

Restriction of Civic Rights in the Roman World: The *Ius Suffragii* of *Liberti* and *Incolae*

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ABSTRACT:

This article examines the restrictions that Roman law imposed during the Republican and Imperial periods on the exercise of political rights – both active and passive – by freedmen. It will be shown how the rules introduced from time to time, on the one hand, aimed – by a variety of means – to limit the exercise of the active electoral right of freedmen, whose vote, also in those cases when it was cast, lacked any real political weight; and on the other hand, they tended to restrict freedmen's access to magistracies in Rome and the local centers of the empire in an increasingly restrictive manner, even allowing for some exceptions.

KEYWORDS: freedmen; *ius suffragii*; *comitia tributa*; Ap. Claudius Caecus; elections.

1. The vote of freedmen in Rome

In the Roman world, the exercise of active electoral rights was subject, over time, to various measures designed to limit its effective political weight, especially when exercised by certain categories of *cives*, whose legal status could appear inferior to that of the *civis Romanus* born *ingenuus*.

The most significant example of this trend is the case of freedmen, whose vote was repeatedly restricted by law: various attempts to equate it, in the exercise of the right to vote itself and in its effective consequences in terms of political competition, with that of the *ingenui* proved unsuccessful.

This problem arose above all in the case of the *comitia tributa*, since in the *comitia centuriata* the *census* criterion ensured that the wealthier classes were able to control the vote and the resulting political scene, whereas in the *comitia tributa*, because of the electoral procedure followed, it could happen that the *libertini* were able to influence the course of the election and its results. This could become the case in particular if freedmen had been registered in all tribes, according to the *domicilium* criterion, which was normally observed for the *ingenui*.

In Rome, the question of the inclusion of freedmen in the tribes was therefore the subject of debate and of a series of legislative measures aimed at reducing the political influence of former slaves.

In 312 BCE, under the censorship of Ap. Claudius Caecus, freedmen were initially distributed among all the tribes on the proposal of the censor (Diod. Sic. 20.36.4; Plut. *Pobl.* 7), in line with a policy of openness towards politically disadvantaged classes that had led Ap. Claudius Caecus to introduce the sons of freedmen into the Senate (Liv. 9.46.10: *Ap. Claudii censura vires nacta, qui senatum primus libertinorum filii lectis inquinaverat*).¹

However, as early as 304 BCE, the censors Q. Fabius and P. Decius deemed it appropriate to limit freedmen's participation, assigning them exclusively to the urban tribes (Liv. 9.46.14):² *donec Q. Fabius et P. Decius censores facti et Fabius simul concordiae causa, simul ne humillimorum in manu comitia essent, omnem forensem turbam excretam in quattuor tribus coniecit urbanasque eas appellavit*. It is easy to see in Livy's *humillimi* a reference also to freedmen, whose vote was dispersed among that of the *turba forensis* so that it would, in fact, lose any value.

This policy of limiting the electoral weight of freedmen, achieved by concentrating their votes in a few tribes, reappeared in 220 BCE, when it was proposed to limit the votes of freedmen in the urban tribes (Liv. *Per.* 20): *libertini in quattuor tribus redacti sunt, cum antea dispersi per omnes fuissent, Esquilinam, Palatinam, Suburanam, Collinam*. The measure of 220 BCE was in open conflict with what we know about the aforementioned measure of 304 BCE, which had the same content. The question therefore arises as to how the measure of 304 BCE actually differed from that of 220 BCE. One might think of a law, unknown to us but promulgated in the interval between 304 BCE and 220 BCE, which further modified the placement of freedmen in electoral districts, moving them back to the rustic tribes or providing for exceptions to automatic registration in the urban tribes (as in fact happened later); alternatively, there may have been an error on the part of Livy (or Livy's source) in recording the measure of 220 BCE, given that the information relating to that of 304 BCE appears to be more likely to be correct, as it is directly contiguous chronologically with the controversial measures implemented by Ap. Claudius Caecus.

In any case, the trend was clearly towards reducing the political weight of slaves, if even in 169 BCE the suffrage of freedmen was confined to a single urban tribe, that of the Esquiline (Liv. 45.15.4-5):

In quattuor urbanas tribus discripti erant libertini praeter eos, quibus filius quinquenni maior ex se natus esset, - eos, ubi proximo lustro censi essent, censeri

1 On the reforms introduced by Ap. Claudius Caecus, with particular attention to those affecting the tribes and the *comitia tributa*, see especially Humm 2005, 229-66.

2 For a summary of the legislative proposals in this regard, see the table provided by Fabre 1981, 131-41, 136.

iusserunt - et eos, qui praedium praediaue rustica pluris sestertium triginta milium haberent, *** censendi ius factum est. hoc cum ita seruatum esset, negabat Claudius suffragii lationem iniussu populi censorem cuiquam homini, nedum ordini uniuerso adimere posse. neque enim, si tribu mouere possit, quod sit nihil aliud quam mutare iubere tribum, ideo omnibus quinque et triginta tribubus emouere posse, id esse ciuitatem libertatemque eripere, non, ubi censeatur, finire, sed censu excludere. haec inter ipsos disceptata; postremo eo descensum est, ut ex quattuor urbanis tribubus unam palam in atrio Libertatis sortirentur, in quam omnes, qui seruitutem seruissent, conicerent. Esquilinae sors exiit: in ea Ti. Gracchus pronuntiauit libertinos omnis censi placere. magno ea res honori censoribus apud senatum fuit. gratiae actae et Sempronio, qui in bene coepto perseuerasset, et Claudio, qui non impedisset.

The Livian text has a gap which, although extensive, does not seem to affect the understanding of the testimony. Firstly, we note that before 169 BCE there must have been a measure that, at least partially, mitigated the position of freedmen in the electoral sphere, since those who, in the last census, had children over the age of five and, above all, those who owned land worth more than 30,000 sesterces appear to have been excluded from compulsory registration in the four urban tribes. We have no direct and explicit information on measures introducing exceptions in relation to the registration of freedmen in the urban tribes, but it is possible that such a measure was introduced in 189 BCE thanks to a plebiscite promulgated by the tribune of the *plebs* Q. Terentius Culleo when T. Quinctius Flaminius was censor (Plut. *Flam.* 18): προσεδέξαντο δὲ πολίτας ἀπογραφέντας πάντας, ὅσοι γονέων ἐλευθέρων ἦσαν, ἀναγκασθέντες ὑπὸ τοῦ δημάρχου Τερεντίου Κουλέωνος [...]. The censors of that year accepted anyone who was willing to enlist as a citizen, provided that they were born to free parents. Since the measure was aimed at foreigners, it would not have affected freedmen *tout court*, who were already Roman citizens. On the other hand, we must imagine that the problem of where to register these new citizens had to be addressed.³ We can therefore assume that in a context that was somewhat open to foreigners,⁴ freedmen were also subject to a partial reform of the existing electoral system, thanks to which some of them, certainly the wealthiest, were registered in those rustic tribes where they owned *praedia*.⁵

3 For an analysis of Plutarch's testimony, see Garzetti 1947 (= 1996, 47).

4 Rotondi 1912, 274 offers a different interpretation of the measure, according to which it was aimed directly and exclusively at freedmen and the children of freedmen. However, the text clearly refers to citizenship, thus implying that the measure referred to foreigners, and uses the term ἐλεύθερος, which indicates free status, not libertine status, to determine the legal condition of the parents.

5 More problematic, and less comprehensible, is the reference to freedmen who had children over the age of five: such an exception would have affected a large number of citizens, resulting in a huge number of freedmen being transferred to the rural tribes. The textual gap prevents a more in-depth discussion of the issue.

Whatever the moment when some change was introduced to the system of registering freedmen in urban tribes, it must have been in force at the time of Ti. Gracchus' census in 169 BCE, when, possibly for political reasons, an attempt was made to intervene on the issue, apparently in an even more punitive manner. That some reform in this regard took place between 220 BCE and 169 BCE is also demonstrated by the double tradition relating to the measures taken by Ti. Gracchus. According to the passage from Livy quoted above, Ti. Gracchus proposed to exclude freedmen completely from all tribes, both rural and urban; his colleague, the censor G. Claudius, arguing that such a measure was impracticable, was instead in favor of maintaining the existing situation. The conflict between the two censors ended with a compromise that Cicero described as a true act of salvation for the state,⁶ since all freedmen were enrolled in a single tribe, that of the Esquiline. It seems unlikely that Ti. Gracchus proposed the total removal of freedmen from any tribe: not only were there no political reasons for such a proposal, as the well-known social stigma attached to this large social group was not a sufficient and understandable cause, but there were also no institutional grounds for it, since, as the other censor pointed out, a measure of this magnitude had never been seen before: removing an entire social class from the tribes meant depriving its members of the right to vote. Such a procedure was certainly known in Rome, but it was applied to individual citizens and for specific reasons (always of a punitive nature),⁷ certainly not to an entire juridical group and, above all, without valid reasons. It is more likely that Ti. Gracchus requested that all freedmen, without exception, be moved back to the urban tribes. This hypothesis is also supported by another tradition relating to the actions taken by Ti. Gracchus during his censorship. Cicero (Cic. *De or.* 1.38) and the author of *De viris illustribus* (*De vir. ill.* 57) report that it was thanks to Ti. Gracchus that the freedmen were concentrated into the four urban tribes, while they make no mention of the drawing of lots for the *tribus Esquilina*. This version contradicts what has already been handed down by Livy, according to whom the two censors ultimately decided to enroll the freedmen in the Esquiline tribe alone, chosen by lot. Combining the versions, we can hypothesize that Ti. Gracchus proposed not a total cancellation, which would have been both unjustified and unsustainable, but rather a return to the old system, which provided for the registration of freedmen in only the four urban tribes. Only those freedmen who, by virtue of the exceptions provided for by law (and in particular those of a patrimonial nature), could be registered in the rural tribes would have been affected. Certainly, Ti. Gracchus had to promote a measure that would cancel the exceptions that were currently provided for: thanks to Cicero and the author of *De viris illustribus*, we can assume that

6 Cic. *De or.* 1.38: *atque is non accurata quadam orationis copia, sed nutu atque verbo libertinos in urbanas tribus transtulit, quod nisi fecisset, rem publicam, quam nunc vix tenemus, iam diu nullam haberemus.*

7 For this aspect, see below.

his proposal provided for the simple restoration of the ancient system, without exceptions, and not outright cancellation. Livy's source may have changed the terms of the issue, probably to enhance the role of guarantor of freedmen that it attributes to the other censor, G. Claudius. It is worth noting the connection between G. Claudius, the censor of 169 BCE who defended freedmen from the excessive attacks of Ti. Gracchus, and Ap. Claudius Caecus, the first to favor the freedmen class. It is no coincidence that the episode, in Livy's version, ends with praise for a reform that seems, to all intents and purposes, to be the result of Ti. Gracchus' will, but also of the goodwill of G. Claudius, who refrains from opposing this choice. Furthermore, it is not even known (and here we must remember the textual gap in Livy's account) what the other censor actually proposed against Ti. Gracchus' alleged punitive position. It cannot be ruled out that, in the tradition that converged in Livy and relating to the censorship of 169 BCE, there was some misunderstanding precisely in relation to the measures aimed at freedmen. The rest of Livy's narrative, in fact, briefly illustrates the main features of the censure of Ti. Gracchus and G. Claudius, who proved to be particularly severe compared to their predecessors, not only because, in exercising the *regimen morum*,⁸ they expelled from the Senate and from the lists of *equites* many who were considered unworthy of their status, but also because they reduced many citizens, by virtue of the ignominy brought about by the *nota censoria*, to the status of *aerarii*, effectively (but temporarily) removing them from the tribes and thus depriving them of the *ius suffragii*.⁹

It is therefore possible that the reference to the desire to completely remove freedmen from the tribes was not a real fact, but rather the improper extension, only at the historiographical level, to these categories of the punitive measures that the censors took to a large extent against citizens who were removed from their tribes. Ti. Gracchus, therefore, would have acted as censor in two ways: on

8 Ps. Asconius (*Div. in Caec.* 189, 16-21 St.) recalls the different effects that the censors' *regimen morum* had on senators, equestrians, and plebeians: senators were expelled from the Senate (cf. Fest. *s.v. praeteriti senatores*, p. 290 L); *equites* lost their public horse (cf. Liv. 29.37.8-10); plebeians were deprived of the *ius suffragii* and were entered in the *Tabulae Caeritum* (see below). For a detailed analysis of these restrictions, as well as of the *regimen morum* and its consequences on the legal capacities of individuals, see Humm 2010. See Astin 1988; Baltrusch 1989.

9 *Aerarium facere* is regularly attested in connection with the expression *tribu movere* (Cic. *Pro Cluent.* 126; Cic. *De Orat.* 2.268; Cic. *De Off.* 1.40; Liv. 27.11.15, 29.37.11-15, *Per.* 29; Val. Max. 2.9.7; Aul. Gell. 4.20.6, etc.). It is accepted by modern scholars that, apart from cases of actual convictions, the censor could also deprive a *civis* of the *ius suffragii*, at least for a limited period of time. On the other hand, some scholars (e.g., Bur 2016, but Niebuhr 1842, 137 and Mommsen 1889-1896, IV, 83-84 had already expressed this view) claim that suffrage was such an important right that no magistrate could have suppressed it, even temporarily. On the contrary, Fraccaro 1933 argues that those which were removed from their tribe also lost the *ius suffragii*, at least for a certain period. Fraccaro's hypothesis has been substantially accepted by Taylor 1960, 10; Nicolet 1961, 689-90, 711-12; Pieri 1968, 115. Discussion of the sources and modern hypothesis in Russo 2019, 124-25. See also below on this issue.

the one hand, by enrolling freedmen in the Esquiline tribe alone, and on the other, by punishing the unworthy on a large scale and in various ways.¹⁰ In this desire to be particularly strict, demonstrated by Livy's claim that no one had ever been so severe, we must find the reason that led Ti. Gracchus to make his initial proposal, namely to return freedmen to the four urban tribes, even more punitive, by enrolling former slaves in only one tribe.

The fate of freedmen and, above all, their electoral weight within the *comitia tributa* was once again the focus of a legislative measure in 115 BCE, when the consul Aemilius Scaurus passed a series of laws, one of which concerned the voting rights of freedmen (*De vir. ill.* 72.5):¹¹ *legem de sumptibus et libertinorum suffragiis tulit*. It is unclear how Aemilius Scaurus intervened with regard to former slaves: according to Rotondi,¹² he would have accentuated the already limited conditions for exercising the vote provided for freedmen. However, it seems preferable to follow Taylor's hypothesis,¹³ according to which the law of 115 BCE could only modify the voting procedure for freedmen by improving it, most likely by reintroducing the registration of freedmen in the four urban tribes, after they had been confined to the Esquiline tribe since 169 BCE.

In the first century BCE, the issue of freedmen's voting rights and the related question of their registration in the tribes took on a more distinct political connotation, becoming a topic of contention between the various *factions* of the time. In 88 BCE, P. Sulpicius Rufus proposed redistributing citizens among all the tribes with the *Lex Sulpicia de novorum civium et libertinorum suffragio* (Liv. Per. 77):

Cum P. Sulpicius trib. pleb. auctore C. Mario perniciosas leges promulgasset, ut exsules reuocarentur et noui ciues libertinique in tribus distribuerentur et ut C. Marius aduersus Mithridaten, Ponti regem, dum crearetur, et aduersantibus consulibus Q. Pompeio et L. Syllae uim intulisset, occiso Q. Pompeio, Q. Pompei cos. filio, genero Syllae, L. Sylla cos. cum exercitu in urbem uenit et aduersus factionem Sulpici et Mari in ipsa urbe pugnauit eamque expulit.

We are faced with a clear political strategy: C. Marius, with the help of the tribune P. Sulpicius Rufus, sought to broaden his base of supporters, seeking them out not only among the *novi ciues*, i.e. the former Italian allies who had just been incorporated into the Roman *civitas*, but also among the freedmen. The possible enrollment of the mass of new citizens in all the tribes, based solely on the criterion of domicile, would undoubtedly have had significant repercussions on the political balance in Rome, as they could have diverted the votes of the tribes

10 On the accusation of *indignitas* and its repercussions on the civil and political rights of the *cives* who were affected by it see Russo 2019, 116.

11 Plin. *NH* 8.82.223 only mentions the *lex sumptuaria*.

12 Rotondi 1912, 320.

13 Taylor 1966, 141-43. Cf. Mouritsen 2011, 77; Russo 2018, 289.

towards candidates who were unpopular to the senatorial *nobilitas*.¹⁴ It is therefore not surprising that the political significance of the *novi cives* vote also affected the suffrage of freedmen, since the latter could also have had an impact on the expression of the tribal vote. Not to mention that the *novi cives* and freedmen would have remembered, at the moment of voting, who had favored them.¹⁵

The changing fortunes of the former allies' vote clearly and undoubtedly demonstrate the marked political significance of the issue: on the one hand, there were those who wanted to confine the Italians into a small number of tribes in order to limit their electoral influence as much as possible; on the other, there were those who proposed distributing them among all the tribes, so as to increase their political and electoral weight and, more generally, their importance within the civic structure.

A similar trend was followed by the vote of freedmen:¹⁶ in favor of the latter was the law promoted by the tribune of the *plebs* C. Manilius in 67/66 BCE—promptly repealed by the Senate—which established that freedmen should vote in the tribe of their patrons (C.D. 36.42.1): τῷ γὰρ ἔθνει τῷ τῶν ἀπελευθέρων ἔν τε τῇ ἐσχάτῃ τοῦ ἔτους ἡμέρᾳ καὶ πρὸς ἐσπέραν, παρασκευάσας τινὰς ἐκ τοῦ ὁμίλου, ψηφίσασθαι μετὰ τῶν ἐξελευθερωσάντων σφᾶς ἔδωκεν. This rule aimed to bring the vote of freedmen back within the sphere of their own *domicilium*, linking it to that of their patrons, in contrast to the previous restrictive provisions that had instead severed this relationship.

It is no coincidence that later (in the Antonine and Severan periods), when the vote no longer had any significance, the principle was established that the domicile of the freedman had to follow that of the former owner (D. 50.1.6.3 Ulp. 2 *opin.*): *Libertini originem patronorum vel domicilium sequuntur: item qui ex his nascuntur.*

2. The vote of freedmen in the local communities of the Roman empire

Given the collective nature of Roman voting, where individual suffrage determined the vote of a larger electoral district, be it a *centuria* or a tribe, it is not surprising that the same criterion adopted in Rome to regulate the vote of freedmen was also employed at the local level, in order to limit the political

14 For an overview of P. Sulpicius Rufus' political strategy, aimed at removing Sulla from the campaign against Mithridates thanks to the support of the new *cives* (and freedmen), see now Zhao, Vervaet 2025.

15 As mentioned, the vote of the centuriate assembly was not directly subject to such tensions, since the *census* and the rigid division into *census* classes prevented upheavals in the assembly consultations.

16 For a summary of the debate on the *census* of freedmen during the civil wars, see Mouritsen 2011, 77-79.

influence of freedmen in the elections that took place regularly in the colonies and *municipia* of the Roman Empire.

Thanks to the epigraphic evidence from Roman Iberia it is possible to reconstruct the electoral procedures of local centers under Latin or Roman law.¹⁷ It has also been demonstrated that the constitutive laws of the Iberian colonies and *municipia* were largely based—including electoral matters—on the procedures and regulations in force in Rome, many aspects of which were literally transposed into local constitutions after appropriate adjustments to the specific needs of centers smaller than the *Urbs*.¹⁸

While the most important epigraphic documents of Roman Iberia, such as the *Lex Ursonensis*¹⁹ and the various examples of the so-called *Lex Flavia municipalis*,²⁰ are silent on the measures adopted to regulate the vote of freedmen due to the incompleteness of the texts, a fragmentary inscription from Maguilla, probably belonging to a municipal constitution, provides us with a useful clue for reconstructing the electoral procedure for freedmen.

The inscription reveals the existence of a *curia* dedicated solely to freedmen (AE 2009, 582; Baetica, Maguilla / Baeturia Turdulorum):

 [- - supra] scriptae [sunt - - -]
 [- - -]unto quiq(ue) m[- - -]
 [- - -]t erunt ita uti [- - -]
 [- - -]libe[?]risq(ue) eorum qui e [- - -]
 [- - -]curia a libertino[rum - - -]
 [- - -]t erit in ea curia li[bertin - - -]
 [- - -]t qui eorum pubes and [- - -]
 (vacant)
 [- - -] comitia ex h(ac) l(ege) habere [- - -]
 [- - -] quam is IIIIvir co[mit - - -]
 [- - -] et satisdare op[ortebit - - -]

17 On this issue see in particular Russo 2019.

18 For a discussion of modern scholarship on the issue, see Das Graças Pinto de Britto 2014. See also Lambert 1993, 235-40; Galsterer 1987, 181-203; González 2008, 125-43. On the theme, see in particular Russo 2019 with relevant documentation and bibliographical references.

19 The statute (*CIL* II 5439), commissioned by Caesar in relation to the deduction of the local Roman colony, was promulgated by M. Antonius (between 44 and 43 BCE). For a critical edition of the text, see D'Ors 1953. For an updated overview of the text, see Crawford 1996, I, 393-454, n. 25 and the edition of the new fragments of the statute proposed by Caballos Rufino 2006, 307-42 (also with respect to the context of the colonial foundation of Urso).

20 There is an extensive bibliography on the so-called *Lex Flavia Municipalis* and on the *ius Latii* that Vespasian granted to the communities of *Baetica*. For Iberian communities: Galsterer 1971; Humbert 1981; Le Roux 1998; Ortiz de Urbina Álava 2000; García Fernández 2001; Andreu Pintado 2004; Le Roux 2017; Russo 2019, with further bibliographical references. On provincial (and non-provincial) *ius Latii*, see: Lamberti 2010; Le Roux 2015. Finally, Russo 2018a, Russo 2019.

[- - -]ve ex h(ac) l(ege) de[- - -]
 [- - -] quam[- - -]
 [- - - - -]

The text, which is unfortunately incomplete, provides us with some significant information: we are clearly dealing with a fragment from a local law (as indicated by the repeated phrase, *ex hac lege*), modeled on the municipal constitutions. On the other hand, it seems that we must rule out, as has been suggested,²¹ that the inscription can be traced back to the *Lex Flavia municipalis*, given that it established *municipia* of Latin right of the duoviral type, whereas the fragment expressly mentions the *quattuorviri*.²²

The inscription refers to electoral matters, as demonstrated by the presence of the term *comitia*. For the issue under analysis here, the mention of a *curia libertinorum* is particularly noteworthy.²³ In Iberian legal bronzes, the term *curia* indicates a territorial subdivision of the city, which corresponded to an electoral district. Thus, for example, eleven *curiae* are known in Irni,²⁴ which, as far as the electoral procedure was concerned, performed functions entirely analogous to those of the tribes of the Roman *comitia tributa*.²⁵

The text seems to refer to a *curia* which was specifically reserved to freedmen and to their descendants (*pubes*). Given the electoral context of the inscription, we can reasonably assume that the registration of freedmen in this *curia* served

21 Saquete Chamizo, Iñesta Mena 2009. On the other hand, González 2015 believes that it should be linked to the status of an unknown colony.

22 The Maguilla inscription is an example of the existence of *quattuorviri iure dicundo* in the *municipia* of Spain. Although the inscription does not explicitly state the jurisdictional nature of the office, it is the very function of the *quattuorviri* that suggests it: in fact, similar to the *duoviri* of the *Lex Malacitana* (supreme magistrates and therefore holders of jurisdictional powers), they oversee voting procedures. Furthermore, in the electoral chapters of the *Lex Malacitana*, the *duoviri* are mentioned without any indication of their jurisdictional powers. For an overview of the *quattuorviri* in Iberian epigraphy, see Pérez Zurita 2004; Le Roux 2013; Melchor Gil 2013a.

23 In the imperial age, the terms *libertus* and *libertinus* were commonly used synonymously, both referring, without semantic or legal distinctions, to the status of a former slave. Previously, in the republican age (as in the imperial age), the term *libertinus* could also refer to the son of a *libertus*: Földi 2005.

24 See chapter 50 of the *Lex Irnitana* (see the editions of the *Lex Irnitana* by González, Crawford 1986, and Lamberti 1993): *Ut Iiuir(i) iure [dicu]ndo curias d(um) t(axat) XI constituent. Iiuiri iur[el] dicund[o], qui primum in municipio Flavio Irnitano [erunt], di[eb]us LXXXX proximis, quibus ha(e) c le[x] in [it] mun[icipi]um [pe]rlata erit, curanto uti arbitratu maioris part[i]s dec[ur]ionum, cum duae partes non minus decurionum ad[er]unt, curiae constituentur, dum ne amplius.* On this issue, see in particular Russo 2018.

25 Epigraphic documentation attests to both *tribus* and *curia* in this regard. The term *tribus* occurs in Antioch of Pisidia (Levick 1965, 55), Corinth (Torelli 1999, 551-54), and Lilybaeum (Sartori 1957). Chapter 101 of the *Lex Ursonensis* mentions *tribus*, although the same law uses the term *curia* in other sections. On the use of these different terms, which does not seem to have legal significance, see Russo 2018, 276, with bibliographical references.

to limit their vote, exactly as was the case in Rome within the *comitia tributa*. We need to underline that, according to some calculations based on epigraphic surveys, the weight of freedmen in the social structures of the centers of the Roman Empire, especially those of Latin or Roman right, must have been particularly significant: modern scholars have highlighted that, at the local level and in various contexts, freedmen appear in epigraphic evidence with greater frequency than *ingenui*.²⁶ Consequently, the *ratio* behind limiting the libertine vote to a single *curia* is clear: whatever the size of the libertine element within the society of a city, it would still have cast only one vote, given the principle of collective suffrage, and a single vote would have been irrelevant for the purposes of the election. Moreover, at the local level, there seems to have been an even more marked limitation on freedmen, since the *curia* reserved for them also appears to have included the children of freedmen (referred to as *pubes*), whereas in Rome the children of freedmen were not subject to any legal restrictions.²⁷

The distinction between freedmen and local *cives* therefore also affected the criteria governing the registration of a citizen in the appropriate *curia*. As evidenced by chapter 16 of the *Lex Ursonensis*, the *duoviri* (perhaps the first of the colony) had the very important task of registering the colonists, *aequisime*, into the correct *curia*: [---]im erit colonos quam aequissumo curiato | [- - -] colon(i) adscribentur Ilvir(is) qui erunt quam | [- - -]fa]cere ius potestasque esto. Consistently, the previous chapter 15 was concerned with defining the penalties for those who, with malice aforethought, had voted outside their own *curia*.²⁸ The appropriate and scrupulous *adscriptio curiatim* of the *coloni* would therefore have guaranteed the expression of the vote, through the deposit of the *tabella* in the indicated *cista*, so that if a *civis* had been found to vote in the wrong *curia* (even several times), it would have been impossible to invoke good faith: it would have been, in all evidence, electoral fraud.²⁹ The *Lex Irnitana*, in the aforementioned chapter 50, also assigns the task of identifying the *curiae* and registering the *municipes* in them to the first *duoviri* of the *municipium* within ninety days of receiving the statute. The documentation does not specify how the supreme magistrates were to proceed in assigning citizens to the *curiae*, but it is likely that the guiding criterion in

26 See, for example, Mouritsen 2011, 207.

27 For example, the children of freedmen were not barred from political careers, which were prohibited to freedmen themselves, as stated by the *Lex Visellia* of 24 CE (D. 9.21.1): *Lex Visellia libertinae condicionis homines persequitur, si ea quae ingenuorum sunt circa honores et dignitates ausi fuerint attemptare vel decurionatum adipere*. For other aspects of the *Lex Visellia*, see Rotondi 1912, 495. The *Lex Visellia* belongs to a series of measures aimed at reorganizing many aspects of the status of *libertus*: in 19 CE, the *Lex Iunia Norbana* attributed a new status, partially comparable to that of the *Latini coloniarii*, to those freedmen who had been manumitted in a non-solemn manner (D. 40.12). Other sources in Rotondi 1912, 463. On the active political rights of freedmen, see in particular Russo 2023a with bibliographical references.

28 On this point, see Russo 2018, 2019, and 2023b.

29 On this, see Russo 2018b.

this case was territorial, similar to principle of the *comitia tributa*: the *civis* would have been registered in the *curia* within which he had his *domicilium*. This was not the case for freedmen, since, according to the Maguilla inscription, they were assigned to a single *curia*, clearly unrelated to the *domicilium* they actually had in the city. The parallel with Rome is therefore evident, since in the *Urbs* freedmen were automatically placed in urban tribes, regardless of where they resided.

Returning to the case documented by the Maguilla inscription, it remains to be understood whether the *curia libertinorum* was a separate *curia*, in which only freedmen voted, or a regular *curia* of the city, to which local freedmen were assigned only during elections. The analogy with the case of Rome would suggest that freedmen were simply enrolled in an existing district, as there was no one specifically dedicated to them. This hypothesis is also supported by the case of the *incolae*, as evidenced once again by the Iberian legal bronzes.

Incolae were individuals who, despite taking up residence in a city for various reasons (mostly commercial), were not *cives*, remaining instead citizens of the community where they had their *origo*.³⁰ They were therefore not *municipes* or colonists of the *municipium* or colony where they resided, remaining in a condition that entailed certain specific disadvantages. The *Lex Irnitana* is particularly eloquent in this regard: while on the one hand they were subject to the jurisdiction of local magistrates, and can therefore be fined and sentenced to various penalties in accordance with local law (chapters 19, 69, 71, 84), and must pay taxes, on the other hand they did not enjoy the *commoda* of the *municipium* (chapters 77, 79, 92), they did not have access to *manumissio* and other related practices (chapters 28, 29), they could not decide on the most important expenses incurred by the *municipium* (which are instead decided by *cives* and *decuriones*: chapter 79) and they could not contribute to assigning the title of *duovir* to the emperor, as was the responsibility of *cives* and *decuriones* (chapter 24).³¹

In such a context, it is not surprising that even in the electoral sphere, the *incolae* voted differently from other citizens. This is, in fact, the meaning of chapter 53 of the *Lex Malacitana*³² (another testimony of the *Lex Flavia municipalis*), which assigns the *incolae* a different voting method from that provided for the *municipes*: *quicumque in eo municipio comitia IIviris, item aedilibus, item quaestoribus rogandis habebit, ex curiis sorte ducito unam, in qua incolae, qui cives R(omani) Latine cives erunt, suffragium ferant eisque in ea curia ffragi latio esto*.

Firstly, we note that the only *incolae* entitled to vote in Malaca are Latin or Roman *cives* and not *peregrini*, in accordance with Malaca's status as a Latin *municipium*. Secondly, we see how, once again, a rule is established for a specific

30 The most comprehensive study on the *incolatus* is Gagliardi 2006, to which reference should also be made for the question of the connection between *domicilium* and *incolatus*. For the question in analysis here, see also Poma 2001 and Russo 2019, 20.

31 On the limitations imposed on *incolae*, see Russo 2019, 20-21.

32 *CIL* II 1964.

category of city inhabitants, the obvious purpose of which was to limit the vote of this category and therefore its political weight. At the time of the elections, in fact, it was the responsibility of the supreme magistrates to draw lots for the only *curia* in which the *incolae* would vote in that specific election. Whatever the size of the *incolae* group within the social structure of Malaca (or any other Latin *municipium* affected by the *Lex Flavia municipalis*), in this way they could determine the vote of a single electoral district, without really influencing the outcome of the elections.

As in the case of freedmen, the criterion of *domicilium*, which *incolae* also possessed, did not apply at the time of elections: in fact, they did not vote in the *curia* where they had their *domicilium* (which was necessary just to fulfill the obligations that the *municipium* imposed on *incolae* as well as on other *municipes*), but in a *curia* chosen by *sortitio* at the time of voting.

This method of selecting the *curia* for *incolae* recalls the practice adopted in Rome to allow Latins present in the city on voting day to exercise the *ius suffragii* provided for by their legal *status*³³. As Livy reports (25.3.17-24),³⁴ in that context too, the tribe in which the Latins would vote was selected by lot:³⁵ a procedure which, at least formally, finds a direct parallel in the system provided for in Malaca and other *municipia* ruled by the *Lex Flavia Municipalis*.

In both cases, in fact, but also in that of freedmen, there appears to be an explicit desire to limit the electoral role of citizens belonging to legal conditions that were in various ways inferior to that of the dominant civic group: freedmen, because of their social origin, *incolae* because they were not natives of the place where the vote was held, and Latins because they were not Roman *cives*.

It is not surprising that the right to vote was limited for these categories: we must remember that it was seen not only as an essential aspect of the *civitas Romana*, but also as a real honor for those who were not Roman *cives* from birth and belonged to a different civic horizon.³⁶

It is no coincidence that the (temporary) suppression of the right to vote was the consequence of certain convictions received in court or as a result of the censorship note, as noted above. Particularly significant in this regard is the testimony of the *Tabula* of Banti, where the magistrate is required not to accept the vote of someone who has been made *aerarius*.³⁷ In technical sources, the

33 Russo 2018, 279.

34 Liv. 25.3.17-24. Livy's passage refers to the trial brought against the *publicani* Postumius Pyrgensis and Pomponius Veientanus in 212 BCE before the *comitia tributa*. However, it seems likely that the same procedure applied to electoral consultations.

35 For the vote of Latin citizens who were in Rome on the day of the elections, see Taylor 1966, 75; Nicolet 1980, 231. Summary of the issue in Ribas Alba 2009, 65.

36 For the *incolae*, the situation was different but similar in principle, in that they were foreigners to a community, even though, in the case of Malaca, they were *cives Latini* or *Romani*.

37 Crawford 1996, I, 206. The fact that in Banti anyone who was convicted for any reason and consequently lost the right to vote was registered among the *aerarii* demonstrates the close

expression *facere* (or *relinquere*) *aerarium* is often accompanied by the expression *tribu movere*, indicating the removal by the censor (in the exercise of the prerogatives of the *regimen morum*) of a *civis* from the *tribus* to which he belonged, with the relative loss of voting rights.³⁸ This situation is then linked by sources³⁹ to the case of the *Tabulae Caerites*, tables on which the names of *the cives* of Caere (who notoriously did not have the right to vote) were originally inscribed and which then came into use to indicate the lists of names of those who could not exercise the right to vote.⁴⁰

Precisely because it was so important and precious, the *ius suffragii* in Rome could not be granted across the board, outside the reference category of *Roman cives* born *ingenui*. For those groups that were in some ways considered outside the common juridical horizon, but not entirely excluded from it, the limited form of suffrage was an effective tool for involving them into the public life of the state or city, without however allowing them to have any real influence on it. Such citizens, therefore, remained in a sort of limbo, suspended between a *civitas* that was complete only in words and a partial exercise of the related civic rights.

connection between these facts.

38 See above.

39 Aul. Gell. 16.13.7: *Primos autem municipes sine suffragii iure Caerites esse factos accepimus concessumque illis, ut ciuitatis Romanae honorem quidem caperent, sed negotiis tamen atque oneribus uacarent pro sacris bello Gallico receptis custoditisque. Hinc tabulae Caerites appellatae uersa uice, in quas censores referri iubebant, quos notae causa suffragiis priuabant.* See Ps. Asconius (p. 189 St.): *Hi [censores] prorsus cines sic notabant: ut, qui senator esset, eiceretur senatu; qui eques R., equum publicum perderet; qui plebeius, in Caeritum tabulas referretur et aerarius fieret ac per hoc non esset in albo centuriae suae, sed ad hoc (non) esset ciuis tantummodo, ut pro capite suo tributi nomine aera praeberet.* See also Ps. Acron *ad Hor. Ep. 1.6.62*, Keller, 2, p. 235: *Caeritibus ciuitas Romana sic data, ut non liceret eis suffragium ferre, quia post datam ausi sunt rebellare, ideoque census eorum in tabulas relati a ceterorum censibus remoti erant. Sic factum est, ut, qui aliquid flagitiosum admiserat, in tabulas Caeritum referretur. Aliter: Cere oppidum in Italia, quo capta a Gallis urbe sacra translata sunt, pro quo beneficio postea ciuitatem Romanam meruit, ita tamen, ne suffragium ferret. Hic autem Cerite cera dixit pro nota et infamia, qui propter ignominiam suffragium ferre non possent.*

40 Russo 2019, 124-26.