

## DIONYSIUS ON ROMULUS: A POLITICAL PAMPHLET?

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Nature and Nature's laws lay hid in night;  
God said, 'Let Newton be,' and all was light.  
(Alexander Pope)

It did not last; the Devil howling, 'Ho,  
Let Einstein be,' restored the *status quo*.  
(J. C. Squire)

Dionysius of Halicarnassus arrived in Rome at one of the most exciting moments in Roman history, on the morrow of Actium in 30 B.C. He lived in Rome for twenty-two years and at the end, in 7 B.C., his history was finished, an authoritative—indeed, he claimed, the first authoritative—history of Rome from the Foundation down to 265 B.C. His work would be the first in the triad of reliable Greek histories of Rome. Possessing his book and the books of Polybius and Posidonius, a Greek reader would at last have a continuous and reliable history of Rome written for him in Greek and by Greeks from the Foundation down to the late Republic.

In chapters 7 to 29 of book 2, Dionysius gave an analytic account of the ordinances of Romulus, painting him in the character of a Greek *nomothetes*, responsible for nearly everything that was fundamental in *Romanità*.

Romulus did not assume power after his election to be king until he had gone out into an open place and, after prayer to Jupiter, had received divine sanction for his rule by the visible sign of a flash of lightning from the left—this (which was perhaps Etruscan practice but perhaps had its precedent in an act of Ascanius, son of Aeneas) being the origin of the taking of auspices in the presence of augurs by later Roman magistrates after election and before assumption of office, a practice which became increasingly formal in the late Republic when the heavenly signs were often disastrously disregarded, in particular by Crassus when he embarked on his Parthian campaign (2, 5 f.).

Romulus divided the citizens on two different principles (2, 7 f.). The first structural and territorial division was into three tribes, each headed by a tribune; each tribe was divided into ten *curiae* (each under a *curio*), and each *curia* into ten units, each under a *decurio*,<sup>2</sup> a specific tract of land being assigned to each *curia*. Secondly, perhaps in imitation of Athenian Eupatrids and Agroikoi, he divided them socially into Fathers (*Patres*), whose families were called patrician,<sup>3</sup> and plebs (plebeians). The Fathers were so called whether from respect or, unfriendly critics suggested, because they were the only men who could claim to be the sons of free men.

This social division was occupational (2, 9), the patricians being the King's associates in government and jurisdiction, the plebeians being farmers or traders; for it was of the first importance that they should not be idle. This was also the basis of the system of the patronate, by which every plebeian was to select a patrician as his patron, the condition of the plebeians in this humane system being a great improvement on the state of the Thetes in Athens and the Penestai in Thessaly. Indeed (2, 10) it was a system of mutual benefit, for while in a paternalistic fashion the patrician patron protected the interests of his plebeian client at law, the plebeian was expected in exchange to prove himself a good financial investment for his patron, putting his hand into his pocket whenever his patron had to provide a dowry or a ransom and even to find whatever sum his patron was adjudged to pay in a private suit and to share his expenses if he held a magistracy. The relationship was

<sup>1</sup> This, largely rewritten, is the Presidential Address which I gave to the Society on 6 January, 1970. In what follows, Gabba = E. Gabba, 'Studi su Dionigi da Halicarnasso, 1, La costituzione di Romolo', *Athenaeum* n.s. 38, 1960, 175-225; Pohlenz = M. Pohlenz, 'Eine politische Tendenzschrift aus Caesars Zeit', *Hermes* 59, 1924, 157-89; von Premerstein = A. von Premerstein, *Von Werden*

*und Wesen des Prinzipats* (Abh. d. Bayer. Akad. d. Wissensch., phil.-hist. Abt., n. F. 15, Munich, 1937).

<sup>2</sup> This was *communis opinio*. Cf. Cic., *De Rep.* 2, 8, 14; L(ivy) 1, 13, 6-8.

<sup>3</sup> The patriciate was generally believed to have originated with Romulus; cf. L. 1, 8, 7; Tac., *Ann.* 11, 25, 3.

hereditary, marked by the greatest delicacy of feeling on either side, the patron in particular refraining from calling on his client for money that was not strictly due. It was the relationship of a golden age. But its sanctions were formidable. If either party violated the bond by giving evidence or voting, for instance, against the other, the offended partner simply 'devoted him to the gods of the underworld'—which meant that, with no guilt or criminal responsibility, he killed him.<sup>4</sup>

From this relationship at its best, which was as close as a blood-relationship, the client achieved *tranquillitas* (εἰρήνη, 2, 10, 1). In a life which was superior to pleasure (ἐγκρατής . . . ἀπάσης ἡδονῆς), the common canon was not fortune (*Tyche*), but virtue (ἀρετή, 2, 10, 4).

This relationship even extended to Roman colonies and allies (2, 11), each of which could be granted a Roman as its patron,<sup>5</sup> the Senate often recognizing the relationship by empowering a patron to give a binding decision in any dispute involving his colonial or foreign clients.

The proof of the pudding is in the eating. This institution, the *clientela*, explains why for 630 years the whole series of internal political disputes, inevitable in Rome as in any other city, was solved amicably without bloodshed until this enviable *concordia* (ὁμόνοια) was shattered by the Gracchi (2, 11, 2 f.).

Romulus then (2, 12) created a body of a hundred members to assist him in the transaction of public business—*senatus* or *patres conscripti* (πατέρες ἐγγράφοι)—on the lines of the councils of elders which in early days advised Greek kings. Their number was a hundred—three chosen by each tribe, three by each *curia* and a president nominated by himself, 'one to whom he thought fit to entrust the government of the city whenever he himself should lead the army beyond the borders.'<sup>6</sup> This senate was a Greek institution: 'Ἑλληνικὸν δὲ ἄρα καὶ τοῦτο τὸ ἔθος ἦν.

Next (2, 13) a bodyguard for Romulus, based perhaps on the three hundred noble youths who guarded the Spartan kings.<sup>7</sup> There were three hundred, ten selected from each *curia*, and they fought on horseback when conditions allowed. They were called *Celeres* because of being so nippy or, according to Valerius Antias, because they were commanded by a man called *Celer*.<sup>8</sup>

Now for chapter 14, 'il capitolo centrale del pamphlet'<sup>9</sup>—the account of the respective functions of King, Senate and People within the constitution. The King held religious supremacy and the guardianship of the laws; he was supreme judge; he summoned meetings of the Senate and people, and carried out their decisions. The Senate judged minor cases and gave majority decisions on all issues placed before it by the King (on the model of the Gerousia at Sparta). The people, voting by *curiae* in succession, elected the magistrates, ratified the laws and declared war,<sup>10</sup> but no decision of the people was valid unless subsequently ratified by the Senate, an order of events which in the course of history was subsequently reversed, whether for good or ill.<sup>11</sup>

Next manpower (2, 15 f.). Romulus made three commendable regulations in this field.

First, in every family all sons were to be brought up, and so was the first daughter. No child under three was to be destroyed unless maimed or malformed, and only then with the agreement of the family's five nearest neighbours.<sup>12</sup>

<sup>4</sup> *FIRA*<sup>2</sup> i, p. 62 (XII Tab. 8, 21); Serv., *Aen.* 6, 609; Mommsen, *Röm. Forsch.* 1, 384; *Strafr.* 566; Pohlenz (n. 1 above), 168. See Plut., *Mar.* 5, 7–9 for the case of a patron's refusal to give evidence against his client. Plutarch also ascribes the creation of patron-client relationship to Romulus, *Rom.* 13, 7–9.

<sup>5</sup> cf. App., *BC* 2, 4, 14 on the persistence of the practice.

<sup>6</sup> A confusion of *princeps senatus* and *praefectus urbi*, Mommsen, *Staatsr.* 1<sup>3</sup>, 663, n. 3.

<sup>7</sup> On theories current in the first century B.C. of Roman derivations from Sparta, Gabba (n. 1 above) 185 f. The notion appears in Posidonius, *FGH* 87, F 59, 106; Cato, *HRR* 1<sup>2</sup>, fr. 50 f.; D(ionysius of) H(alicarnassus) 2, 49, 4 f. (through the Sabines).

<sup>8</sup> cf. Serv., *Aen.* 11, 603, 'quos *Celeres* appellavit (Romulus) vel a celeritate, vel a duce *Celere* . . . Alii hos *Celeres* ideo appellatos dicunt quod explorationes obirent et quae usus exigeret velocius facerent.'

<sup>9</sup> Gabba 186. This is, of course, an utterly subjective view on the part of those scholars who believe (v.i.) in a *Tendenzschrift*.

<sup>10</sup> DH refers back to this passage (the three powers of the people) in 4, 20, 2 (explicitly), 6, 66, 3 and 7, 56, 3. See Pohlenz 179.

<sup>11</sup> Ratification by Senate repeated, 4, 12, 3. On DH's confusion here between *patrum auctoritas* and *senatus consultum*, Mommsen, *Röm. Forsch.* 1, 235; *Staatsr.* III, 2<sup>3</sup>, 1037, n. 2; Schwartz, *RE* 5, 939–42; Pohlenz 179, n. 5. cf. Gabba 212 ff., who finds a close affinity between this remark of DH and App., *BC* 1, 59, 266.

<sup>12</sup> Cic., *De Legg.* 3, 19 (Twelve Tables); Sen., *De Ira* 1, 15, 2. What happened to younger daughters if there was no obligation to bring them up, but on the other hand they could not be exposed?

Secondly he established a refuge for political refugees from misgovernment (tyrannies or oligarchies) in neighbouring cities, provided they were free men. The place of asylum was 'intra duos lucos', between the two peaks of the wooded Capitol.<sup>13</sup> He promised protection and the gift of citizenship to any—and in the event there were many—who sought refuge there.

Thirdly (2, 16) (a practice which the Greeks would have been the better for following), instead of killing men of military age and enslaving the rest of the population of captured cities (and so allowing their depopulated districts to revert to *saltus* or *pascua*), he left them where they were, sending Roman citizens to join them, often turning the place into a colony and giving Roman citizenship to its captured inhabitants.<sup>14</sup> So, starting with an army of 3,000 infantry and 300 cavalry, at his death Romulus left 46,000 infantry and about a thousand horse. This admirable policy—and not *Tyche*—was pursued by later kings and Roman magistrates (2, 17) and it (not *Tyche*) explains why Rome has never suffered a shortage of manpower. Look at the disastrous results for Greece of the pursuit of a diametrically opposite policy, the deliberate restriction of privileged citizenship: Sparta crippled by its losses at Leuctra, Thebes and Athens extinguished by their losses at Chaironea.<sup>15</sup> Contrast Rome, which could put vast armies into the field in the period of the great wars. At Cannae only some 3,000 out of 80,000 infantry, 370 out of 6,000 cavalry, survived the battle; yet for Rome Cannae was no Leuctra or Chaironea. People who ascribe Roman success to *Tyche* are simple fools.

No less remarkable than Romulus' particular ordinances was the general spirit of his new foundation (2, 18). He encouraged respect for the gods, justice and courage. (There was no *Tyche* about that.) For he knew that good laws and the acceptance of high standards make for piety, temperance, justice and courage in war.

First and foremost, he made a godfearing people (2, 18–23). He erected statues and temples and, in the best Greek manner, created festivals. Rome has none of the loathsome myths concerning the gods which so discredit Greek religion, bringing the gods into contempt or alternatively encouraging their worshippers to copy their immoral doings. It avoids ecstatic cults like Bacchic worship and even when under oracular instruction it has admitted cults like that of the Bona Dea, it has adopted them *more Romano*, leaving it to foreign devotees to carry out the degrading practices of the cult.

The priesthood—sixty for a start, according to Varro—were life-priesthoods, not purchased by simony but conferred by public election: two men from each *curia*, healthy, wealthy men over age for military service. Moreover the priesthoods were often family affairs, the wives of priests being associated with their husbands in ritual and also (this in the Greek manner) children whose parents were still alive (*patrimi matrimique*). A *haruspex* (one from each tribe) had to attend all sacrifices and the election of priests, as of magistrates, required divine sanction.

Particular cults were assigned to individual *curiae*, each of which feasted together in its own banqueting hall (a borrowing of the Spartan *phiditia*), but in a very simple style; for a mark of Roman religion is its simplicity and avoidance of all extravagance, whether in offerings or in sacrificial vessels.

Romulus, then, laid the foundations of Roman religion; Numa and Tullus Hostilius built on them.

Of his laws (2, 24 f.), some were written, the majority not. Justice and Temperance (δικαιοσύνη and σωφροσύνη) were encouraged—as concerns married life, by a single law instituting the excellent form of marriage by *confarreatio*, which worked admirably in the interest of both parties. If a wife was unfaithful or took to drink, her husband and relatives were her judges and could condemn her to death.<sup>16</sup> History again is witness to Romulus'

<sup>13</sup> The name of the place persisted, Cic., *Ad Att.* 4, 3, 4; L. 1, 8, 5. On this legend (often exploited by Rome's enemies) as anti-Roman in invention, Pohlenz 176; H. Strasburger, *Zur Sage von der Gründung Roms* (Heidelberg 1968), 33–5.

<sup>14</sup> Such conduct was later regarded as being in the best Roman tradition. cf. L. 8, 13, 16, 'Exemplo maiorum augere rem Romanam victos in civitatem accipiendo'.

<sup>15</sup> The same favourable contrast with Greek practice was made by Philip V of Macedon in 214 B.C. *SIG*<sup>3</sup> 543, 31–5, and by the Emperor Claudius later, *Tac., Ann.* 11, 24, 5. Cf. Plut., *Flam.* 11, 3–7.

<sup>16</sup> Also (but nothing about drink) in Plut., *Rom.* 22, 3.

success. For five-hundred and twenty years there was not a divorce in Rome—not until 231 B.C.

Add (2, 26 f.) the excellent institution of *patria potestas*, the absolute and persisting power of a father over his sons, something far better than the loose control formulated by Greek lawgivers and well illustrated in the execution of Manlius Torquatus in the Latin war of 340 B.C. The right of a father to sell his son three times was re-enacted by the Decemviri. Romulus must be its originator, whether in a written or an unwritten law, because Numa's prohibition of the sale by a father of his son if he had married with his father's leave implies the existence of a regulation allowing the sale of a son.<sup>17</sup>

Good, too, was Romulus' regulation (2, 28) about the importance of work and his social grading of the different forms of labour, the sedentary, banausic and corrupting trades for slaves and foreigners; agriculture (with the system of *nundinae*) and fighting for free citizens, these two activities being complementary and the fighting suitably remunerative, since there was a fair division among all soldiers of the land, slaves and money captured during a war.

Finally the execution of justice was expeditious (2, 29), and proper emphasis was given to the sanction of fear, from the formidable appearance of Romulus' bodyguard of three hundred with the rods and axes ready to be stripped and used, which were carried by his twelve lictors.

These were Romulus' main regulations. There were others which, Dionysius explains (24, 1; 29, 2), he leaves undescribed.<sup>18</sup>

In 1922 Fritz Taeger turned a spotlight onto this account of Romulus' legislation (hereafter referred to as the capsule).<sup>19</sup> The passage, he declared, could not derive from an annalist, since there is nothing comparable in Livy or in Cassius Dio. Most of it (7, 2–13; 15.; 18–29), he claimed, comes from a good antiquarian source, but chapter 14 (respective powers of king, senate and people) derives from Polybius VI and marks 'die Tendenz der augusteischen Zeit' as suggesting—does it?—that monarchy restores the rule of law after the fall of democracy and republic, as against the view of Plato and Polybius that, in the process of *anakyklosis*, tyranny was the outcome of the last, horrible state of ochlocracy. Chapters 16 and 17 Taeger regarded as Dionysius' own contribution (ὡς ἐμῆ δόξα φέρει, 16, 1), heavily tinged with recollections of Polybius—for, though Polybius never stressed explicitly the peculiar Roman policy of extending its citizenship, he was fully conscious of the Roman advantage in numbers over the Carthaginians (2, 24; 6, 52, 5 ff.)<sup>19a</sup>—and if Dionysius chose to make the comparison with Greek cities, that was because by his time Carthage had ceased to exist and he had to make a more realistic comparison—i.e. with the cities of Greece.

Pohlenz grasped the nettle. The capsule was a misfit in its context. How could Roman religion originate both with Romulus and, later, with Numa? How could a historian writing in the days of restored *Concordia* and the *Ara Pacis*, state that *Concordia* received its death-blow from the Gracchi?<sup>20</sup> Why, if Romulus invented *confarreatio*, was it not by *confarreatio* that the raped Sabine brides were married? Why does Dionysius' history of the monarchy show not the slightest sign of the power of the Senate in government, as described in chapter 14? And the 'Greekness' of the capsule is not in Dionysius' particular shade of Greek; <sup>21</sup> instead of deriving Romulus' measures from Greek antecedents, he goes to Greek states not for derivations but for analogies.

Moreover, it conflicted with orthodox Roman, Polybian, Ciceronian belief that Rome never had a single *nomothetes* and, indeed, with the widespread belief that Romulus never legislated at all. 'Nobis Romulus ut libitum imperitaverat; dein Numa religionibus et

<sup>17</sup> See below, p. 24.

<sup>18</sup> One is recorded by Plut, *Rom.* 22, 5. See pp. 26–7 below.

<sup>19</sup> *Die Archæologie des Polybios* (Stuttgart 1922), chap. 2, esp. 124–35.

<sup>19a</sup> This is not really true. Polybius 2, 24 is an objective description of the size of the rival forces in 218 B.C.; 6, 52, 5 ff. is not about numbers at all, but

about the advantage of a citizen army as against a mercenary army.

<sup>20</sup> Taeger 127; Pohlenz 166 f., 181. Dionysius himself, presumably, was too witless to appreciate the incongruity—if incongruity it was.

<sup>21</sup> This is simply not true. See Gabba, 198 on the Greek aspect of the capsule as being typical of Dionysius.

divino iure populum devinxit . . . Sed praecipuus Servius Tullius sanctorum legum fuit, quis etiam reges obtemperarent.'<sup>22</sup>

The idea of Romulus as legislator was, Pohlenz claimed, something that Dionysius had got hold of, not from a work of scholarship but from a document written with a contemporary political purpose; it was a *Tendenzschrift*, a glorification of monarchy as 'die altrömische Verfassung'.<sup>23</sup> And, as a *Tendenzschrift*, the capsule has in recent years enjoyed a lively history.

For Pohlenz the capsule was something concocted for some Roman aspirant to monarchy—for Julius Caesar.

That Julius Caesar, the distant descendant of Aeneas and of Venus, had an interest in Romulus also is suggested by a great deal of other evidence.<sup>24</sup> Look, therefore, for Caesarian features in the capsule.

Romulus interested himself in the upbringing of children (c. 15); did Caesar not give rewards for large families (Cass. Dio 43, 25, 2) and in his Campanian land bill had he not given priority to the fathers of three children (App., *BC* 2, 10, 35)? Establishment of colonies and extensive grants of Roman citizenship: who founded more colonies or granted Roman citizenship more liberally than Caesar? Romulus discredited banausic occupations (c. 28); in the draft of his municipal bill Caesar barred municipal office to town-criers and to undertakers (*FIRA* 1<sup>2</sup>, 13, 94; Cic., *Ad Fam.* 6, 18, 1). What occupations could be more banausic than those? Romulus encouraged frugality and temperance (c. 23, 3); Caesar introduced a sumptuary law. Romulus attached the greatest importance to religion (c. 18–23); Julius Caesar was Pontifex Maximus even if, from the evidence, he took his duties lightly. And so on.

This is a long way from the general character of the supposed *Tendenzschrift* and, perhaps, a long way from Caesar too. And it is time to ask the question whether there are not elements in the capsule which are not Caesarian at all. Pohlenz at the end turned to face the question. What about the Senate, Romulus' creation, in association with which he ruled? This has not a very Caesarian ring. So Pohlenz changed his ground a little. The imaginary *Tendenzschrift* was not issued by Caesar but by a supporter of Caesar who wanted to persuade him to strengthen the position of the Senate.<sup>25</sup> It is, then, something like the second Sallustian or pseudo-Sallustian letter to Caesar, chapter 5 of which distinguishes between *patres* and *plebs*, states that in the good old days the *plebs* were farmers or soldiers and that in their existing degenerate state they should be sent to join veterans in colonies, for good communications improve bad manners. Farming, soldiers, colonies: all three features of the capsule.

Next von Premerstein in 1937.<sup>26</sup> The stress on the Senate, he decided, was fatal to Pohlenz's theory, but the notion of a *Tendenzschrift* was too good to abandon. If Caesar did not fit the bill, what of Caesar's adopted son?

Of Octavian's interest in Romulus there can be no doubt. Kornemann called the period before 27 B.C. his Romulus-epoch. Now what affinities has the young Octavian with Romulus of the capsule?

In the senate house near the altar of Victory dedicated in August, 28, a golden shield was placed in Octavian's honour in January, 27 with an inscription that it was a gift of the Senate and people to mark the *Virtus, Clementia, Iustitia* and *Pietas* of Octavian (*RGDA* 34, 2), *virtus* which Horace then set to work to celebrate in his civic odes (*Odes* 3, 1–6).

Now what in the capsule were the excellencies which Romulus fostered (2, 18, 1 f.)? First the favour of the gods (ἡ παρὰ τῶν θεῶν εὐνοία). This is not far from *pietas*. Next Moderation (σωφροσύνη). This, of course, is not *clementia*; it is *temperantia*—but, von Premerstein claims, *clementia* is at least an element of *temperantia*. Then Justice

<sup>22</sup> Tac., *Ann.* 3, 26, 5 f. Yet the source of App., *Lib.* 112, 531 could make the people in 148 B.C. appeal to 'the laws of Romulus and Servius Tullius' as establishing their absolute and unfettered right in elections.

<sup>23</sup> Pohlenz, esp. 180–9. J. Gagé thought the idea not untenable, *Rev. hist.* 177, 82–4 and it was adopted by E. Skard, 'Zwei relig.-pol. Begriffe Euergetes-Concordia', *Avh. d. Akad. Oslo* 1931, no. 2, 97.

<sup>24</sup> Von Premerstein 9; K. Scott, 'The identification of Augustus with Romulus-Quirinus', *TAPA* LVI, 1925, 82–4. E.g. statue with those of the kings, royal garb, *spolia opima* etc.

<sup>25</sup> Pohlenz 188 f.

<sup>26</sup> See n. 1. See also E. Kornemann, *Klio* 31, 1938, 81–5 and K. Scott, o.c. (n. 24).

(δικαιοσύνη), which is certainly *iustitia*. Fourthly courage in war ((ἡ ἐν τοῖς πολέμοις γενναϊότης), *Virtus* in fact. So the virtues of Romulus were the virtues of the golden shield.

But ἡ ἐν τοῖς πολέμοις γενναϊότης is ἀνδρεία, *fortitudo*. So in Romulus' case we have three of the four cardinal virtues (courage, temperance, justice) with the addition of εὐσέβεια, which is *pietas*. In the case of Augustus we have Virtue in general, *clementia* and *pietas* and only one of the four cardinal virtues. The two pieces, in fact, neither dovetail nor fit.

What more? In 36 B.C. Octavian's house on the Palatine was dedicated with augural propriety. It was near the *casa Romuli*.<sup>27</sup> There was his revival of religion, his respect for the Senate, his *clientela*. There is a reference in the capsule to colonization; Octavian established a number of colonies in 29 B.C. It was Romulus' privilege to speak first among the elders (γνώμης ἀρχεῖν); Octavian in the *lectio* of 28 was made *Princeps Senatus* (RGDA 7, 2; CD 53, 1, 3). There were 300 of Romulus' Celeres, evidently organized in three bands of 100 (DH 2, 13, 3) because they were commanded by three centurions. Augustus tried to reorganize the youths who took part in the *Lusus Troiae* in three bands instead of in the previous two.<sup>28</sup>

Some of these are not very good parallels. And, anyhow, is the regal tone of the work in keeping with Augustus' restored Republic? Von Premerstein meets the objection. The *Tendenzschrift* was written, he suggests, in 28 B.C., in the period of Octavian's absolute power from Actium to 27, before people knew that there was to be a restoration of the Republic; it was written by somebody who thought that Augustus might be intending to perpetuate monarchical rule. It was, he suggests, recited at some *conversazione* attended by Dionysius, who had just arrived in Rome, where he moved in cultured senatorial circles, and perhaps by Livy.<sup>29</sup> But this date destroys some of the parallels. Augustus' first and very temporary *praefectus urbi*, Messalla Corvinus, did not hold his five-day office until 26.<sup>30</sup>

Anyhow, such a *Tendenzschrift*, published in 28, must have fallen very flat in view of the Augustan settlement of 27.<sup>31</sup> Not, however, in the view of E. Kornemann (*Klio* 31, 1938, 80-5). So far from misfiring, the capsule, composed in and around 28, succeeded, he claims, triumphantly. It inspired the first four chapters of the *Res Gestae* which, he thinks, were originally an inscription over the mausoleum; it inspired the dedication of the shield commemorating Octavian's virtues; it inspired Horace's *Odes* 3, 2-6. For its suggestion (we are assured) was not that Octavian wanted to be king, but that he wanted to be a Second Founder. What, it seems, establishes its date is the fact that, contrary to all other tradition, the capsule gives Romulus an important part in the foundation of religious piety—this by no accident at a moment when Octavian himself was introducing the first batch of his religious and moral reforms. It was, perhaps, the work of a Greek-thinking jurist.<sup>32</sup> It fitted very well with Octavian's by 28 well-evidenced Romulan proclivities—the augural dedication of his house on the Palatine, near the *casa Romuli*,<sup>33</sup> as an *aedes*, the completion in 28 of the mausoleum, an example of 'die altitalische Tumulusform', a true 'Romulusgrab'.

The opportunities of ingenuity are infinite. Why not a *Tendenzschrift* of Sulla? Romulus created the Senate; Sulla sought to restore its power. So E. Gabba entered the lists and tried to show that the capsule was 'un opuscolo politicamente atteggiato' of the time of Sulla.<sup>34</sup>

The Sullan features detected by Gabba are these. Romulus' Senate was popularly chosen; Sulla's new senators had to be popularly approved. Romulus' Senate was to rule *and judge*; Sulla restored the Courts to the Senate. *Concordia*, according to the capsule, ended with the Gracchi; it ended with the dispute over the manning of the Courts, and

<sup>27</sup> Though for von Premerstein's statement (9 f., repeated by E. Kornemann, *Klio* 31, 1938, 82) that in 36 B.C. Octavian consecrated his house as an *aedes* on the spot where ancient tradition placed the *casa Romuli* (the alleged object itself was perfectly visible), there is no evidence whatever.

<sup>28</sup> See my *Life and Leisure in ancient Rome* (London/New York, 1969), 327.

<sup>29</sup> Von Premerstein 12.

<sup>30</sup> Tac. *Ann.* 6, 11, 4; *RE* VIII A, 1530.

<sup>31</sup> L. Wickert, who was not prepared to dismiss Pohlenz's theory (*Klio* 30, 1937, 253 n.), thought DH 2, 11, 3 (stasis after the Gracchi) fatal to von Premerstein's view (*Klio* 32, 1939, 332).

<sup>32</sup> For disputes among jurists on the question of regal legislation, Tac. *Ann.* 3, 26; *Dig.* 1, 22 (Pomponius); Pohlenz 170 f.; von Premerstein 12.

<sup>33</sup> See n. 27.

<sup>34</sup> Gabba 207.

this would be a dead letter by the time of Julius Caesar and Octavian.<sup>35</sup> Sulla's programme was presented as a programme of *Concordia*. Sulla was in the succession of Saviour-Fathers of the country: Romulus, Camillus, Marius, Sulla. Many of these points are highly debatable, and in any case they cover a very small part of the capsule and take no account of the rest.

It stands to reason that the basis of the capsule cannot in its origin be all three things: a *Tendenzschrift* for the attention of Julius Caesar, a *Tendenzschrift* of 28 B.C. and a *Tendenzschrift* of the Sullan period. So it is not unreasonable to ask whether, in its origin, it was a *Tendenzschrift* at all.

The capsule is a coherent unit. That is clear. It lists the supposed measures of Romulus, illustrating their wisdom from their proved success in subsequent Roman history: *Concordia* for centuries until the Gracchi; no manpower shortage even after Cannae; no divorce for centuries.

The claim that in places it conflicts with other passages of Dionysius cannot be established. The attribution of the introduction of religious ritual to Numa is not in open conflict with what is attributed here to Romulus; no Roman ever doubted that it was with Romulus that augury started. The three fundamental rights of the people (election of magistrates, ratification of laws and declaration of war) occur three times elsewhere in Dionysius.<sup>36</sup> As a matter of artistry he has described the measures of Romulus (introduced, presumably, over a period of time) in bulk before giving a narrative history of his rule; so the fact that the Sabine women were not married by *confarreatio* is nothing to worry about.

For Gabba the conclusive proof that the capsule was a misfit was supplied by Romulus' supposed regulation (in the capsule)—whether or not a written law, Dionysius cannot say—that a father might sell his son three times, but after that the son should be free and independent (2, 27). This regulation appeared in the Twelve Tables, but for Dionysius the proof that Romulus was its author lay in the inference that, when Numa forbade a father to sell a son who had married with his consent, this cannot but have been a limitation of a previously existing (i.e. inevitably Romulan) law on the sale of children (2, 27, 4).

Now according to Dionysius elsewhere (3, 36, 4) and Livy (1, 32, 2) Numa's religious institutions (*sacra publica*, αἱ περὶ τῶν ἱερῶν συγγραφαί) lapsed after his death and were republished by Ancus Marcius; and, according to Dionysius, they were published once more after the expulsion of the kings by C. Papirius. According to Pomponius in the *Digest* 1, 2, 2, 2 all the laws of the kings, Romulus and his successors, were extant later 'in libro Sexti Papirii' (who in 1, 2, 2, 36 becomes Publius Papirius).

So,<sup>37</sup> if Romulus had really introduced a law concerning the sale of a man's sons, all that Dionysius had to do to establish the fact, Gabba claims, was to refer to the *lex Papiria*. The fact that he did not do this shows that, in writing this part of the book 2, he (or, rather, his *Tendenzschrift* source) did not know of Ancus Marcius' publication or the *lex Papiria* (which Dionysius knew when he wrote book 3) but he thought the Twelve Tables to have been the first publication of laws after the expulsion of the kings. But is this a compelling argument? Dionysius knew of the existence of a *lex Papiria*. There is no evidence that he ever consulted it. And, anyhow, he thought it concerned Numa alone, and Numa's religious enactments at that.

It is argued<sup>38</sup> that in book 2 the capsule has displaced an account of the Roman constitution which was, at the start, an integral part of Dionysius' plan.

Emphasizing the Greek character of the Romans from their very beginnings at the end of book 1 (1, 90, 2), Dionysius postpones his proof of this 'to the account which I shall be giving of their government'; and, arriving in book 7 at the institution of the *ludi magni*, which for him supplied evidence that the Greek character of the Romans antedated their conquest of Greece, he refers back (7, 70, 2) to this undertaking: 'At the end of book 1, I promised to support my thesis by any amount of evidence, citing their traditional customs, laws and practices.'

Now early in book 1 (1, 5, 2) he had written, 'Starting with book 2, I shall describe

<sup>35</sup> Gabba 218 f.

<sup>36</sup> See n. 10 above.

<sup>37</sup> Gabba 204-7.

<sup>38</sup> e.g. Gabba 181, n. 11, with Pohlenz 163-5.

their achievements directly after the Foundation, together with the practices (ἐπιτηδεύματα) which brought their successors to such a peak of dominance.'

In fact Dionysius never gives a specific account of the Roman constitution or 'practices'. Advocates of the *Tendenzschrift* theory claim that he has inserted it in place of the account which at the start of book 1 he had intended, that what he planned at the start was not an account of Romulus as legislator, and therefore when he wrote book 1 he knew nothing of the material subsequently incorporated in the capsule.

Why, you may ask, did he not in that case go back and alter what he had written in book 1, to take account of the nature of the capsule? Gabba's answer is that book 1 must already have been published, and so it was too late.<sup>39</sup>

Others have thought that everything that came after book 1 could be considered an account of Roman government and so a fulfilment of the undertaking given in book 1. But why should not this very account of Romulus (2, 7-29), which is nominally about Romulus but really about *Romanità*, not be just what at the start of book 1 he had in mind? What was to be demonstrated was (a) that the Romans were a Greek people and not barbarians, and (b) that their early regulations proved their value in the successes achieved later; which is exactly what the capsule does.<sup>40</sup> The fact that some of the practices supposedly introduced by Romulus were contrasted favourably with those of individual Greek states<sup>41</sup> neither made the Romans un-Greek nor, indeed, barbarians. Dionysius who, after all, must be allowed some little mind of his own, evidently considered when he was writing book 7 that the earlier undertaking had in fact been fulfilled.

A weakness of the hypothesis of a lost *Tendenzschrift* at the start is that antiquity has not been so generous as to bequeath us any similar *Tendenzschrift* with which we could compare it. Pohlenz speaks of λόγοι ἐσχηματισμένοι, but gives no instances. He refers to Isocrates' panegyric of Agamemnon which was to be read as a panegyric of Philip and to a section of Livy where Tiberius Gracchus listed the extravagant honours which Scipio had once declined, and which was thought by Mommsen to derive from reminiscences of Julius Caesar.<sup>42</sup> A better instance would be chapter 4 of the *Athenaion Politeia*, an imaginary account of the constitution of Draco issued in 411 B.C. as being the description of a historical seventh-century Athenian constitution, in the hope of deceiving people into thinking it genuine and clamouring for its re-introduction as a form of government.<sup>43</sup>

In what language was the supposed *Tendenzschrift* written? Pohlenz, stressing the Greekness of, for instance, the emphasis on *homonoia*, favoured the idea of a Greek rhetor as author.<sup>44</sup> Von Premerstein suggested that it might have been written by a Greek-minded jurist who found himself in conflict with his Roman colleagues (in that, presumably, he liked the idea of Rome having a Greek-type *ktistes*).<sup>45</sup> E. Skard suggested Aelius Tubero.<sup>46</sup> Gabba in the end opted for a work by a Roman, on the ground that its chief interest (chapter 14) lay in the relationship of King, Senate and people, a peculiarly Roman problem.<sup>47</sup>

<sup>39</sup> Gabba 181, n. 11, cf. 206, where he decides not to go further with the hypothesis that book 2 was already published by the time Dionysius wrote book 3 (a hypothesis which would not have suited his argument).

<sup>40</sup> Survival of the patronate (10, 1); survival of *Concordia* down to the Gracchi (11, 2 f.); survival of the term *patres conscripti* (12, 3); no manpower troubles in Roman history, even after Cannae (17); the ban on orgiastic cults never removed (19, 2-5); survival of the *curiae* (23, 2); survival of frugality in sacrifices (25, 2); no divorce for five centuries (25, 7); banausic occupations for a long time confined to slaves (28, 1).

<sup>41</sup> *Clientela* (9, 2); extension of *civitas* (16, 1); religion and myths (18, 3 and 19 f.); *patria potestas* (26).

<sup>42</sup> L. 38, 56, 11-13. Mommsen, *Röm. Forsch.* II, 502-10; it was written, he suggests, in the form of a speech by a saddened supporter of Caesar, trying to recall him to his senses. So also E. Meyer, *Caesars Monarchie*<sup>3</sup> (Stuttgart/Berlin, 1922), 531 f.

<sup>43</sup> H. Mattingly, *JRS* xxvii, 1937, 106 f. suggested that the *commentarii* of Servius Tullius, referred to by L. 1, 60, 4 (in connection with the first election of consuls in 509 B.C.), were a Sullan pamphlet, written to justify some of Sulla's reforms (including monetary and census reforms), published independently and anonymously or perhaps in a history book (?Sisenna's). This suggestion is based on a number of hypotheses and the mention of Servius Tullius in App., *BC* 1, 59, 266. R. M. Ogilvie, however, in his note on L. 1, 60, 4, shows that these *commentarii* could perfectly well in fact have been an ancient manual of religious protocol.

<sup>44</sup> But see A. Momigliano, *CQ* 1942, 117-20 (*Secondo Contributo* 99-104) on the importance as early as the fourth century B.C. of *Concordia* in Roman political thought. It is a feature of the 'Sallustian' *Epistulae ad Caesarem senem* (explicitly in 1, 6, 5 and 2, 7, 2).

<sup>45</sup> Von Premerstein 12. See n. 32 above.

<sup>46</sup> E. Skard, o.c. (n. 23) 97, n. 3.

<sup>47</sup> Gabba 199.



One of the vulnerable points of the *Tendenzschrift* theory is that its advocates concentrate almost exclusively on chapter 14, to the neglect of the other 22 chapters of the capsule, many of which cannot conceivably have had any political purpose at all. Did Caesar, did Octavian, did Sulla advocate a revival of marriage by *confarreatio* (2, 25) and a curbing of the emancipation of women? What value for political propaganda would lie in the revelation (2, 25, 2) that, while the Greeks used barley in sacrifice, the Romans used spelt?

Gabba's own consideration of the capsule is more plausible than those of his predecessors because, with far greater knowledge of Dionysius as a writer, he recognizes that the hypothetical *Tendenzschrift* can be little more than a substratum which is overlaid by a great deal which is unquestionably Dionysius' own composition; indeed that the very attribution of motives, political and philosophical, which for Pohlenz indicated the non-Dionysian character of the work, are themselves as genuine and typical of Dionysius as could be.<sup>48</sup> The frequent tilts at those who ascribed Roman success to Tyche (2, 10 4; 2, 17, 3; 2, 18) are Dionysius' own, for this was his King Charles' head. The comparisons with individual Greek states, again, are typical of Dionysius, as Gabba—though not dismissing the possibility that some, not all, of them were in his source—concedes.<sup>49</sup> The tone of chapters 18 to 20, for instance, as Gabba stresses, is typical of Dionysius—that Romulus' religious ordinances derived from what was best in Greek religion, but were an improvement on Greek religion in the avoidance of ecstatic cults and immoral Greek religious myths. So there is evidence and to spare of Dionysius' own composition in the capsule. *Expellas furca, recurret.*

It is time to do what none of the *Tendenz*-fanciers does, to look at Cicero's *De Republica*, the first two books of which were written in 54 B.C. Pohlenz claimed jejunely that the notion of Romulus as a Greek-style legislator was in utter conflict with the Polybian-Ciceronian notion that Rome's constitution was not, in the Greek manner, the work of a single legislator, but was the culmination of a long series of legislative enactments by a number of outstanding men; that, like Topsy, it just grew.

As far as the *De Republica* is concerned, this sharp antithesis is simply untrue, as Gabba realized, though without pursuing the point as far as he might have done.<sup>50</sup> The point which Scipio labours in the *De Republica* is that the mixed constitution, as developed by the wisdom of experience in the Roman case, is the best constitution of all. At the same time, if you consider the simple, unmixed constitutions, monarchy, aristocracy and democracy, monarchy—given a good monarch—is unquestionably the best of the three. Aristotle had said the same. Now, for Scipio, Romulus was a very perfect monarch and, as such, his achievement is described; and many of its features are those which Dionysius also stressed—the choice of the site of Rome, the three tribes and thirty *curiae*, the auspices, *clientela*, cooperation with the Senate;<sup>51</sup> and Scipio too makes comparisons with Greek practices, like Dionysius.<sup>52</sup> At the same time this excellent and inventive king was, for Scipio, simply the first of the great statesmen whose work found ultimate fulfilment in the Roman mixed constitution, the best constitution of all. To state, therefore, that praise of Romulus' monarchy is in contradiction with a high evaluation of the *mikte* is wrong.

The capsule is nowhere in conflict with the *De Republica*, but it goes into more detail and has a greater breadth. It is not so much an account of Romulus as of *Romanità*.

Plutarch in his Life of Romulus states that Romulus legislated against murder under the name of parricide, imposing no particular penalties for the murder of a man's father because he did not envisage the possibility of such a crime; and so there was no recorded case of parricide in the literal sense until after the Second Punic War.<sup>53</sup> This evaluation of Romulus' legislation in terms of subsequent history is so exactly in the style of Dionysius' account in the capsule that it is tempting to see here one of those measures of Romulus

<sup>48</sup> Gabba 179–81, 198.

<sup>49</sup> Gabba 187–9.

<sup>50</sup> Gabba 200.

<sup>51</sup> Site of Rome, 2, 5–11; three tribes and thirty *curiae*, 2, 14; auspices, 2, 16; Senate, 2, 14, 'patrum auctoritate consilioque regnavit', 15 and 23 f.; *clientela*, 2, 16. On punishment, however, 2, 16 differs considerably from DH 2, 29.

<sup>52</sup> Site of Rome superior to that of Corinth and most Greek cities, 2, 7–9; Spartan precedent for Celeres, 2, 13; Spartan-type constitution, 2, 15; monarchy not hereditary as in Sparta, 2, 24.

<sup>53</sup> Plut., *Rom.* 22, 4 f.

which, by his own account, Dionysius omitted,<sup>54</sup> and which Plutarch picked up from a source other than Dionysius himself. In which case the capsule is not a wholly original work of Dionysius. And, as has been seen, it could have been read by Cicero.

There is, Taeger saw, a lot of good antiquarianism in it, and this could derive from Varro. R. E. A. Palmer has recently suggested<sup>55</sup> that considerable knowledge of Valerius Antias reached Dionysius through Varro, to whom Ovid evidently went for information about Romulus; but Dionysius is likely to have read the whole of Valerius Antias carefully and, if E. Bux was right,<sup>56</sup> his history of the early Roman Republic was greatly influenced by Valerius in that, unlike Livy, he ascribed to the Senate as against the consuls far greater power than at that time it in fact possessed, such a presentation of the past being in keeping with the outlook of a Sullan annalist. And chapter 14 (but not 16 f.) could be influenced by Polybius, as Taeger thought; the three powers of the people in the constitution are certainly the same as in Polybius.

So there are probably a number of ingredients in the dish. It is a mistake to concentrate on chapter 14. If I am correct in thinking that the capsule is what Dionysius intended from the start, it was something to which he attached great importance—and rightly. For it was an answer (and a different and in many ways better answer<sup>57</sup>) to the same fundamental question which Polybius had asked: how explain the success of Rome? Polybius posed the question at a dramatic moment in his narrative, after the defeat of Cannae. Dionysius asked it of the whole period which he proposed to treat, the first period of Roman expansion, before the rot set in. He asked it at the very start of his history. What he read in a number of different sources about Romulus gave him an appropriate context.

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<sup>54</sup> DH 2, 24, 1; 29, 2.

<sup>55</sup> *The Archaic Community of the Romans* (Cambridge, 1970), 28–32. Dionysius mentions Varro by name in 2, 21, 2 as his source on the priesthoods of tribes and *curiae*, and Valerius Antias in 2, 13, 2 for the view that the *Celeres* were so called because of the name of their commander. F. Cornelius, *Untersuchungen zur frühen römischen Geschichte* (Munich, 1940), 87, n. 5, thought that Dionysius derived much from Varro. See Cornelius 27, n. 59

for an appreciation of the capsule as Dionysius' own work and a refusal to accept any theory of *Tendenzschrift*.

<sup>56</sup> E. Bux, *Das Probouleuma bei Dionys von Halikarnassos* (Diss. Leipzig, 1915), 121 f.

<sup>57</sup> cf. A. Momigliano, o.c. (n. 44) (*CQ*, 120; *Secondo Contributo*, 103) on Polybius' and Cicero's failure to appreciate the importance of Rome's extension of *civitas* (the very point which Dionysius emphasizes so strongly).