103 (*agrariam Ti. Gracchus legem ferebat: grata erat populo; fortunae constitui tenuiorum videbantur; nitebantur contra optimates, quod et discordiam excitari videbant et, cum locupletes possessionibus diuturnis moverentur, spoliari rem publicam propugnatoribus arbitrabantur*; cf. App. *bell. civ.* 1.9 ff.; Plut. *Ti. Gracch.* 8–13; Liv. *perioch.* 58; Cic. *leg. agr.* 2.5.10, 2.12.31; Vell. 2.2.3; Auct. *vir. ill.* 64; CIL, I, n. 200, Meyer, *or. rom. fr.*, p. 160: *oratio C. Metelli contra Ti. Gr. de l. agr.*); Plut. *Mar.* 29.1–2 (ὁ Σατορνῖνος εἶτα δημαρχῶν ἐπῆγε τὸν περὶ τῆς χώρας νόμον, ᾧ προσεγέγραπτο τὴν σύγκλητον ὀμόσαι προσελθοῦσαν, ἢ μὴν ἐμμενεῖν οἷς ἂν ὁ δῆμος ψηφίσαιτο καὶ πρὸς μηδὲν ὑπεναντιώσεσθαι. τοῦτο τοῦ νόμου τό μέρος προσποιούμενος ἐν τῇ βουλῇ διώκειν ὁ Μάριος οὐκ ἔφη δέξεσθαι τὸν ὅρκον, οὐδὲ ἄλλον οἴεσθαι σωφρονοῦντα: καὶ γάρ εἰ μὴ μοχθηρὸς ἦν ὁ νόμος, ὕβριν εἶναι τὰ τοιαῦτα τὴν βουλὴν διδόναι βιαζομένην, ἀλλὰ μὴ πειθοῖ μηδὲ ἑκοῦσαν; cf. Cic. *Sest.* 16.37; *Balb.* 21.48; *dom.* 31.82; *leg.* 2.6.14, 3.11.26; App. *bell. civ.* 1.29; Liv. *perioch.* 69; Schol. Bob., p. 272, 347; Auct. *vir. ill.* 73). To summarise: most plebeian resolutions turn out to be directly promoted by the Senate and then brought before the council by the tribunes (A); in two cases the plebiscite is claimed to reproduce the content included in a precedent *senatus consultum* (B); the testimonia present, in only a few cases, plebeian resolutions either promoted by the tribunes and brought forward in spite of the Senate's vote, or promoted by the tribunes and submitted to the council without asking the Senate's prior approval (C).

72 See Table n. 3.

73 Liv. 4.12.3–4: *causa seditionum nequiquam a Poetelio quaesita, qui tribunus plebis iterum ea ipsa denuntiando factus, neque ut de agris dividendis plebi referrent consules ad senatum pervincere potuit* (Rotondi, *Leges publicae populi Romani* 1912, 209).

415 BC: Decius brought in a bill for a colony to be sent to Bolae; yet, his colleagues vetoed this, claiming that they would not allow any plebiscite to be passed without prior senatorial approval[74].

β.1) In a number of episodes, by describing what happened before the enactment of a given plebiscite, Livy emphasises senatorial consent, or at times the absence of senatorial obstruction, for the bill to be voted by the *plebs*[75].

445 BC: Canuleius' bill on intermarriage was first brought before the council at the beginning of the year. It was only after many delays and obstructions, which antagonised the *plebs*, that the *patres* finally gave their pre-approval, so that the measure could be voted for by the tribes[76].

440 BC: After a dispute between the two opposing orders over a famine, the tribunes, without any senatorial opposition, brought a bill before the *plebs* to give

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74 Liv. 4.49.6: *temptatum ab L. Decio tribuno plebis ut rogationem ferret qua Bolas quoque, sicut Labicos, coloni mitterentur, per intercessionem collegarum qui nullum plebi scitum nisi ex auctoritate senatus passuros se perferri ostenderunt, discussum est*; cf. Liv. 4.49.7–12, 51.3–6; Diod. Sic. 13.42 (Rotondi, *Leges publicae populi Romani* 1912, 216; Flach, *Die Gesetze der frühen römischen Republik* 1994, 257 ff.). See Petrucci, *Colonie romane e latine nel V e IV sec. a. C.* 2000, 80 f.; Id., *Osservazioni sui rapporti tra organi della res publica* 2006, 708 (who rightly mainatins that the plebeians did not accept that any plebiscite be voted on with no senatorial approval); see, moreover, Chiabà, *Roma e le priscae Latinae coloniae* 2012, 97, 137 (who, erroneously states that "il plebiscito con l'istanza di fondazione, qualora fosse stato votato, avrebbe comunque necessitato della delibera senatoria per diventare attuativo").

75 See, moreover, Liv. 7.16.1 (*haud aeque laeta patribus insequenti anno C. Marcio Cn. Manlio consulibus de unciario fenore a M. Duillio L. Menenio tribunis plebis rogatio est perlata; et plebs aliquanto eam cupidius scivit*; cf. Liv. 7.27.3, 7.42.1; App. *bell. civ.* 1.232, Gai. 4.23): in 357 BC M. Duilius and L. Menenius, tribunes of the *plebs*, proposed a famous measure which fixed the monthly rate of interest at 8,3 per cent. Albeit not so welcome to the patricians, it was voted for by the *plebs*, with even more eagerness than the *lex Poetelia* against canvassing. According to Humbert, *I plebiscita* 2012, 323, "la disposizione, certamente rogata, è tuttavia sprovvista di valore normativo". Yet, even if one believes in Tacitus (Tac. *ann.* 6.16: *sane uetus urbi fenebre malum et seditionum di scordi arumque creberrima causa, eoque cohibebatur antiquis quoque et minus corruptis moribus. nam primo duodecim tabulis sanctum, ne quis unciario fenore amplius exerceret, cum antea ex libidine locupletium agitaretur; dein rogatione tribunicia ad semuncias redactum; postremo uetita uersura*), plausibly either the *lex* of the Twelve Tables (which first provided the interest of a twelfth of the capital per month) had fallen into desuetude and so had to be re-enacted, or after the Gauls had set fire to Rome, the legal cap was set higher, while, in 357 BC, it was lowered. All in all, it is not correct to assume, as Humbert does, that "si trattava solo di reclamare l'applicazione di una disposizione anteriore".

76 Liv. 4.6.3: *plebes ad id maxime indignatione exarsit, quod auspicari, tamquam invisi dis immortalibus, negarentur posse; nec ante finis contentionum fuit, cum et tribunum acerrimum auctorem plebes nacta esset et ipsa cum eo pertinacia certaret, quam victi tandem patres ut de conubio ferretur concessere* (Rotondi, *Leges publicae populi Romani* 1912, 207; Flach, *Die Gesetze der frühen römischen Republik* 1994, 230 f.).

Minucius the *cura annonae* so as to deal with, in a time of scarcity, the corn-shortage (either for a year or for an indefinite period)[77].

432 BC: The leading plebeians wanted the tribunes to promulgate a statute to prevent individuals from canvassing for office, and thus, bribery. There was great contention between patricians and plebeians, but eventually the tribunes succeeded in carrying the statute. That is, they were allowed to bring it before the *plebs* and have it approved[78].

367 BC: After a great many unfortunate setbacks due to numerous tribunician vetoes, in addition to patrician speeches which deferred the vote of the tribes, the tribes were finally allowed to vote on the plebeian consulship. In other words, the tribunes managed to make the dictator bring the bill before the Senate and to attain approval for a vote by the *plebs*[79]. However, this was only possible once Licinius and Sextius were elected for the tenth time and a statute for five out of ten *viri sacris faciundis* were selected among plebeians was passed.

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77 Liv. 4.12.8: *postremo perpulere plebem, haud adversante senatu, ut L. Minucius praefectus annonae crearetur*; cf. Liv. 4.13.7; Plin. *nat.* 18.15, 34.21; Dion. Hal. 12.1.5 (Rotondi, *Leges publicae populi Romani* 1912, 209). Due to the late Republican association of the Minucii with the grain supply, Lucius Minucius was anachronistically interpreted as *praefectus annonae* by Licinnius Macer (who, indeed, saw his name listed in the *libri lintei*). On the Spurius Maelius' and Lucius Minucius' 'saga' (whose oldest version is found in Dion. Hal. 12.4.2–5), where the former is accused by the latter of attempted tyranny for using his own wealth and acquaintances to acquire grain, and so to meet with the people's needs, in order to finally obtain absolute power, see Mommsen, *Sp. Cassius* 1871, 256 ff.; Pais *Ancient Legends of Roman History* 1906, 204 ff.; Ogilvie, *Commentary on Livy's Books 1–5* 1965, 550 ff.; Lintott *The Tradition of Violence* 1970, 12 ff.; Forsythe, *The Historian L. Calpurnius Piso Frugi* 1994, 301 ff.; see a more recent analysis in Barbati, *Dittatura e stato di necessità* 2018, 258 ff., 271. Accordingly, it is untenable to repudiate this *plebisscitum* by arguing that no 'statute' (no matter whether *lex rogata* or resolution of the *plebs*) could have appointed a magistrate (see Siber, *Die plebejischen Magistraturen* 1936, 46; Humbert, *I plebiscita* 2012, 323, and Id., *La normativité des plebiscites* 1998, 227): the *plebs*, with the Senate's consent, may have vested an officer already in charge with a special task, i. e. without creating any new *magistratus*.

78 Liv. 4.25.13–14: *placet tollendae ambitionis causa tribunos legem promulgare ne cui album in vestimentum addere petitionis causa liceret. parva nunc res et vix serio agenda videri possit, quae tunc ingenti certamine patres ac plebem accendit. vicere tamen tribuni ut legem perferrent* (Rotondi, *Leges publicae populi Romani* 1912, 211; Flach, *Die Gesetze der frühen römischen Republik* 1994, 246 ff.).

79 Liv. 6.42.9: *et per ingentia certamina dictator senatusque victus, ut rogationes tribuniciae acciperentur;* Ampel. 25.4; Diod. Sic. 12.25 2; Flor. 1.17 (1.26.1–4); Liv. 6.35–37, 6.42; Plut. *Cam.* 42.7; D. 1.2.2.26; Schol. Cic. Ambros. (p. 275 Stangl); *vir. ill.* 20.1; Zonar. 7.24.4 (Rotondi, *Leges publicae populi Romani* 1912, 216 ff.; Flach, *Die Gesetze der frühen römischen Republik* 1994, 294 ff.).

358 BC: Poetelius, once the *patres* gave their approval, brought his bill against *ambitio* before the people[80].

β.2) Against the background of these episodes and the rules already considered, it is plausible to suggest that two additional passages further demonstrate that it was the proposal of a bill, and not the final resolution, which had to be approved by the *patres*, even if there is no clear mention of when such a sanction occurred.

449 BC: Duillius' *plebisscitum* – which qualifies as a capital crime, both leaving the *plebs* without tribunes and appointing magistrates without *provocatio* – is presented as a repetition of the *lex Valeria Horatia*, even if the connection between these two identical measures remains quite obscure[81]. According to Livy it is for this reason that the patricians finally allowed this to pass, although they never reached a general consensus on the matter[82].

366 BC: Camillus, acting as dictator for the fifth time, found no obstacle in being granted the military triumph, since the *patres* were fully in agreement with the *plebs*[83].

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80 Liv. 7.15.12–13: *eodem anno duae tribus, Pomptina et Publilia, additae; ludi votivi, quos M. Furius dictator voverat, facti; et de ambitu ab C. Poetelio tribuno plebis auctoribus patribus tum primum ad populum latum est; eaque rogatione novorum maxime hominum ambitionem, qui nundinas et conciliabula obire soliti erant, conpressam credebant* (Rotondi, *Leges publicae populi Romani* 1912, 221; Elster, *Studien zur Gesetzgebung* 1976, 12 ff.). This was the first statute of fifteen, regulating political corruption (*crimen ambitus*): the *lex Poetilia*, indeed, banned campaigning by *homines novi* for candidates in market-places and settlements, *nundinae et conciliabula*, outside Rome (see, as taking a rather conservative approach about this early criminal provision, Fascione, *Alle orgini della legislazione de ambitu* 1981, 269, 272 f.; Id., *Crimen e quaestio ambitus* 1984, 24; Hölkeskamp, *Die Entstehung der Nobilität* 1987, 83 ff.; Wallinga, *Ambitus* 1994, 411 ff.; Cornell, *The Beginnings of Rome* 1995, 469, nt. 33; Mouritsen, *Plebs and Politics* 2001, 35; Rosillo López, *La corruption a la fin de la republique romaine* 2005, 40, 48; *pace* Binder, *Die Plebs* 1909, 482; Bleicken, *Lex Publica* 1975, 265, nt. 60; Nadig, *Ardet ambitus* 1997, 19, nt. 6; Humbert, *I plebiscita* 2012, 322 f., and Id., *La normativité des plebiscites* 1998, 226).

81 According to Humbert, *La normativité des plébiscites* 1998, 213, nt. 9 "Tite-Live n'à pas compris la séquence logique *plebisscitum* – loi (ou *senatusconsultum*) et, surtout, n'à pas perçu l'identité substantielle des revendications de la plèbe et des lois comitiales; il n'à pas vu dans les secondes la réponse aux premières" and "l'analyse des modernes … ne vaut pas plus". More precisely, as Zuccotti, *'Sacramentum civitatis'* 2016, 77, remarks, "nel 449 una *lex Valeria Horatia de provocatione* … avrebbe stabilito il divieto di creare magistrature *sine provocatione*, sanzionando tale eventualità con la sacertà", while "un successivo plebiscito … avrebbe anacronisticamente punito tale fattispecie senz'altro con la pena capitale".

82 Liv. 3.55.14–15: *M. Duillius deinde tribunus plebis plebem rogavit plebesque scivit qui plebem sine tribunis reliquisset, quique magistratum sine provocatione creasset, tergo ac capite puniretur. haec omnia ut invitis, ita non adversantibus patriciis transacta, quia nondum in quemquam unum saeviebatur*; cf. Cic. *leg.* 3.9; Diod. Sic. 12.25.3 (Rotondi, *Leges publicae populi Romani* 1912, 203; Flach, *Die Gesetze der frühen römischen Republik* 1994, 221 f.).

83 Liv. 6.42.8: *dictatori consensu patrum plebisque triumphus decretus* (Rotondi, *Leges publicae populi Romani* 1912, 220). See Petrucci, *Il trionfo nella storia costituzionale romana* 1996, 44, 5

γ) One case in particular seems to prove that a bill was not subject to any formal patrician sanction before being brought before a vote, on condition that the tribune himself had started the process on behalf of the Senate (and, accordingly, the tribunician bill's contents were consistent with the senatorial stance).

413 BC: The Senate demanded the plebeian tribunes to consult the *plebs* on Postumius' murder and to appoint a court for the enquiry. The *plebs* delegated the matter to the consuls[84], in accordance with public opinion[85].

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nt. 11; Cascione, *Consensus* 2003, 81 and nt. 113; see, for the link between *triumphus* and *consensus patrum*, Liv. 31.20.6; Liv. 37.46.2; Liv. 37.58.3; Liv. 40.52.4–7; Liv. 39.42.2.

84 Liv. 4.51.2–3: *his consulibus principio anni senatus consultum factum est, ut de quaestione Postumianae caedis tribuni primo quoque tempore ad plebem ferrent, plebesque praeficeret quaestioni quem vellet. a plebe consensu populi consulibus negotium mandatur*; cf. Flor. 1.17 (1.22.2); Liv. 4.49.7–4.50.6; Zonar. 7.20.2 (Rotondi, *Leges publicae populi Romani* 1912, 213 f.; Flach, *Die Gesetze der frühen römischen Republik* 1994, 259 f.). Postumius, a military tribune with consular power, had been stoned to death by his troops because, against his promise, he had denied them the spoils. Thus, the Senate invited the tribunes to ask the plebeians whom they would choose to lead the investigation. The consuls were 'authorised' to investigate the matter and to punish the guilty. According to Humbert, *I plebiscita* 2012, 323, "la critica moderna è unanime nel negare ogni storicità a questa pesante invenzione" (see also Id., *La normativité des plébiscites* 1998, 228). Such a severe statement does not reflect the truth. On the one hand, some scholars seem to question the historicity of the episode, rather than radically deny it (see Ogilvie, *Commentary on Livy's Books 1–5* 1965, 611 ff.; Santalucia, *Studi* 1994, 183, nt. 118; Venturini, *Processo penale* 1996, 98, 106; Giuffrè, *La repressione criminale* 1997, 187). On the other hand, other scholars advocate a more conservative approach: on the basis of the Livian passage concerned, they believe that a joint responsibility for setting up *quaestiones* between the Senate and the people "may go as far back as the fifth century", and that "a particular historical circumstance – namely, the tension between the patricians and the plebeians during the Struggle of the Orders that was being exacerbated by the actions and subsequent death of Postumius – may explain the specific reasons for a joint decision on the part of the plebeians and the Senate" (in these terms, see Gaughan, *Murder was not a crime* 2010, 99). The same can be stated with regard to a *plebisscitum* voted prior to the enactment of the *leges Valeriae Horatiae* in 449 BC: Icilius proposed a bill that no-one should be punished for the recent plebeian secession, this measure being a mere doublet of a rule already established in a precedent senatorial consult (Liv. 3.54.5: *factum senatus consultum … et ne cui fraudi esset secessio militum plebisque*. Liv. 3.54.14: *tribunatu inito L. Icilius extemplo plebem rogauit et plebs sciuit ne cui fraudi esset secessio ab decemuiris facta*; Liv. 3.59.1–2: *ingens metus incesserat patres, uoltusque iam iidem tribunorum erant qui decemuirorum fuerant, cum M. Duillius tribunus plebis, inhibito salubriter modo nimiae potestati, 'et libertatis' inquit, 'nostrae et poenarum ex inimicis satis est; itaque hoc anno nec diem dici cuiquam nec in uincla duci quemquam sum passurus'*; Rotondi, *Leges publicae populi Romani* 1912, 203; Flach, *Die Gesetze der frühen römischen Republik* 1994, 208 ff.).

85 See Mommsen, *Römisches Staatsrecht* III.1 1887, 305, nt. 2, who distinguishes between "Volksabstimmung" and "öffentliche Meinung" as a result of the "factische Gesammtwille der Gemeinde" (cf. Nocera, *Il potere dei comizi* 1940, 162); see, moreover, Catalano, *Contributi allo studio del diritto augurale* 1960, 26, nt. 22, who points out that *consensus populi* may stand

δ) Only on two occasions does it appear that the threefold scheme, above depicted, failed. Indeed, two *iussus* (which some authorities qualify as *leges populi*, or as one *plebisscitum* and, respectively, one *lex*, rather than two plebiscites)[86] – both

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for "opinione pubblica" and, as far as *iussus* concerns, believes that "non si può irrigidire il valore della volontà comiziale nella formula del comando" (cf., in similar terms, Cascione, *Consensus* 2003, 72 and nt. 86).

86 Taking aside both Siber, *Die plebejischen Magistraturen* 1936, 45 (who espouses, as usual, a hyper-critical approach, and conceives of both triumphs as forgeries), and Graeber, *Auctoritas patrum* 2001, 124 f. (who considers the plebiscitarian triumph of 449 BC "mit Sicherheit ein annalistisches Phantasieprodukt", while, as for the case of 356 BC, "vor welchen Komitien der Diktator beide Anträge einbrachte, wird zwar nicht eindeutig gesagt, aber da die patrizisch – plebejischen *comitia tributa* wohl überwiegend für die Wahlen der niederen Magistrate zuständig waren und auch kein weiterer Fall bekannt ist, in dem ein Ober- oder Höchstmagistrat die Genehmigung seines Triumphs vor diesen Komitien rogiert hat, kommen nur die *comitia centuriata* in Frage"), suffice it to consider the following five main trends of thought. 1. Rotondi, *Leges publicae populi Romani* 1912, 206, 223 (according to whom, if the triumph of 449 was a case of *plebisscitum*, as for the year 356 BC, the measure would be voted either "nei comizi … tributi … diretti dal dittatore", or "più probabilmente, nei *concilia plebis*"; moreover, "questi plebisciti accordanti il trionfo non rappresentano in sostanza se non il gradimento del popolo e la constatazione della non opposizione dei tribuni"); 2. Biscardi, *'Auctoritas patrum'* 1987, 33 ff. (rather inclined to identify the *iussus populi* of 356 BC, unlike that of 449 BC, with a *lex rogata*); Mannino, *L'"auctoritas patrum'* 1979, 75, 89 and nt. 50 (in 356 BC "il ditattore avrebbe ottenuto il trionfo senza la ratifica senatoria della deliberazione popolare", while in 449 BC the triumph would be granted by the *plebs*); Lanfranchi, *Les Tribuns de la Plèbe* 2015, n. 53 and n. 113 (who identifies the *iussus* of 449 BC with a "plébiscite validé" and, as for the triumph of 356, generally supports the idea of a *lex rogata*); 3. Ridley, *Livy and the concilium plebis* 1980, 340, 343 (who claims that, due to Livy's account, in 449 BC *comitia* of the whole *populus* would grant the triumph, while in 356 a tribunician law would be more plausible); 4. Richardson, *The triumph* 1975, 58 (who champions the view that the Senate permitted triumphs "through requests to the tribunes to act in the *comitia tributa*, which could extend the *imperium* of the returning general"); Staveley, *Tribal Legislation before the lex Hortensia* 1955, 9, nt. 1 (who explicitly counts the permission for the triumph of 356 BC among the comitial laws voted by tribes; moreover, as already noted, he agrees with Mommsen that the *comitia tributa* were established in 449 BC, so that such assembly could be the body that awarded the triumph to Valerius and Horatius); Drogula, *Commanders and Command* 2015, 111 f. (who, considering both cases at stake, maintains that "people … alone could authorize the temporary grant of *imperium* necessary to lead the victorious army through the streets of Rome"); Rich, *The Triumph* 2014, 210 (who believes in an "approval by the popular assembly rather than the Senate" for the year 449, and the year 356 BC alike; in his opinion, generally speaking, "a law had to be passed by the popular assembly granting them *imperium* for the day of their entry into the city, since their *imperium*, by virtue of which they commanded their lictors and troops, would otherwise lapse when they crossed the *pomerium*"); 5. Petrucci, *Il trionfo nella storia costituzionale romana* 1996, 34 ff., 45, 52 ff. (who sees in Liv. 10.37.10 a 'summary' of the previous constitutional experience and, at the same time, a move towards the new discipline of triumph based on the *plebs*' – and not on

linked with the highly controversial matter of granting a triumph – were adopted, despite lacking prior senatorial approval. That is to say, this was passed merely in accordance with the assembly's majority vote[87].

449 BC: Icilius' bill for the triumph of the consuls of that year, although many patricians spoke against it, was approved by all the tribes, and thus for the first time, victorious commanders triumphed only *iussu populi*. This enactment sounds, in any case, revolutionary and amounts to an extraordinary breach of the *status quo*, and to a first usurpation of apparently patrician prerogatives[88].

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the *populus' – iussus*); Humbert, *I plebiscita* 2012, 322, and Id., *La normativité des plebiscites* 1998, 226 (who considers both triumphs as examples where the *patres' consensus* did not meet the *plebs'* will); Sandberg, *Magistrates and Assemblies* 2001, 139 f. (who, since "the circus Flaminius was used as a meeting place for the *concilium plebis* also in later times" [Liv. 27.21.1; Plut. *Marc.* 2.7; Cic. *Att.* 1.14.1], believes that the plebeian assembly, once summoned at the *prata Flaminia* in the *Campus Martius*, "granted the consuls L. Valerius Poplicola Potitus and M. Horatius Barbatus the triumph that the Senate had not been willing to grant them"; the same assembly would be convened in 356 BC).

87 See Versnel, *Triumphus* 1970, 164 ff., for an accurate discussion of a *triumphator*'s need for both *imperium* and *auspicium*; cf. Firpo, *Allora per la prima volta si celebrò un trionfo* 2007, 97 ff. and Itgenshorst, *Tota illa pompa* 2005, 148 ff. for detailed discussions on the historicity of Livy's descriptions of early triumphs; see, moreover, Ogilvie, *Commentary on Livy's Books 1–5* 1965, 519; Oakley, *A Companion to Livy VI–X* 1997, 188. A military commander who, after defeating the enemies, desired a triumph – i. e. the highest military award – was not permitted, as a rule, to cross the *pomerium*: accordingly, a request for a triumph was highly unusual because it represented a violation of the normal prohibition of yielding one's military *imperium* within the city. His 'right' to celebrate a triumph had to be claimed at a special meeting of the Senate convened *extra pomerium*, and the triumph marked the first moment when he was permitted to enter the city retaining his *imperium* (Liv. 26.21.1, 28.9.5, 31.47.7, 33.22.1, 34.39.5, 38.44.9–11, 39.4.2, 39.29.4, 42.21.6–7, 45.35.4; Plut. *Caes.* 13.1; Plut. *Cat. Min.* 31.2–3; Plb. 6.15.7–8; Cic. *Att.* 4.18.4, 7.1.5; Cic. *Q. frat.* 3.2.2; Vell. 1.10.4). If the Senate approved the commander's request, it is commonly held that the tribunes of the *plebs* brought forward a *rogatio* aimed at a *iussus* that gave the *triumphator* the permission to enter the city possessing *imperium* on the day of his triumph (cf. Liv. 26.21.5 and 45.35.4, with Richardson, *The triumph* 1975, 59 f.; Beard, *The Triumph* 2007, 187 ff.). On a very few occasions, commanders celebrated triumphs in Rome despite the Senate had refused to grant permission: in such cases, the commander could obtain a necessary *iussus* from the 'popular' vote (Liv. 3.63.8–11, 6.30.2–3, 7.17.9, 10.37.6–12, 21.63.2; Suet. *Tib.* 2.4; Dion. Hal. 11.50.1, 17-18.5.3; Dio Cass. fr. 74.2; Plut. *Marc.* 4.6; Zonar. 8.20.7; Oros. 5.4.7).

88 Liv. 3.63.8–11: *ubi cum ingenti consensu patrum negaretur triumphus, L. Icilius tribunus plebis tulit ad populum de triumpho consulum … nunquam ante de triumpho per populum actum; semper aestimationem arbitriumque eius honoris penes senatum fuisse … omnes tribus eam rogationem acceperunt. tum primum sine auctoritate senatus populi iussu triumphatum est*; Liv. 10.37.10; Dion. Hal. 11.50.1; Zonar. 7.19.1 (Rotondi, *Leges publicae populi Romani* 1912, 213; Flach, *Die Gesetze der frühen römischen Republik* 1994, 223 f.). On the triumphs granted *sine auctoritate patrum* to L. Valerius Publicola and M. Horatius Barbatus in 449, see also Petrucci, *Il trionfo nella storia costituzionale romana* 1996, 33 ff., (who takes into account, alongside Livy, Dion. Hal. 11.49.3–

356 BC: Marcius Rutilus, the first plebeian to be appointed as a dictator, was granted the triumph by the 'people' without any patrician authorisation[89]. However, this may also be read as 'by the *plebs*', given the context and the very generic use of the term *populus* by Livy.

VII. *Auctoritas* and *plebisscita* between 339 BC and 287 BC

We now turn to the period between the enactment of the *lex Publilia Philonis de plebisscitis* in 339 BC and the crucial year in which, in circumstances that are not clear due to the scarcity of evidence, the dictator Q. Hortensius passed his famous law. This was later thought to be definitive in terms of *exaequatio* and bestowed upon the resolutions of the *plebs* equal status to that of the statutes voted in the assemblies of the entire Roman populace (287 BC)[90]. What is particularly striking about this, however, is that, in the light of the cases attested to in the sources, the general scheme that has been depicted above for the period of 449–339 BC seems to be almost unaltered here[91].

Ancient historians fall within two schools of thought in this regard, and either confirm the grant of a previous senatorial approval (α) or allude to it as a regular procedural requirement (β).

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5). A previous case of triumph concerned P. Servilius Priscus, consul in 495 BC (Dion. Hal. 6.30.2–3).

89 Liv. 7.17.9: *castra quoque necopinato adgressus cepit et octo milibus hostium captis, ceteris aut caesis aut ex agro Romano fugatis sine auctoritate patrum populi iussu triumphavit* (Rotondi, *Leges publicae populi Romani* 1912, 223; Elster, *Studien zur Gesetzgebung* 1976, 23 f.).

90 See Willems, *Le Sénat de la République romaine* II 1883, 85 f.; Vassalli, *La plebe romana nella funzione legislativa* 1906, 127, nt. 3; Ferenczy, *From the Patrician State to the Patricio-plebeian State* 1976, 193 ff.; Biscardi, *'Auctoritas patrum'* 1987, 88 f. and nt. 294; Maddox, *The economic causes of the lex Hortensia* 1983, 277 ff.; Id., *The binding plebiscite* 1984, 85 ff.; Hölkeskamp, *Die historische Bedeutung der "Lex Hortensia de plebisscitis"* 1988, 292 ff. (who reads the *lex Hortensia* as an exceptional response to popular pressure that contrasted with the process of patricio-plebeian compromise of the previous half-century). Cassius Dio (8.37.2) informs us that a tragic increase of debt caused severe strife between debtors and creditors. The plebeian tribunes proposed that capital be paid back with no interest, or that debts be diluted into three payments: the creditors, after attacking such measures, finally compromised, but the debtors asked for further concessions and Zonar. 8.1 says that this opposition ceased only when the enemy approached Rome. The *Summary* of Livy's eleventh book points out that the *plebs*, after some seditions, seceded to the Janiculum; hence they were brought back to the city by the dictator Q. Hortensius, who died before the full term of his office. It was him – according to Plin. *nat.* 16.37, Gai. 1.3, Gell. 15.27.4, and D. 1.2.2.8 – that passed the measure stating that 'whatever the *plebs* ordered was to be binding on the entire people'.

91 See Table n. 4.

304 BC: As a result of preliminary senatorial approval, a proposal was brought before the people (or perhaps the *plebs*, given the parallel interests of the Senate and the tribunes) for temples and altars to be dedicated only by order of either the Senate or majority of the tribunes themselves[92].

300 BC: The *Ogulnii* drew up a bill to increase the number of augurs and pontiffs and allow admission to these priesthoods by the *plebs*. Eventually the statute was voted on and approved, despite the firm opposition of the patricians and attempts to block the statute by some tribunes. Once again, senatorial consent can be seen to 'ratify' the tribunician proposal, rather than to 'implement' the resolution[93].

287 BC: Shortly before the third (or even fourth) plebeian secession and the consequent enactment of the *lex Hortensia*, the tribunes tried several times to get the *plebs* to approve a bill which stipulated the abolition of debts. This would have in effect released those citizens imprisoned by their creditors; however, their efforts did not prove successful. While it is not definitively stated in the sources, it is possible to suggest that the tribunes failed to meet the requirement consisting in the senatorial preliminary approval[94].

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92 Liv. 9.46.7: *itaque ex auctoritate senatus latum ad populum est, ne quis templum aramve iniussu senatus aut tribunorum plebei partis maioris dedicaret* (Rotondi, *Leges publicae populi Romani* 1912, 234 f.; Elster, *Studien zur Gesetzgebung* 1976, 95 f.). More than a *lex*, this measure looks to be a *plebisscitum* as a result of the combined interests of the Senate and tribunes.

93 Liv. 10.6.9–11*: ceterum, quia de plebe adlegebantur, iuxta eam rem aegre passi patres, quam cum consulatum vulgari viderent. simulabant ad deos id magis quam ad se pertinere: ipsos visuros, ne sacra sua polluantur; id se optare tantum, ne qua in rem publicam clades veniat. minus autem tetendere, adsueti iam tali genere certaminum vinci*; cf. Liv. 10.7.1, 10.9.1–2 (Rotondi, *Leges publicae populi Romani* 1912, 236; Elster, *Studien zur Gesetzgebung* 1976, 103 ff.). The college of pontiffs was originally composed of five or, more likely, six priests, until it was increased to eight or, more likely, nine by means of the so-called *lex Ogulnia* (see Franchini, *Aspetti giuridici del pontificato romano* 2008, 200, nt. 96).

94 Dio Cass. 8.37.2: χρεῶν ἀποκοπὴν εἰσηγουμένων τῶν δημάρχων ὁ νόμος κελεύων τὴν ἄφεσιν τῶν ὑπερημεριῶν πολλάκις μάτην ἐξετέθη, πᾶν ἀπολαβεῖν τῶν δανειστῶν βουλομένων, τῶν δὲ δὴ δημάρχων αἵρεσιν διδόντων τοῖς δυνατοῖς ἢ τοῦτον ἐπιψηφίσαντας τὸν νόμον τὰ ἀρχαῖα μόνα λαβεῖν ἢ καὶ ἐκείνους τοὺς; Zonar. 8.2: Μετὰ δὲ ταῦτα δημάρχων τινῶν χρεῶν ἀποκοπὴν εἰσηγησαμένων, ἐπεὶ μὴ καὶ παρὰ τῶν δανειστῶν αὖτη ἐδίδοτο ἐστασίασε τὸ πλῆθος· καὶ οὐ πρότερον τὰ τῆς στάσεως κατηυνάσθη ἕως πολέμιοι τῇ πόλει ἐπήλθοσαν (Rotondi, *Leges publicae populi Romani* 1912, 238). According to Biscardi, *'Auctoritas patrum'* 1987, 88, the so-called *rogatio de aere alieno minuendo* "non potè essere presentata ai concilia plebis per il voto contrario del senato". Indeed, the two sources do not support such a clear-cut statement, as they merely connect the debt problem and the patrician opposition to the tribunician proposals with the last secession: then, in turn, this secession with the enacting of some of the Hortensian measures in 287 BC. To be more precise, Cassius simply says that, when the so-called proposal *de aere alieno minuendo* was brought forward, to find a solution to the debt question, the provision that ordered the creditors to release their debtors was presented, as usual, pointlessly, since the lenders wanted to recover everything and the tribunes were alternatively proposing that

γ) On several occasions the tribunes began the plebiscitarian process on behalf of the Senate, bringing in a bill which was of interest to the most eminent of the patricio-plebeian nobles.

327 BC: The Senate requested the tribunes force the people to vote to appoint Publilius Philo as commander-in-chief for the entirety of the Greek war[95].

319 BC: Perhaps at the request of the Senate, as inferred by a much later speech by Atilius Regulus, the tribune Antistius brought in and finally succeeded in passing a bill that provided the Senate with the power to punish the Satricans[96].

296 BC: The Senate requested that the tribunes bring forward a bill which made the praetor the magistrate in charge of conducting the election process. This was evidently conducted with a view to appoint a committee of three men, who had the power to implement a project of colonisation (*tresviri colonis deducendis*)[97].

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debts be paid back in three payments. In Zonaras a dispute was started by the masses, when some of the tribunes championed the annulment of debts, since this measure was not granted by the creditors. This was only ended by the interference of enemies threatening the city.

95 Liv. 8.23.12: *actum cum tribunis est, ad populum ferrent, ut, cum Q. Publilius Philo consulatu abisset, pro consule rem gereret, quoad debellatum cum Graecis esset* (Rotondi, *Leges publicae populi Romani* 1912, 230; Elster, *Studien zur Gesetzgebung* 1976, 61 f.).

96 Liv. 26.33.10–11: *per senatum agi de Campanis, qui cives Romani sunt, iniussu populi non video posse, idque et apud maiores nostros in Satricanis factum esse cum defecissent ut M. Antistius tribunus plebis prius rogationem ferret sciscerentque plebs uti senatui de Satricanis sententiae dicendae ius esset. itaque censeo cum tribunis plebis agendum esse ut eorum unus pluresve rogationem ferant ad plebem qua nobis statuendi de Campanis ius fiat*; cf. Liv. 9.12.5, 9.16.2–10 (Rotondi, *Leges publicae populi Romani* 1912, 232; Elster, *Studien zur Gesetzgebung* 1976, 77 ff.).

97 Liv. 10.21.9: *tribunis plebis negotium datum est, ut plebei scito iuberetur P. Sempronius praetor triumviros in ea loca colonis deducendis creare* (Rotondi, *Leges publicae populi Romani* 1912, 237; Elster, *Studien zur Gesetzgebung* 1976, 111 f.). The political backdrop of this case is the following: in the second half of the 4th century BC, the decisions taken by the Senate mirror a *status quo* in which the plebeians do not turn out to be, as they were in the past, against the founding of colonies arranged by *senatusconsultum*; moreover, after the military revolt of 342 BC, an extensive program of access to the land in favour of the lower strata of the *plebs* takes place. More precisely, in dealing with the founding of Minturnae and Sinuessa, Livy confirms that the Senate is given primary responsibility in authorising the colonies; but he also points out that the tribunes were entrusted to obtain a *plebisscitum* giving the power to summon and preside over the assemblies for electing the *tresviri* to the *praetor urbanus* in charge, P. Sempronius, since both supreme magistrates were absent from Rome. The practice previously followed was then changed from here on out, without affecting the Senate's prerogative to found a colony (i. e. it was the consuls who were required to conduct such elections). This helped to establish the presence of younger men in the colonial boards, which were formerly dominated by ex-consuls. It is further noteworthy that, on this occasion, the *plebs*' vote was deemed necessary, due to the constitutional change just mentioned:

295 BC: As a result of a previous *consultum* passed by the Senate, a plebiscite prolonged the military command of Volumnius for a year[98].

VIII. Conclusions

If, as for the period between 449 and 287 BC, the annalistic tradition attests to three separate *leges,* which apparently lay down the same reform concerning the legal standing enjoyed by *plebisscita*, the scrutiny of single *plebisscita* enacted over these years allows for some interesting conclusions.

1. On the one hand, the role played by the *lex Hortensia* is uncontroversial in the sense that nobody can deny that this statute amounted to the last step on the path to the universal validity afforded to the resolutions of the *plebs*[99]. On the other hand, as far as the alleged effects of the *lex Publilia Philonis* are concerned, in the Livian narrative no relevant change in the legal standing of the plebeian resolutions is detectable after 339 BC.

2. The sources present an essentially codified process through which plebiscites acquired universal validity, both before and after the enactment of the supposed *lex Publilia Philonis de plebisscitis*. Yet this process does not seem to imply the 'ratification by the *patres*' (i. e. authorisation placed after the final vote of the *plebs*), either before or after 339 BC. What seems to be required throughout is

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the subsequent testimonies show the consuls and praetors alternating in the presidency of such popular assemblies summoned for elections; however, once the new practice was established, voting a plebiscite to legitimise the praetor's presidency ceased to be considered necessary (see Weigel, *Roman Colonization* 1983, 190 ff.; Petrucci, *Colonie romane e latine nel V e IV sec. a. C.*, 73 ff., 87 ff.; Id., *Osservazioni sui rapporti tra organi della res publica* 2000, 700 ff.; Laffi, *Studi di storia romana e di diritto* 2001, 97 ff.; Id., *Colonie e municipi* 2007, 18).

98 Liv. 10.22.9: *postridie … et L. Volumnio ex senatus consulto et scito plebis prorogatum in annum imperium est* (Rotondi, *Leges publicae populi Romani* 1912, 238; Elster, *Studien zur Gesetzgebung* 1976, 114 ff.).

99 More precisely, in 287 BC the Roman people *una tantum* and unprecedently delegated to the *plebs* the ability to enact general rules. This meant that such a reform did not directly impact the procedure of voting on the plebeian resolutions. Indeed, even after the *lex Hortensia* was passed, many important procedural differences continued to exist between the *iter legis* and the *iter plebissciti*: for instance, only plebeian magistrates could summon the *plebs* to make it vote and the augural law requirements, such as the *auspicia*, did not affect the *concilia* at all. Yet, by providing any future *plebisscitum per se* with universal validity, the Hortensian reform indirectly annihilated the role still played by the senatorial consent given before the vote: whether it was asked or not by the tribunes, whether it was given or not by the senators, it was the voted *plebisscitum* that, *iussu populi*, was binding for the community at large.

'prior consent' to be given by the patrician senators[100], although the form of such consent is not stipulated. Either the Senate requests the tribunes to bring forward a given proposal; or the tribune, acting autonomously, before proposing his bill, must seek senatorial permission.

3. Even if there is no legitimate grounds to dismiss the *leges Publiliae Philonis* as entirely fictitious and, consequently, deny that in 339 BC a first or second step was made towards total equality between *leges* and *plebisscita*, it is necessary to 're-read' such reforms or, at least, to narrow the goal pursued by the proposer at this juncture.

A possible solution could be that we approach the filo-plebeian reforms of 339 in their entirety. Livy states that the dictator Q. Publilius Philo enacts three *leges*, the first two of which provide the resolutions of the *plebs* binding status on all *Quirites* and that laws brought to the centuriate assembly, before going to a vote, be approved by the *patres*. If so, the *exaequatio* supposedly achieved by means of the *Publilia Philonis* legislation could be explained simply as follows: the reforms at issue neither changed the previous standing of the plebiscites (granting them a new and unprecedented universal validity), nor modified the process of the enactment of plebeian resolutions (requiring the *auctoritas patrum* be given before the vote). They simply contributed to the final accomplishment of a 'limited' overlap of the *leges* over *plebisscita*. It seems true that a first 'procedural' *exaequatio* was obtained by Q. Publilius Philo as a result of one of the provisions included in his legislation, i. e. the *lex* that modified the process of passing a centuriate *lex,* by requiring the consent of the *patres* before (and not after) the vote in the assembly. In other words, the dictator, after repeating and, at the same time, establishing the rules to be followed for issuing plebiscites with general validity as a model, made the *leges* closer to general plebiscites from a procedural perspective: not the opposite[101]. As for the Publilian reforms, both *leges* and *plebisscita* needed prior approval by by *patres* to be binding for *omnes Quirites*, even if different rules regarding *auspicia* and magisterial competence to summon the Romans continued to apply to each of the two processes.

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100 It is likely (if not certain) that, by some years after the final assessment of the patricio-plebeian *nobilitas* in 367 BC (which was a prerequisite for plebeians to enter the Senate) and, above all, after the *plebissicitum Ovinium* was enacted between the years 318 and 312 BC (see, e. g., Pelloso, *Ricerche sulle assemblee quiritarie* 2018, 269 ff. and ntt. 46 ff.), what originally was an authorisation exclusively given by the *patres* to the tribunician bills, started to change, at least *de facto*, into a general 'senatorial approval', i. e. an instrument of political intent that reflected more faithfully and intensively the interests of the new ruling class (in the same way that the preventive *auctoritas patrum* perhaps was confused with the preliminary *senatus consultum* after the enactment of the *lex Publilia Philonis de patrum auctoritate*).
101 This means that App. *bell. civ.* 1.266 points out that in 88 BC Sulla and his colleague, by repealing the Hortensian legislation, revived the ancient regime introduced in 449 BC, reaffirmed in 339 BC, and only implicitly abrogated in 287 BC.

4. If all of this is ultimately plausible, then it is the law of 449 BC, rather than the law of 339 BC, that can be credited with the first legal reform affecting the process by which the *plebisscita* were passed with general validity. After the collapse of the second decemvirate, the Roman *populus*, by means of its *iussus*, did not delegate to the *plebs* – once and for all – the vote on universally binding *scita*, but required that every future plebeian resolution must first meet the approval of the *patres* who served in the Senate. This is further supported by the detailed account provided by Dionysius regarding the *lex Icilia de Aventino publicando* of 456 BC: before the Valerio-Horatian legislation, a *plebisscitum* happened to be given binding force for the entire community neither *per se*, nor *auctoritate patrum*; the rules laid down by the plebieans, only if approved first by the *patres* sitting as senators and, then, by the popular assembly (*comitia centuriata*), could be considered binding for the entire community[102].

5. Thus, to return to the results yielded by the current discussion, Table n. 5 succinctly outlines the possible path which, in the history of plebiscites, would have led to the total *exaequatio* that the Roman jurists considered an undeniable legal reality in the 2nd and 3rd centuries AD and, at most, linked to the *lex Hortensia* alone. Prior to 449 BC, a plebiscite obtained general validity only if converted into a popular assembly's statute; from 449 BC to 287 BC, general validity depended on the prior grant of *auctoritas patrum* (since in 339 BC it was the legislative process which was conformed to the plebiscitarian one, rather than the opposite); after 287 BC the plebiscites were *per se*, i. e. irrespective of potential approval by the Senate, bestowed unconditional general validity.

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102 In 456 BC, the so-called *lex Icilia de Aventino publicando* (Liv. 3.31.1, 3.32.7; Dion. Hal. 10.31–2; cf. Rotondi, *Leges publicae populi Romani* 1912, 199 f.; Flach, *Die Gesetze der frühen römischen Republik* 1994, 95 ff.) was voted on and, then, recorded on a bronze pillar in the temple of Aventine Diana. It provided that public land on the Aventine, even the areas illegally occupied, be distributed in lots to the plebeians for building houses. Dionysius' account records the precise procedural *iter* which led to the enactment of the measure. According to the Greek historian, the tribune who first brought forward the proposal, i. e. L. Icilius, submitted it to the consuls and the Senate. After some discussion the law was first approved by the Senate and then enacted by the *centuriae,* who had been summoned by the consuls. This law, considered a *lex sacrata*, evidently bears the name of the tribune Icilius (Liv. 3.31.1; Liv. 3.32.7; Dion. Hal. 10.32.4), whereas a *centuriata lex* would have been named after the consuls; as such, it is plausible that what the Senate approved, and the popular assembly voted on, did not amount to a mere *rogatio*, but to a resolution already passed by the plebeian tribes in a *concilium* (cf. Strachan-Davidson, *The Decrees of the Roman Plebs* 463; Serrao, *Lotte per la terra* 1981, 129 ff., 135 ff.; Oliviero Niglio, *La lex Icilia de Aventino publicando* 1995, 526 ff.; *contra*, see Binder, *Die Plebs* 1909, 473 ff.; Cornell, *The Beginnings of Rome* 1995, 262). In the period prior to the enactment of the *leges Valeriae Horatiae*, such a process – which sought to convert a plebeian resolution into a *lex centuriata* – seems to be unnecessary as long as the tribune brings forward a bill before the *plebs* on behalf of the Senate itself (cf. Liv. 3.54.5; Liv. 3.54.14; Liv. 3.59.1–2): cf. Table n. 2.

Table 1

Trends of scholarly thought	Scholars	Periods			
		Up to 449 BC	449–339 BC	339–287 BC	287–88 BC
1) Rejecting the *Lex Valeria de plebisscitis* (449 BC) and the *lex Publilia Philonis* (338 BC) as unhistorical statues	Meyer/ Siber/ Bleicken/ Magdelain/ Humbert/ Lanfranchi	No general validity	No general validity	No general validity	Unconditional general validity
	Mommsen/ Krueger/ Cuq	Conditional general validity on the grant of 'previous senatorial approval'	Conditional general validity on the grant of 'previous senatorial approval'	Conditional general validity on the grant of 'previous senatorial approval'	Unconditional general validity
2) Accepting the *Lex Valeria de plebisscitis* (449 BC), the *lex Publilia Philonis* (338 BC), and the *lex Hortensia* (287 BC) as historical statutes	Niebuhr	No general validity	Conditional general validity on the grant of 'double authorisation' (approval before the vote and ratification afterwards)	Conditional general validity on the grant of 'previous senatorial approval'	Unconditional general validity
	Platschnick/ Soltau/ Botsford/ Mannino (1979)	No general validity	Conditional general validity on the grant of 'previous senatorial approval'	Conditional general validity on the grant of 'previous senatorial approval'	Unconditional general validity
	Hennes	No general validity	Conditional general validity subject to conversion into a popular assembly's statute	Conditional general validity subject to conversion into a popular assembly's statute	Unconditional general validity

Trends of scholarly thought	Scholars	Periods			
		Up to 449 BC	449–339 BC	339–287 BC	287–88 BC
(cont.)	Madvig/ Karlowa	No general validity	Conditional general validity on the grant of 'senatorial consent' (i. e. no matter how and when)	Unconditional general validity	Unconditional general validity
	Willems	Conditional general validity subject to conversion into a popular assembly's statute	Conditional general validity on the grant of 'subsequent senatorial ratification'	Conditional general validity on the grant of 'previous senatorial approval'	Unconditional general validity
	Nocera	No general validity	Conditional general validity on the grant of 'previous senatorial approval'	Conditional general validity on the grant of 'previous senatorial approval'	Conditional general validity on the grant of 'previous senatorial approval'
	Staveley	Conditional general validity subject to conversion into a popular assembly's statute	Conditional general validity on the grant of 'subsequent senatorial ratification'	Conditional general validity on the grant of 'subsequent senatorial ratification'	Unconditional general validity
	Mannino (1994)	No general validity	Conditional general validity on the grant of 'senatorial consent' (i. e. no matter how and when)	Conditional general validity on the grant of 'previous senatorial approval'	Unconditional general validity
	Zamorani	No general validity	Conditional general validity on the grant of 'subsequent senatorial ratification'	Conditional general validity on the grant of 'previous senatorial approval'	Unconditional general validity

Trends of scholarly thought	Scholars	Periods			
		Up to 449 BC	449–339 BC	339–287 BC	287–88 BC
(cont.)	Tondo	Conditional general validity on the grant of 'previous senatorial approval'	Conditional general validity on the grant of 'double authorisation' (approval before the vote and ratification afterwards)	Conditional general validity on the grant of 'previous senatorial approval'	Unconditional general validity
3) Accepting the *Lex Publilia Philonis* (338 BC), and the *lex Hortensia* (287 BC) as historical statutes	Arangio-Ruiz/ Humm	No general validity	No general validity	Conditional general validity on the grant of 'subsequent senatorial ratification'	Unconditional general validity
	De Martino	No general validity	No general validity	Conditional general validity on the grant of 'previous senatorial approval'	Unconditional general validity
	Guarino	No general validity	No general validity	Conditional general validity subject to conversion into a popular assembly's statute	Unconditional general validity
	Biscardi	No general validity	No general validity (and isolated cases of general validity subject to senatorial approval)	Conditional general validity on the grant of 'previous senatorial approval'	Conditional general validity on the grant of (mandatory but non-binding) 'previous senatorial approval'

Trends of scholarly thought	Scholars	Periods			
		Up to 449 BC	449–339 BC	339–287 BC	287–88 BC
(cont.)	Graeber	No general validity	Conditional general validity on the grant of 'subsequent senatorial ratification' (as a constitutional practice)	Conditional general validity on the grant of 'previous senatorial approval'	Conditional general validity on the grant of 'previous senatorial approval' (*auctoritas patrum* being untouched by the *lex Hortensia*)

Table 2

Year	Sources	*Plebisscitum*	Passed/ Failed/ Vetoed
486–462	Val. Max. 5.8.2; Liv. 2.41.1; Dion. Hal. 8.68.1; Liv. 24.2.6; Dion. Hal. 8.87.4–8.88.1; Liv. 2.42.8; Dion. Hal. 9.1.2–3; Liv. 2.43.2–4; Dion. Hal. 9.2, 5.1–2; Liv. 2.44.1; Dion. Hal. 9.27.1–5; Liv. 2.52.2–3; Dion. Hal. 9.37–38; Liv. 2.54.2; Dion. Hal. 9.51–54; Liv. 2.61.1–2; Dion. Hal. 9.59.1–2; Liv. 3.1.1–2; Dion. Hal. 9.69.1	*Plebisscita agraria*	Failed/ Vetoed (with one exception in 467 BC)
471	Liv. 2.56.1, 57.1; Dion. Hal. 9.43.4; Liv. 2.57.4; Diod. Sic. 11.68.7; Dion. Hal. 9.68.7; Zonar. 7.17.6	*Plebisscitum Publilium Voleronis de plebeis magistratibus creandis*	Passed
462–457	Dion. Hal. 10.1.5, 10.3.4; Liv. 3.9; D. 1.2.2.3; Liv. 3.10.5–14 and 11; Liv. 3.15.1–3, 3.24–25, 3.30	*Plebisscita Terentilia de Vuiris legibus scribundis*	Failed
457	Dion. Hal. 10.30.2; Liv. 3.30.5	*Plebisscitum de tribunis plebis decem creandis*	Passed
456	Dion. Hal. 10.31.2–3 and 10.32.1–4, 10.33.1, 10.40.2, 11.28.2 and 11.28.7, 11.30–11.33.3, 11.37.7, 11.38.2, 11.46.5, 11.50; Liv. 3.31.1–2, 3.32.7, 3.35.4–5, 3.44.3–7, 3.45.4–46.8, 3.47.3–8, 3.48.1–49.4, 3.51.6–11, 3.54.11–15, 3.57.4, 3.58.5, 3.63.8–1, 3.65.9; Zonar. 7.19	*Plebisscitum Icilium de Auentino publicando*	Passed
449	Liv. 3.54.14–15	*Plebisscitum Icilium de secessione*	Passed

Table 3

Year	Sources	*Plebisscitum*	Passed/ Failed/ Vetoed
449	Liv. 3.55.14–15; cf. Cic. *leg.* 3.9; Diod. Sic. 12.25.3; Liv. 3.55.14–15	*Plebisscitum Duillium de tribunis plebis sine successoribus non relinquendis*	Passed
449	Liv. 3.34.15; Liv. 3.55.14–15	*Plebisscitum Duillium de consulibus non creandis sine prouocatione*	Passed
449	Liv. 3.63.8–11; Liv. 10.37.10; Dion. Hal. 11.49.3–5 and Dion. Hal. 11.50.1; Zonar. 7.19.1	*Plebisscitum Icilium de triumpho consulum*	Passed
448	Diod. Sic. 12.25.3; Dio Cass. fr. 22; Liv. 3.65.1–4; Zonar. 7.17	*Plebisscitum Trebonium de tribunis plebis non cooptandis*	Passed
445	Liv. 4.6.3	*Plebisscitum Canuleium de conubio patrum et plebeiorum*	Passed
445	Liv. 4.1.2 and 4.6.5–12	*Plebisscitum de consule plebeio*	Failed
441	Liv. 4.12.3–4	*Plebisscitum Poetelium agrarium*	Failed
440	Liv. 4.12.8; cf. Liv. 4.13.7; Plin. *nat.* 18.15, 34.21; Dion. Hal. 12.1.5	*Plebisscitum de cura annonae L. Minucio tribuenda*	Passed
439	Dion. Hal. 12.4.6; Liv. 4.16.2–5; Plin. *nat.* 18.15, 34.21	*Plebisscitum de L. Minucio honoribus tribuendis*	Passed
436	Liv. 4.21.3–4; Val. Max. 5.3.2g	*Plebisscitum Maelium de Seruili Ahalae publicandis bonis*	Failed
432	Liv. 4.25.9–14	*Plebisscitum de ambitu*	Passed
421–414	Liv. 4.43.5–6, 4.44.7–10, 4.47.7–8, 4.48.1–2 and 48.15–16; Diod. Sic. 13.42.6; Liv. 4.49.6–12 and 51.3–6	*Plebisscita agraria*	Failed/ Vetoed
415	Liv. 4.49.6; cf. Liv. 4.49.7–12.51.3–6; Diod. Sic. 13.42	*Plebisscitum Decium de Bolae colonia deducenda*	Vetoed
414	Diod. Sic.13.42.6; Liv. 4.49.7–12 and 51.3–6	*Plebisscitum Sextium de Bolae colonia deducenda*	Failed
413	Liv. 4.51.2–3; cf. Flor. *epit.* 1.17; Liv. 4.49.7–4.50.6; Zonar. 7.20	*Plebisscitum de quaestione Postumi caedis*	Passed
412–401	Liv. 4.52.2, 4.53.1–7, 5.12	*Plebisscita agraria*	Failed/ Vetoed
395–393	Liv. 5.24.7–5.30.7; Plut. *Cam.* 7.2–11.2	*Plebisscitum Sicinium de parte ciuium Veios deducenda*	Vetoed/ Failed
390	Liv. 5.50.8 and 5.55.1–2	*Plebisscitum de ciuibus Veios deducendis*	Failed
387	Liv. 6.5 and 6.6	*Plebisscitum Sicinium de agro Pomptino*	Failed

Year	Sources	*Plebisscitum*	Passed/ Failed/ Vetoed
368	Liv. 6.38.5–13; Plut. *Cam.* 39.4	*Plebisscitum de multa M. Furio Camillo dicenda*	Passed
367	Liv. 6.42.9; cf. Ampel. 25.4; Diod. Sic. 12.25 2; Flor. *epit.* 1.17; Liv. 6.35–37, 6.42; Plut. *Cam.* 42.7; D. 1.2.2.26; Schol. Cic. Ambros. (Stangl 275); [Auct.] *vir. ill.* 20.1; Zonar. 7.24.4	*Plebisscitum Licinium Sextium de consule plebeio*	Passed
367	App. *bell. civ.* 1.32–34; Cato. orig. 5.3e (Chassignet); Cic. *leg. agr.* 2.21; Colum. 1.3.11; Dion. Hal. 14.12; Gell. 6.3.39–40; Liv. 7.16.9, 10.13.14 and 34.4.9; Plin. *nat.* 18.17; Plut. *Cam.* 39.5–6 and *Tib. Gr.* 8.1–2; Val. Max. 8.6.3; Varr. *rust.* 1.2.9; Vell. 2.6.3; [Auct.] *vir. ill.* 20.3	*Plebisscitum Licinium Sextium de modo agrorum*	Passed
367	Liv. 6.35–39	*Plebisscitum Licinium Sextium de aere alieno*	Passed
367	Liv. 6.37.1, 6.42.2 and 10.8.2–3	*Plebisscitum Licinium Sextium de decemuiris sacris faciundis*	Passed
366	Liv. 6.42.8	*Plebisscitum de triumpho M. Furii Camilli*	Passed
358	Liv. 7.15.12–13	*Plebisscitum Poetelium de ambitu*	Passed
357	Cato. *agr.* 1.1; Liv. 7.16.1	*Plebisscitum Duillium Menenium de unciaro fenore*	Passed
357	Liv. 7.16.8	*Plebisscitum de populo non seuocando*	Passed
356	Liv. 7.17.9	*Plebisscitum de triumpho C. Marci Rutili*	Passed

Table 4

Year	Sources	*Plebisscitum*	Passed/ Failed/ Vetoed
327	Liv. 8.23.12	*Plebisscitum de imperio Publili Philonis prorogando*	Passed
323	Liv. 8.37.8–11; Val. Max. 9.10.1	*Plebisscitum Flauium de Tusculanis*	Passed
319 BC	Liv. 26.33.10–11; Liv. 9.12.5, 9.16.2–10	*Plebisscitum Antistium de Satricanis*	Passed

Year	Sources	*Plebisscitum*	Passed/ Failed/ Vetoed
318	Liv. 9.26.5–9	*Plebisscitum de quaestione instituenda*	Passed
318–312	Cic. *Cluent.* 43.121; Fest. s. v. *praeteriti senatores* (Lindsay 290); Liv. 9.29.6–8; Zonar. 7.19.7	*Plebisscitum Ouinium de senatus lectione*	Passed
312–311	Liv. 9.30.3	*Plebisscitum Atilium Marcium de tribunis Militum creandis*	Passed
312–311	Liv. 9.30.4	*Plebisscitum Decium de duumuiris naualibus*	Passed
304	Liv. 9.46.7	*Plebisscitum de dedicatione templi araeue*	Passed
300	Liv. 10.6.9–11	*Plebisscitum Ogulnium de auguribus et pontificibus*	Passed
298	Liv. 10.13.5–11	*Plebisscitum de lege soluendo Q. Fabio Maximo Rulliano*	Passed
296	Liv. 10.21.9	*Plebisscitum de creatione triumuirum colonis deducendis*	Passed
295	Liv. 10.22.9	*Plebisscitum de L. Volumni imperio prorogando*	Passed
294	Liv. 10.37.9–12	*Plebisscitum de L. Postumii Megelli triumpho*	Passed
287	Dio Cass. 8.37.2; Zonar. 8.2	*Plebisscitum de aere alieno minuendo*	Failed

Table 5

Trend of scholarly thought	Scholar	Periods			
		Up to 449 BC	449–339 BC	339–287 BC	287–88 BC
Accepting the *Lex Valeria Horatia* (449 BC), and the *lex Hortensia* (287 BC) as historical statutes *de plebisscitis*	Pelloso	Conditional general validity subject to conversion into a popular assembly's statute	Conditional general validity on the grant of 'previous senatorial consent'	Conditional general validity on the grant of 'previous senatorial consent'	Unconditional general validity (only implicitly achieved through the *lex Hortensia*)

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