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The Distinction Between Comitia and Concilium

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The Distinction Between *Comitia* and *Concilium*

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THE DISTINCTION BETWEEN COMITIA AND CONCIL\_UM.

1. Introduction.

The Romans used three words to designate legitimate public assemblies. Of these three, contio may have been the most general term for an assembly of any kind; but it normally denotes open meetings called by a state official to discuss public business. The two other words, comitia and concilium, denote the various kinds of voting assemblies in which such business was not discussed, but rather was actually carried out in the form of elections, legislation, and trials. While contio is seldom confused with comitia and concilium, the basis of distinction between the two words applied to voting assem-

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(1) A preliminary version of this paper was read on 28 December 1980 at the 112th Annual Meeting of the American Philological Association in New Orleans. Although the scope of the study has since been expanded, the conclusions presented here are essentially the same. I am pleased to thank Professor Jerry Linderski of the University of North Carolina at Chapel Hill, for his encouragement to undertake this study and for his sustained interest in its development. Thanks as well to my colleagues, Professors R. E. A. Palmer, Ralph M. Rosen, and R. V. Munson, whose scrutiny of an earlier draft greatly improved this paper, and Professors Wesley D. Smith and Robert A. Kraft for technical assistance in gathering and organizing the evidence. Blame for any residual shortcomings is to be laid at my door. In addition to standard abbreviations (CIL, ILS, OLD, RE, TLL) the following appear: CRR = A. K. Michel, The Calendar of the Roman Republic (1967); FIRA = S. Riccobono, Fontes Iuris Romani Antejustiniani 12, (1941); Huschke = P. E. Huschke, E. Seckel and B. Kuebler, Inscriptio\n\natriae Antejustiniane Religias 16, (1908); LPPR = G. Rotondi, Leges Publicae Populi Romani. Estratto dalla «Enciclopedia Giuridica Italiana» (1922; rpt. 1966); MRR = T. R. S. Broughton, The Magistrates of the Roman Republic (1951-52); RA = G. W. Botsford, The Roman Assemblies (1909); RVA = L. R. Taylor, Roman Voting Assemblies (1966); stS = Theodor Mommsen, Römischen Staatsrecht 3 (1887-88).

(2) A «legitimate public assembly» was one convoked by a magistrate or a priest for the purpose of discussing or transacting public business (Paulus/Festus 100,20; Lindsay, Cicero Leg III 4,10). Assemblies could be held only on specified days, dies comitales (on which see in general CRR 36-61) and were always restricted to the daylight hours (Plutarch Alex 30, Livy XXIX 17,4,1; [Sallust] in Cic 19, Censorinus 24,3).

(3) The word itself is evidently a contraction of conventio, which appears in inscriptions and in the technical literature (e.g. CIL II 2,196 line 23 = ILS 1,18 line 23; commentarii consularis, cited by Varro DIL VI 188; Paulus/Festus 100,20 Lindsay, in conventione in contione): so OLD 432 s.v.; Ernout/Mellet, Dictionnaire d\n\nder synonymie du latin 4 (1959) 140. On its relation to other words meaning «assembly», see note 4. Contio is also the normal word for «a military parade» or «address before the troops»; thus e.g. Caesar BC III 7,2, contionem apud milites habuit «Caesar addressed his assembled troops».

(4) According to the triple distinction drawn by Cicero Div II 35,74 vel in iudicis populi vel in iure legum vel in creandis magistratibus.

(5) Contio is sometimes confused by commentators with comitia and concilium: see e.g. Weissenborn on Livy II 7,7, where of the passages cited only I 6,1-2 seems to apply both words to the same assembly; in all the rest, a preliminary contio can be distinguished from the subsequent concilium. Paulus/Festus define contio as an assembly duly convoked for a specific purpose in contrast with conventus «a chance gathering.» As such, the word might indeed apply to voting assemblies as well as public meetings. Botsford RA 139-40.

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Note: The text is a critical edition of Cicero's work on Roman public assemblies, providing a clear distinction between contio, comitia, and concilium, and discussing their usage in different contexts.
bles is far from clear, and has been a matter of intermittent discussion at least since the second century. In this paper, I propose to review the history of the question, to examine again the relevant evidence, and to present a new interpretation of the way our ancient sources use the two words.

2. The problem: current theories.

A. So far as I know, only two theories of any importance, one ancient and one modern, have been advanced to explain the words in question. Still frequently cited is the definition, preserved by Aulus Gellius, of Laelius Felix, a jurist who wrote during the time of Hadrian:

> Whoever summons not the universitas populi, but rather some part thereof, ought to announce a concilium instead of comitia. Tribunes of course do not summon patricians, nor are they able to put legislative questions before them. Therefore, measures passed on a tribune’s initiative should properly not even be called leges, but plebis cetia. Patricians were not bound by such measures until Q. Hortensius as dictator carried a lex providing that all citizens be bound by whatever was the plebs should have established.¹

The alternative view, put forth by G. W. Botsford in 1904, explains comitia as the correct term for electoral assemblies, and concilium as the word normally used for legislative and judicial assemblies.² Both definitions are cited with approval by modern lexical and institutional authorities.³ Neither Botsford, however, nor Laelius as reported by Aulus Gellius provides a completely satisfactory basis for distinguishing between the words.

B. Laelius’ definition is, I believe, the more widely followed of the two, probably

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¹ Laelius Felix fr. 2 Huschke = Aulus Gellius NA XV 13,1 that manifestum est ut illud esse cum populo aere, alia cum comitio habere. Nam cum populo aere est rogare quid populum, quod suffragium suum aut sese aut genet in valeare est serva facere ad populum sine nulla rogatione. On L. Julius Caesar’s definition in his de auctoritate 16 fr. 1 Huschke = Macrobius Sat I 16,29 of comitum habere as cum populo aere, see CRR 47 note 26. Additionally, Asconius (71 Clark) states that comitones were distinguished from voting assemblies in that those in attendance were not sorted according to groups (i.e. centuriae, tribus, etc.; see paragraph 2 H below). Botsford (RA 140 note 1), however, disputes this point.

² See e.g. A. Gudeman’s article in TLL IV 44 s.v. concilium.

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si non universum populum, sed partem autem neque advocavit patricios neque pelautar, quae tribunis plebis ferentes ortensia dictator cum legem tali, ut

Iulius Paulus in Digita V 4,3.

CXV (1904) 21-32; reproduced with refer in this paper only to the later and his work an indispensable guide

because it is clear, simple, and prescriptive (debet. 3). His information is generally reliable: the notice in Gellius preserves additional data, not included above, that accord well with what we know of the assembly system from other sources.8 Nevertheless, on the matter of distinguishing between comitia and concilium, Laelius’ testimony is often challenged. It is clear that his generalizing partem aliquam (1) actually refers mainly to the plebs, since his subsequent observations concern the competency of the tribunus plebis to assemble the populus and the status of measures passed on a tribune’s initiative (plebiscita) as law. Moreover, Laelius’ insistence on distinguishing these measures from legis proper, even though they were equally binding on the entire populus, assumes a persistent distinction between assemblies of the populus and plebeian assemblies (which he calls comitia and concilium respectively) throughout the Republican period.9 Laelius’ definition can therefore be questioned for two reasons:

1) While many scholars today accept this distinction, the existence of an exclusively plebeian assembly after 287 BC at the latest has frequently been denied.10 Unquestioned and well-attested in earlier periods, the plebeian assembly (usually termed concilium plebis) was an organ born of class struggle soon after the birth of the Republic itself. Meeting first at an informal body without official constitutional status, and later in organized assemblies with limited but officially sanctioned electoral, legislative, and judiciary functions, the plebeians were only gradually conceded equal status under the law by the patricians.11 A measure passed by the concilium plebis was not binding on the populus unless it later received the patronum auctoritat, a formal vote of acceptance by the patrician Senators which made the measure binding on omnes Quirites.12 But any such measure may still have been bin-

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(8) For example, fr. 1 Hirschke (= NA XV 27,1-3) cites the Augustan jurist Laboe (fr. 22 Hirschke) on the definitions and functions of the calata comitia; fr. 3 Hirschke (= NA XV 27,5) discusses the differences between the comitia curiata, the comitia centuriata, and the comitia tributa, and preserves the fact that the centuriae assembly had to be held outside the pomerium: see note 24.

(9) Attempts to use correct terminology can be observed in legal inscriptions throughout the Republican period: see e.g. the lex latina tabularia Basilinae of the late 2d century BC (CIL II 2,582 = FIRA 6, line 5 etc.) ex bac leges plebene scito (as against line 8 etc. ex bac leges); also two references to the lex Rubria de danno interfecto of about 45 BC (LPR 435-36) in the lex de Gallia Civilia of 49-42 BC (CIL III 2,592 = FIRA 19, lines 29-30 [cf. 38-39]) ex leges Rubriae se vide id p(ubi) s(itum) est, and the fragmentum 34tham (CIL II 2,600 = FIRA 20, lines 12-14 [cf. 19-20]; see note 55 below) ante legem se vide id pl. sc. est (quod L. Roscius a.d. V diid. Mart. populum plebenu occisit.


(11) On the murky origins of the plebeian assembly, see StR III 151-53; RA 262-82.

(12) If indeed the patronum auctoritas ever applied to plebeian assemblies. The question is fully discussed, with further bibliography, by Staveley 20-31; cf. E. Gabbie, Appiani Deiellenos Civilium Libri Primus (1667) 171 ad 59,266.
ding on the plebs even if it failed to gain this approval. Moreover, it was through this organ that the plebs elected their own magistrates, the tribuni plebis, whose purpose was to protect plebeian interests against the abuses of the patrician oligarchy. Therefore, at the height of contention between the ordines, the plebeians had an obvious motive for keeping patricians out of their assembly; and, in fact, our earliest sources record the efforts of patricians to invade plebeian assemblies in this period, along with plebeian efforts to exclude them.14

But the plebeians gradually gained virtually complete equality with the patricians. Final victory came when the lex Hortensia of 287 -- for which Laelius Felix is an important witness -- made plebiscites, like leges, binding on omnes Quirites.15 This measure, as some have argued, by investing plebeian assemblies with the same lawmaking power as assemblies of the universus populus, obviated any motive for distinguishing between them thereafter.16 Botsford, an early proponent of this view, cites instances in the Late Republican period of patricians in attendance at assemblies called by a tribune.17 From such occurrences he infers that Laelius' definition, which depends on a distinction between assemblies of the populius and those of the plebs, is in error.18

2) Even if plebeian assemblies -- i.e. those convoked by a tribune -- continued to exclude patricians throughout the Republic, there exist a number of passages in which Roman authors refer to such assemblies as comitia rather than as concilia plebis.19 Various attempts have been made to explain these passages in such a way as to defend Laelius' testimony, but none has carried conviction.20 Thus Botsford is correct in observing that

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(13) So, at least, scholars have assumed. It seems to me equally possible, and perhaps more likely, that a measure that the patres failed to accept would have quickly fallen into abeyance.


(15) Laelius Felix fr. 2.6-10 Hudeke. -- Aulus Gellius NA XV 27.4 (see paragraph 2 A above); cf. Gaius UCC 1:3; Sex. Pomponius in Digesta I 2,2,8; Pliny NH XVI 37; H. von Siber s.v. «plebiscita», RE XXI/41 (1951) 54-73.

(16) See note 10.

(17) RA 320 note 1. Taylor (RVA 140-41 note 10) insists that the examples cited by Botsford are in fact controverses, which patricians could legitimately attend, rather than plebeian voting assemblies.

(18) RA 130, 137.

(19) RA 120-128. In addition to plebeian assemblies, Botsford (RA 120) adduces a number of other kinds of elections as evidence that comitia could denote an assembly of a part of the people. These include the consular election of 468 (Livy II 64,2), which was boycotted by the plebs; the «praetorpraetor» election of 211 by the troops in Spain (Livy XXVI 2,2); all priestly elections (see note 48 below); and meetings of the optimates (Cicero Rep I 23,50) and of the Senate (Cicero Phil XI 8,19; cf. Vell. Pat. II 124; Tacitus Ann I 13) for electoral purposes.

(20) See paragraph 2 D with notes 29-31 below.
Moreover, it was through the *bunium plebis*, whose purpose was to maintain oligarchy. Therefore, at the end an obvious motive for keeping one of the plebeian efforts to exclude the equality with the patricians, which Laelius Felix is an important Quirites. This measure, as the same lawmaking power alive for distinguishing between few, cites instances in the Lates, the call of a tribune. From depends on a distinction between error, by a tribune -- continued to exchange number of passages in which han as consilia plebis. Various columns as to defend Laelius’ third is correct in observing that

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Dion. Hal. IX 48) II 60,3 III 114 II 390 note 1. (see paragraph 2 A above): cf. Gaius Sibirt s.v. *plebiscita,* RE XXI 41

examples cited by Botsford are in plebeian voting assemblies.

5) adds a number of other kinds of the people. These include the iv; the *propraetorius* election of re 40 below; and meetings of the cf. Vell. Pat. II 124; Tacitus Ann

such passages weaken Laelius’ definition of *comitia* as an assembly of the *universus populus*.

Botsford’s definition is based not just on objections to that of Laelius, but on a thorough examination of the ancient evidence. In essence, this examination involves only two -- but those extremely voluminous -- authors, Cicero and Livy. In the works of these authors, *comitia* refers to an electoral assembly much more often than to any other type. Conversely, *concilium* is used (in the Roman sphere) to denote a legislative or judicial assembly more often than an election. Botsford explains this usage with reference to ancient philology and institutional procedure. *Concilium*, he argues, was felt to be the *mottot* for a deliberative assembly by virtue of the Varronian folk-etymology connecting it with *consilium*. The word would apply to legislative and judicial assemblies, he believes, because they (unlike electoral assemblies) were regularly preceded by a *conito* at which the issue to be decided was debated one last time just prior to the vote. Similar deliberation supposedly did not take place at the *conito* that preceded an electoral assembly, which was devoted to formalities such as prayers and voting instructions. Thus the elections were simply called *comitia*, organized voting assemblies without deliberation. Historical developments eventually produced a virtually complete polarization of the two words as elections came to be distinguished from other kinds of assemblies by a variety of factors.

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(21) D.LL VI 43: *a cogitatione concilium, inde consilium*. The similarity between the two words inspired numerous puns in ancient authors and caused copyists much confusion (cf. note 57), as Botsford (RA 136: references, notes 2 and 3) observes.

(22) RA 143.

(23) RA 136.

(24) In the late Republic, these factors were four: 1) *Scheduling*. The yearly elections of magistrates were the most regular feature of the political calendar, taking place (after Sulla) each July (SIR I 580-88). Legislative and judicial assemblies by contrast might be held at almost any time; for the general restrictions see CRR 36-42, 94-97, 191-206; RVA 17-18. 2) *Form*. Different assemblies were organized either by centuries or by tribes. Centurial assemblies were based on an ancient method of organizing a much smaller *populus*, and are thought to have been a cumbersome, time-consuming form (RA 201-61; RVA 85-106). The rise of tribal assemblies probably derives in part from a desire to streamline the polling process. Moreover, the centuries could be convoked only by a magistrate with *imperium* -- generally a consul or praetor -- whereas the tribes might convene under a tribune as well (SIR I 191-97). After the *lex Hortensia* the centurial form came to be reserved for those occasions when it was felt to be unavoidable, i.e. chiefly in the annual elections of consuls and praetors (RA 229-61). Thus only once a year was one likely to vote in a centurial assembly; whereas most legislative (and, before the first century) judicial activity took place in tribal assemblies, which occurred throughout the entire year. 3) *Procedure*. If the centurial assembly, which was virtually confined to elections, was distinguished from all tribal assemblies by means of its characteristic form, it is also true that electoral assemblies of the tribes differed from other tribal assemblies in the voting procedure that they used. It is clear from a number of sources that in elections all tribes voted simultaneously, while in legislative and judicial assemblies they voted in succession (Plut. Fracco, *La procedura dei voti nei comizi tributi romani* *Opuscula* II (1937) 235-54; cf. RVA 128-30 note 26). It is not certain that the same distinction obtained in the case of centurial assemblies, but it is at least arguable that it did; Taylor (RVA 96; followed by C. Nicolet. Le
D. Botsford’s chapter raises a number of interesting issues which are strictly speaking only tangential to the question under discussion.²⁹ I must therefore with regret forego a

mériter du citoyen dans la Rome républicain [1976] 360) stresses the organizational similarity between the tribal and the reformed centuriate assemblies as well as the fact that elections in both assemblies made use of the same structure in the Campus Martius (see below), as evidence that the vote within classes at centuriate assemblies was simultaneous. If so, simultaneous voting would have applied to elections of both plebeian and curule magistrates, and will have served to accentuate the differences between electoral assemblies on the one hand and legislative or judicial assemblies on the other. 4) Veneti. Simultaneous polling of all voting units at electoral assemblies required a great deal of space. Thus, while legislative and judicial assemblies are attested in a number of relatively confined areas, such as the Comitia (Varro DRR 1.2.9; most recently estimated at about 1600 m² by F. Coarelli, Il Foro Romano: periodo arcaico [1983] 148) and the even smaller Aera Capitolina (Livy XXXIII 25.7; Cicero ND 1.38,106; about 1,500 m² according to the measurements given by Pliny and Ashby, A Topographical Dictionary of Ancient Rome [1929] 48), elections were normally held - during the Late Republic, at least - in the less restricting Campus Martius (RA 47). The Saepta Iulia, which were built specifically for these assemblies, covered about 24,000-37,000 m² = 400 m x 60 m, Pliny and Ashby 461; 300 m x 90 m, E. Nash, Pictorial Dictionary of Ancient Rome [1961] 291). The comitia centuriata had in any case been held there from an early date, regardless of purpose or voting procedure (Laelius Felix fr. 3 [Huschke = Aulus Gellius NA XV 27,5]), but by Cicero’s day, this assembly was virtually confined to an electoral role, so that the Campus became the site for all electoral assemblies, both centuriate and tribal. (In fact, Cicero at de Crat III 42,167 even adjoins Campus pro comitibus as a stock example of metonymy.) Thus it is reasonable to assume, according to Botsford, that elections were distinguished in the public mind from other assemblies not only in their purpose, but by a variety of secondary factors as well, and that such a distinction might well have been reflected in contemporary usage.

²⁹ Chief among these is his assertion that there was no exclusively plebeian assembly in the late Republic. It should be noted that L. R. Taylor makes some compelling arguments in support of Mommsen’s view that a distinction between assemblies of the populus, which he calls comitia, and plebeian assemblies, for which he uses concilium plebis, was in fact observed to the very end of the Republican period, and that patricians actually continued to be barred from plebeian assemblies even when their numbers were so small as to render them incapable of influencing an election by their votes (RA 61-64, 111-112, 139-142 notes 7-10). J. Linderski, Reymnkie zimodzenie wzdzech od Salli do Cezara [i.e. The Roman Electoral Assembly from Sulla to Caesar] (1966) 21-22 takes a similar position, arguing that even if the distinction between assemblies of the populus and those of the plebs was blurred in the case of legislation and trials, it ought to have been maintained in elections, since the tribunes were in theory officers of the plebs, not of the populus. Thus it remains possible — and in my view highly probable — that the group convening under a curule magistrate (i.e. one who had been elected by the universitas populus) was exo facto and de iure the populus, while those gathering under a plebeian magistrate (i.e. one who had been elected by the plebs) constituted e exo facto and de iure, the plebs; cf. the precision of Laelius Felix’s language in defining plebissitca as quaes tribonis plebis ferentibus accepta sunt (fr. 2.5-6). This would remain true whether or not any patricii happened to appear on the day appointed by (let us say) the praetor; even if none did, and the assembly were therefore attended only by plebeians, it would remain an assembly of the populus and not of the plebs, by virtue of the praetor’s presidency. So too if, on another day, a few patricians failed to heed the tribune’s order to leave before the vote. Despite their presence and participation, the assembly would remain officially one of the plebs and not of the populus, thanks to the tribune’s presidency. Thus Botsford is only partially correct that the presence or absence of a few patricians in an assembly probably mattered little (RA 130); their presence did not in the end affect the classification of the assembly in question before the law. But it does not follow that no
nizational similarity between the tribal and centuriae within classes at centuriae assemblies of both plebeian and curule magistrates, all voting units at electoral assemblies are attested in a number of relatively large, perhaps up to 1400 or 1500. This is the number of voting units in a total.

The decision of the case, however, is in favor of Botsford's theory, as also to that of Laelius Felix, in its incompatibility with the ancient evidence. Botsford himself raises this issue by adding a number of passages from the classical period which do not conform with Laelius' definition. Although I disagree with Botsford in some instances, there exist by my count some 21 passages in which Cicero uses comitia or concilium in a way that contradicts Laelius, well as in Livy 41 such passages can be found. These deviations were known to Mommsen and his forerunners, who attempted to reconcile the implied testimony of Republican writers with the more explicit testimony of the Imperial jurist. Botsford's discussion of these attempts and his judgment concerning their limited success is excellent. What Botsford does not admit, however, is that such passages account for only about 7% of the total number of occurrences of these two words in Livy and Cicero. In other words, Laelius' definition is about 93% accurate when judged against the usage of our two most important classical witnesses. This is an impressive rate of accuracy, and some scholars have

[Note 26] The desire to remove patricians from plebeian assemblies or that the formal distinction between assemblies of the populus and those of the plebs ever disappeared.

[Note 27] I will however mention one point which is central to Botsford's argument, the supposed relationship between comitia and concilium. Botsford rejects this derivation (RA 135-36), but uses Varro's belief in it and the many purists based on it (cf. notes 21 above and 57 below) as evidence that the Romans looked on those assemblies that they called concilia as being in some sense deliberative bodies. The weakness in this reasoning is what seems to me the inherent unlikelihood of the Romans differentiated between kinds of voting assembly according to the character of the accessory assemblies that preceded them. Any discussion of the vote, after all, took place at the contio that took place just before every voting assembly, not during the voting assembly itself. No comitia ae concilium entailed any discussion at all. In the case of trials, the law provided that both the prosecution and the defense be allowed to state their case in a series of four contiones prior to the vote, the last of which (the so-called quarta accusatio) had to take place on the same day as the actual vote, immediately preceding it. Cicero (Doss 17,45). But judicial assemblies were by far the least common type in the late Republic, and we have Plautus' testimony that such assemblies were colloquially called comitia (see note 82). Moreover, the evidence indicates that comites and voting assemblies were strictly distinguished (RA 465-66; cf. R VA 61-62). One might of course expect the lengthier deliberative contiones themselves, rather than the actual voting assemblies, to have been called concilia while the more perfunctory gatherings retained the general designation. In fact, however, the idea of deliberation is closely attached to the word contio and its derivatives as a matter of usage (OLD 432 s.vv. contiones, contiones, etc.). Here the length of the contio should not be a factor, since the very word implies talk: Cicero, among others, actually uses it as a synonym for oratio (Var 1.3 Att XIV 11.1, 20.3 XV 2, 3; Faus IX 14,7 [Asinius Pollio] X 33,2 -- all, interestingly, of speeches in written form).

[Note 28] See note 19 above.

[Note 29] The passages are listed in paragraph 3 C (Table 1,1 section A,1,b and Table 1,2 section A,2,a).

argued plausibly that deviations in the testimonia are due (for example) to simple carelessness in the transmission of Laelius' definition. Botsford, however, acting on the assumption that contemporary authors are incomparably better sources for the meaning of these words than a second-century jurist, bases his distinction on the actual usage of such authors, i.e. primarily Livy and Cicero. Yet even so, his distinction is only slightly more accurate than that of Laelius. In the same number of total occurrences of comitia and concilium in Livy and Cicero, I find 58 passages (= 6.6% of all occurrences) which definitely conflict with Botsford's distinction.

E. The slight difference in accuracy between the two prevailing theories makes it difficult to argue decisively for either one, while the objections I have discussed cast doubt on both. Indeed, there are a few passages that do not conform with either definition. Thus even the assumption of random error in our sources (which is of course always a live possibility) militates against choosing one definition over the other. In such a situation, only by successfully explaining all the relevant testimony to ancient usage is one likely to decide the matter.

For all these reasons, a complete re-examination of the evidence is needed.

3. Testimonia and interpretation.
A. Two preliminary remarks are in order. First, the words comitia and concilium are not mutually exclusive in ancient usage. A number of ancient witnesses apply both words to the same assembly, sometimes even in the same passage. Such usage may, as I noted above, merely result from random error or minor confusion. In some instances, however, the extremely close juxtaposition of the two words looks purposeful, and so argues against this assumption. One is therefore forced to conclude that the words, not being incompatible, were used correctly, or else that the authorities in question were almost totally ig-

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(31) See Taylor's argument concerning Gellius' possible unreliability in reporting the words of Laelius Felix (RVA 139 note 9).
(32) RA 119, 130, 137. Botsford also cites the evidence of Caesar, Sallust, Nepos, and Varro, although these authors together add only about thirty examples to the hundreds found in Cicero and Livy.
(33) I.e. passages in which comitia refers to a legislative or judicial assembly, or in which concilium refers to an electoral assembly. Botsford claims that only one exception to his rule can be found, in the lex Julia municipalis (CIL 12,465 = FIRA 13), which provides for the election of magistrates comitiis concilione (RA 133 note 2). For further exceptions to Botsford's rule, see paragraph 3 C (Table 1,1 section A,1 and Table 1,2 section A,2,a). Exceptions could be multiplied by taking into account the many passages in which the two words clearly include on the one hand assemblies of the populus or plebs, and on the other electoral, legislative, and judicial assemblies indifferently (such as the passages listed in Table 1,1 section A,1,c and Table 1,2 section A,2,c).
(34) See paragraph 3 C (Table 1,2 section A,1 and Table 1,2 section A,2,a).
(35) E.g. Livy II 60,5 plus enim dignitatis comitii iuris detrectum est patres ex concilio submovendo, quam virium aut plebi additum est aut demiptum patribus; cf. Cicero RedSen 5,11, Sest 30,65, Livy III 13,9.
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the many passages in which the
d on the other electoral, legislative,
section A,1,c and Table 1,2 sec-
A,2,a).

res ex concilio submovendo, quam

notciant of their true meaning beyond the simple definition «assembly.» Our two main
witnesses to the classical usage of these words, Livy and Cicero, both occasionally use
political terminology with a certain freedom.36 But in most important respects, their com-
mand of this sphere is impressive; and furthermore, as I have observed, their use of comitia
and concilium is as a rule extremely consistent. In short, both authors show sufficient ex-
pertise and sensitivity to inspire confidence in their testimony on the meaning of these
words.

B. Second, although I shall refer to other Republican and Imperial sources, the argu-
ments that I will present are based on evidence gathered from the works of Livy and
Cicero. I will forego discussion of their relative merits and simply note the credentials they
share as witnesses to the ancient use of political terminology: mainly, that the vast num-
ber of occurrences of both words in these authors far outweigh the total found in all others
combined; that both of them lived during a time when the assemblies were still func-
tioning; and that between them they cover nearly the entire range of Republican institu-
tional history. I might add that no evidence that contradicts my findings has come to light
from other literary or inscriptive sources.37 Thus by «confining» myself in the formal presen-
tation of testimonia to these two authors, I will not be neglecting an important body of
evidence.

C. The clearest and most convenient way to marshall such a vast body of evidence is in
tabular form. The following charts will serve to illustrate the various meanings of comitia
and concilium as determined by the frequency with which each meaning appears.

Table 1,1 comitia (595 occurrences):38
A. Political (595 occurrences):
1. Roman (577 occurrences):
   a.) of the populus (476 occurrences):
   Electoral (426 occurrences):39

(36) This is particularly true with respect to the distinction between the populus and the plebs, which
both authors frequently ignore.
(37) On the literary evidence collected by Botsford see note 32 above. Inscriptive evidence is of lit-
tle use in settling this question, since most of the material we have confines itself to the equivocating
formula comitiae consilium; see note 9 above.
(38) In tabulating instances of comitia and concilium, I have included occurrences that are implied by
the use of multiple modifiers. Thus Cicero Ver 18,23 proximus consulibus praetorio comitatis, because it ref-
ers to two sets of elections, is counted as two occurrences of comitia; although the temporal modifier prox-
us is not taken as indicating a separate occurrence (but see Table 2,1 section C,2).
(39) Kings, consuls, praetors, quaestors, curule aediles, censors, and other curule magistrates are assumed
to have been elected by assemblies (whether curiate or centuriate) of the universus populus even when this
is not explicitly stated by the sources.
Cicero  Ver I 6, 17, 17, 19 bis 8, 15 bis Man 1, 2  Agr II 2, 4 7, 18 bis 11, 27  Catil I 5, 11  Mar 1, 1 bis 17, 35 17, 36 bis 18, 37 18, 38 ter 19, 38 25, 51 26, 53  Sae 18, 51  RedSen 7, 17  Caes 8, 19 a  Pis 5, 11  Planc 3, 7, 4 9, 10 6, 15 bis 8, 21 20, 49 quinquiens 20, 50 22, 23 22, 54 28, 68, 29, 69  Scarp 30  Mil 9, 24 9, 25 15, 41, 16, 42  Phil II 32, 80 32, 81, 33, 82 38, 98  VIII 9, 27  Fam I 4, 1  II 10, 1  VII 30, 1 ter [Caesius]  VIII 2, 2 bis 4, 3 bis (12, 4) 14, 1  X 25, 2, 26, 1 26, 2, 26, 3  Att I 1, 2 10, 6 bis 11, 2 16, 12, 16, 13  III 12, 1, 13, 1 bis 14, 1 14, 2, 18, 1  IV 2, 6 3, 3 bis 4, 3 3, 5 13, 1 14, 2, 15, 4 15, 7, 16, 6 17, 3 quater 19, 1  VII 9, 2 bis  IX 9, 3  XII 8, 1  XIV 12, 1  Qfr II 1, 2  bis 2, 1 2, 2, 4, 6, 11, 3, 13, 5, 15, 3  III, 16, 2, 3, 3, 2, 8, 4  adBrut I 5, 3 bis 5, 4 bis 11, 14, 1 1° Rep II 13, 25 17, 31  Div I 27, 33  ter  NDII 4, 10 bis 4, 11  Bruntus 14, 55

Livy I 32, 1 35, 1 47, 10 60, 3  II 2, 11, 8, 3 64, 2 a  III 6, 1 19, 2 20, 8 35, 1 35, 7 35, 8 36, 9 37, 5 40, 12 46, 6  IV 6, 9 6, 11 7, 3 7, 8 bis 7, 9, 12, 4 bis 13, 5 16, 6 bis 25, 1 25, 5, 25, 14 35, 6 36, 4 41, 2 43, 8, 44, 1, 44, 2 44, 5 50, 8 51, 1 53, 13, 5 54, 2 54, 5 54, 8 bis 55, 4 55, 8, 56, 1 bis 57, 9  bis 5 9, 1 9, 8 12, 13 13, 2 14, 1 14, 2, 14, 4 14, 7, 15, 8, 16, 3 26, 1 31, 1, 32, 16 32, 17  VI 1, 5 4, 7 5, 7 18, 1 22, 7 30, 1, 35, 5 35, 9 35, 10 36, 3 bis 37, 4 37, 4 42, 9 42, 14 a  VII 6, 11, 9, 4 14 17, 10 17, 13, 18, 10, 19, 5 21, 1 21, 1 21, 2, 14 22, 7 22, 9, 22, 10 22, 11 24, 10 26, 11 26, 12  VIII 3, 4 13, 10 16, 12 bis 20, 1 23, 11, 23, 13 23, 14 23, 17  IX 7, 12 7, 14, 15, 11 18, 14 34, 25 bis 40, 21 42, 3, 44, 2 46, 12  X 5, 14, 9, 13 bis 11, 3, 11, 10, 13, 2, 15, 7, 15, 11, 16, 11, 23 22, 8 bis 36, 18 47, 5  XXI 15, 6 53, 6 57, 4 32, 3, 33, 10 33, 11, 34, 1 34, 3 34, 9, 34, 10 35, 2 35, 5 38, 23, 9 24, 3 31, 7 31, 8 31, 9 31, 12 31, 14 11, 7, 11, 9, 9, 10, 2 11, 6 43, 5, 43, 9  XXV 2, 3 bis 2, 5 5, 2 7, 5 41, 10  XXXIV 18, 4 bis 18, 6 22, 2 23, 2  ter  XXVII 14, 1, 5, 14 bis 6, 2 6, 4, 6, 5 bis 6, 6, 6, 8 6, 10, 6, 11, 8, 11, 7, 20, 13 21, 6 29, 3 29, 5 33, 6, 35, 1 bis  XXVIII 10, 1 bis 10, 3 10, 4 38, 6 38, 7, 38, 11  XXIX 10, 1, 10, 2 bis 37, 14 38, 2 38, 4 38, 5  XXX 26, 12 39, 4 39, 5 40, 5  XXXI 4, 4 49, 8 49, 12 50, 6 11, 9, 11, 10

(40) I include as assemblies of the universus populus elections of strictly religious officials. This practice is against that of Botsford, who argues that because pontifical elections took place before a special assembly of seventeen tribes, the minor populus, they were not assemblies of the universus populus (RA 120); cf. notes 19 above and 49 below. Passages in Table 1,1 that refer to such assemblies are distinguished by a superscript letter «a» (e.g. Agr II 7,18a). The passages concerned deal with elections to various priestly offices. Pontifical elections include: Cicero Caes 8,19 adBrut I 5,3 semel 5,4 semel 14,1 (ponitex maximum, Cicero Agr II 7,18; Livy XXV 5,2 bis), and see the following note; augural: Livy XXXIX 45,8; curio maximum, Livy XXVII 8,1; rex sacrorum, Livy XL 42,10.

(41) I have not included this disputed passage in my analysis. The text read «seis + domitio diem timore esse e spectio»; Shackleton Bailey notes: «the text remains in doubt. The reading formerly in favor seems Domito (conditionem) diem timor esse was abandoned after the redating of 97(viii.14); though the comitum might possibly be for the election of a pontifex (see 97 (viii.14). n.»

(42) See note 19.

(43) ...factum senatus consultum ut... patres auctores omnibus eis ami comitis ferentes; but there is nothing to suggest that magistrates elected by plebeian assemblies received the patronum auctoritas; see note 12 above. Livy’s statement therefore applies only to elections of curiae magistrates for 366.
Cicero Agr II 11,27 bis⁴¹ 12,31¹ RedSen 11,27 Dom 30,79 bis 33,87 Har 6,11 Sest 38,82⁵¹ 109 Pis 15,35 Phil I 8,19 X 8,17 XIII 15,31 Fam 19,16 Att I 14,5 II 15,2 IV 1,4

Livy III 20,6 34,6 34,7 37,4 55,3 V 46,10⁵² 52,16¹ Vili 12,15 (X 24,18)⁶⁶ XXXI 6,3 6,7 7,1 XLI 30,10;

Judicial (ten occurrences): Cicero Rab Perd 4,11 Dom 32,86 Sest 30,65 34,73 Mil 3,7 Rep II 36,61 Livy III 24,7 29,6 XLI 16,11,12,16;

(⁴⁴) The first occurrence of comitia in this passage is Madvig's universally accepted supplement.

(⁴⁵) These passages refer to the curate of impetio. I regard this organ as a legislative assembly of the populus despite the opinion of several scholars (most notably Mommsen, Str P612; K.; Latte, Zwei Einkurse zum römischen Staatsrecht: 1. Lex Curia und Continuatio, «Nachrichten von der Gesellschaft der Wissenschaften zu Göttingen,» phil.-hist. Kl., n.F. 1 [1934-36] 59-73) that in it no law was actually passed and no vote taken, but rather that the decision of a previous electoral assembly was confirmed by an oath of loyalty. In the late republic of course it was merely a vestigial assembly intimately bound up with elections, and was attended by thirty lectors instead of voters (Cicero Agr II 12,31). Nevertheless, its function was to pass a lex, and its original membership must have been the universus populus. The status of the lex curiae as a proper law and of the comitia curiata as a formal voting assembly is defended by A. Magdelain, Recherches sur l'imperium: la loi curiata et les asperses d'investiture (1968) 1-35; cf. J. J. Nicholls, The Content of the lex curiata, «AJP» LXXVIII (1968) 257-278; R. E. A. Palmer, The Archdis Community of the Romans (1970) 184-88, 202-26. Passages in this table referring to these assemblies are distinguished by a superscript letter 'e' (e.g. Agr II 12,31b).

(⁴⁶) The known facts concerning this assembly are these: Sometime after 23 Jan 57, the tribune P. Sextius imposed his right of sancarius against an assembly held by the consul Q. Metellus Nepos at the Temple of Castor. Since the assembly was held in the Forum, it must have been tribal, because the comitia centurion could not assemble within the pomerium; and it must also have been either legislative or judicial, since simultaneous polling of all the tribes at elections required the plentiful space of e.g. the Campus Martius (on both points cf. note 24). Sextius' intervention and the subsequent attack on his life by Cicero's gang suggests that the assembly concerned a bill intended to impede Cicero's recall; but Sextius may have been hindering Metellus' activities in some other area in order to force a compromise on the question of Cicero.

(⁴⁷) I have included but not counted Livy X 24,18, where all editors read Comitio abit against the reading of the MSS, comitia habuit (endorsed by Taylor RVA 130 note 27). If genuine, this would be a legislative assembly of the tribes under the presidency of Q. Fabius Maximus Rullianus (cos 295) for the purpose of assigning consular provinces.
No Distinction as to Purpose (ten occurrences):
Cicero Red. Sen. 11.27 Dom. 14.38 bis Rep. II 32.56 Div. I 45.103 II 40.83
Livy VI 6.15 41.10 bis XXXIX 15.11;

b.) of the plebs (fifty-four occurrences):
Electoral (forty-three occurrences):
Cicero Ver. I 8.22.9.24 bis 86.9.25.48 II 1.7.19.48 Agr. II 8.20 ter 9.9.22 bis 12.31.49 [Cael.]
Fam. VIII 4.3 Att. I 1.1 4.1 II 20.6 21.5 23.3 IV 15.8 bis Qfr. II 14.4;
Livy II 56.1 56.2 58.1 60.4 60.5 III 24.9 30.6 37.5 51.8 bis 54.9 54.11 64.4 64.5 bis 64.8
bis V 10.10 29.1 VI 35.10 39.5 39.11 VIII 22.4;

Legislative (five occurrences):
Livy III 17.4 (cf. concilium 16.6) 24.7 VI 36.9 37.12 XLV 35.7;

Judicial (five occurrences):
Livy III 13.9 (cf. concilium 13.9) XXV 4.5 (cf. concilium 3.14.4.4 quinquies) XXVI 3.9
3.12 XLIII 8.10;

Legislative and Judicial (one occurrence):
Cicero Leg. III 19.45;

c.) no distinction between populus and plebs (forty occurrences):
Electoral (seventeen occurrences):
2.4 [Cael.] Fam. VIII 4.3 bis De Orat. III 42.167
Livy III 37.5 39.8 VI 40.7;

(49) Broughton (MRR II 132 and 116) follows L. R. Taylor (Cicero's Aedilship, «AP» LX [1939]
194-202) in listing Cicero as aedilis plebis for 69 rather than aedilis curonis as Menzies (SR I 443 note 2,
etc.) and others formerly supposed. I therefore regard this passage as referring to plebeian comitia.
(49) The comitial form proposed by Rullus to carry out the election of ten land-commissioners -- an
assembly of seventeen tribes modeled on the one employed for pontifical elections -- was unusual to say
the least. Nevertheless, because the proposed election was to be conducted by a tribune (Rullus himself, in fact),
I regard it as a plebeian assembly no less than if all thirty-five tribes had voted, just as I regard priestly elec-
tions as expressions of the will of the universus populus; see note 40 above. I should note that Cicero does
not distinguish clearly in this speech between electoral comitia of the populus and those of the plebs. Some
readers may therefore differ with my classification of individual instances by these categories.
(49) Here Cicero refers to the two assemblies which drove him into exile, which he denounces as
legislative and as judicial proceedings.
(51) This passage refers to P. Vatinus' unsuccessful campaign for the aedilitas of 57. Since it is uncertain
whether Vatinus ran for aed cur or aed pl, it is impossible to say whether this was an assembly of the
populus or of the plebs; therefore I include it here.
Legislative (two occurrences):
Cicero Sest 51,109 Leg III 19,45;

Electoral and/or Legislative (six occurrences):
Cicero Agr II 11,27 bis Sest 50,106 54,115 59,125
Liv. I 17,9;

Judicial (one occurrence):
Cicero Leg III 19,45;

No Distinction as to Purpose (fourteen occurrences): Cicero RedSen 5,11 Dom 28,75 Pis
15,36 Phil II 32,81 bis Att IV 16,8 Tusc IV 1,1 Div II 18,42 bis 18,43 bis 35,74 bis 35,74 bis
Liv. IX 46,14 and XXXIV 2,11;

d.) military electoral comitia (three occurrences):
Liv. III 51,8 XXV 37,6*XXVI 2,2;

e.) figurative electoral comitia (four occurrences):
Cicero Phil XI 8,19 ter and Rep I 23,50;

2. Foreign (seventeen occurrences):
Electoral (sixteen occurrences):
Cicero Ver II 2,52,128 ter 2,52,129 2,52,130 bis 2,53,133 2,54,136 Fam VIII 1,23

Cicero's observations here apply to assemblies of both the populus and of the plebs, though only
for the period when the leges Aelia et Fufla were in effect, i.e. from about the mid-second century until they
were superseded by Claudius' legislation in 28 (see LPFR 397). But since Cicero invariably speaks favorably
of the leges Aelia et Fufla (e.g. RedSen 5,11 Har 27,58 Sest 15,33), I interpret his remarks in these passages
in accordance with the period when those measures were in force rather than with the situation that prevailed
when Cicero was actually writing.

Irregular elections of tribuni militum by rebellious soldiers during the overthrow of the decemviri
in 449.

...III rumores de comitiis Transpadanorum Cumanorum tenues caherunt, Romam cum venissent, ne
tenuissent quidem auditionem de eo re accipere, praetorius Marcellus, quod aediles nihil retulit de successione pro-
vinciarum Galliarum et in K. In., ut nihili saepi dicit, cum distinxi relationem, sum manu eos sententias expressit,
qui de eo tum fuerant cum Romae nos essemus. This passage clearly refers to the establishment of the towns
of Transpadan Gaul as municipia: cf. Att V 2,3 enrique rumor de Transpadanis, eos insos III viris creare, with
Shackleton Bailey's note. Most take the phrase rumores de comitiis Transpadanorum to mean rumors about
the establishment of quattuorviral elections among the Transpadanes, and I have followed the consensus;
see note 77 below. It would be more consistent with normal patterns of usage to take the phrase as an elipse
for rumores de comitiis Tr. (in civitate adimicendum) (vel sim.), «rumors about an assembly to grant citizen-
Asinius Pollio] X 32, 3
Livy XXIV 23, 1 26, 16 27, 1 XXXII 25, 2 XLII 43, 7 XXXIII 27, 8;

No Distinction as to Purpose (one occurrence):
Livy XXXIV 51, 3;

3. No Distinction between Romans and Foreigners (one occurrence):
Livy V 1, 1;

B. Non-political (no occurrences).

Table 1,2 concilium (286 occurrences):

A. Political (257 occurrences): 1. Foreign (210 occurrences):¹⁶
Cicero Inv II 23, 69
Livy I 50, 2 50, 4 52, 6 51, 1 51, 4 bis 51, 5 51, 9 52, 1 54, 1 II 44, 8 II 2, 3 10, 8 IV

¹⁶ Foreign concilia in general are the assemblies or congresses of various national or federal organizations, especially in Greece, whose members were entire poleis themselves rather than the individual citizens of each poleis. Such organizations are known in Greek by a variety of names that denote the common purpose of the member cities (e.g. summakhaia) and also by more general names (e.g. koinon). Their assemblies, too, are variously called synedria, ekklèsiai, synkletic, etc., words which can also designate the inner councils of the same organizations. Most of them convened once annually, were structurally less complex than Roman comites, and above all were forms of representative as opposed to direct government. They are therefore fundamentally different from the primary assemblies of the Roman populus and plebes. On these organizations in general, see J. A. O. Larsen, Representative Government in Greek and Roman History (1953). All these assemblies Livy calls concilia (Conversely, the Roman concilium plebis is rendered into Greek by Cassius Dio as a synodos tou demen [XXXIX 35, 1] and a svilos [XXXVI 39, 4]; also as an ekklèsia [Dion. Hal. IX 49, 3] and an agôga [Appian BC I 12]; see H. J. Mason, Greek Terms for Roman Institutions: a lexical analysis, American Studies in Papyrology 13 [1974].) I have also included in the category of foreign concilia diplomatic conferences in which Roman representatives were involved (e.g. Livy XXX 24, 11).

²⁷ Manuscripts and editions frequently vary between concilium and comitia; cf. note 21. I have followed the Oxford editors (or Teubner where Oxford is lacking) in all cases despite occasional disagreement, and have acknowledged variant readings by referring to this note. An editorial consensus in favor of concilium, even against manuscript authority, is counted in this tabulation; a consensus for comitia on the other hand -- usually a sign that the sense of the passage clearly requires comitia «plain» as opposed to concilium/comitia «council» -- is recorded but not counted. The latter group of passages appear in square brackets, and are included here only for completeness. All uncertain readings are distinguished in this table by a superscript letter «» (e.g. Livy I 50, 4).
XXXIII 27,8;

for instance:

IV 44,8 III 2,3 10,8 V

and, rather than a foreign electoral
use, as was the case with Cassius Dio XLI 36,3) was
the praetor L. Roscius Fabus

uous national or federal organiza-
rather than the individual citizens
that does the common purpose
for Augustus: Their assemblies, too,
so designate the inner councils of
necessarily less complex than Roman
mention. They are therefore fun-
and plebs. On these organizations
History (1955). All these assemblies
Greek by Cassius Dio as a sunodos
Dion. Hal. IX 49,5) and an agon
tical analysis, American Studies
oncilia diplomatic conferences in

id consilium; cf. note 21. I have
uses despite occasional disagree-
editorial consensus in favor of
a consensus for consilium on the
utilitum 'plans' as opposed to con-
assemblies appear in square brackets,
ished in this table by a superscript

2, Roman (forty-five occurrences):
a.) of the populus (eight occurrences):
Electoral (two occurrences):
Livy I 6,1 and 26,5;

Legislative (two occurrences):
Livy I 8,1 and II 7,7;

Judicial (two occurrences):
Livy III 71,3 and VI 20,11;

No Distinction as to Purpose (two occurrences):
Livy I 36,6 and II 28,3;

b.) of the plebs (thirty-four occurrences):
Electoral (two occurrences):
Livy II 60,5 and III 64,8 (= comitia III 64,4 and 64,5 bis);

Livy XXIII 4,4 and XXVI 16,9 are the only examples of foreign assemblies that are termed concilium plebis. Cf. Livy XXI 14,1 permixtum senatus…populi concilium, and XXX 24,11 permixto paene senatus populi concilii, the only other references to non-Roman assemblies that show a concern for the social orders of those in attendance. These passages are distinguished in the tables by a superscript letter «» (e.g. Livy XXI 14,19).
Legislative (seventeen occurrences):
Cicero Sext 35,75 Vat 2,5 6,15 Inc II 17,52 Livy II 56,15 57,1 III 16,6 18,6 54,15 VI 35,8 38,4 38,7 39,1 XXII 25,17e XXXVI 5,18 XLIII 16,8 16,9;

Judicial (ten occurrences):
Cicero Dom 30,79 Sext 30,65 Livy III 13,9 VII 5,5 XXV 3,143,17 3,19 4,1 4,4 XXXVIII 53,6;

No Distinction as to Purpose (five occurrences):
Cicero Vat 7,18 bis Livy II (28,1) 28,3) 35,4 III 14,5 XXXIX 15,11;

c.) no distinction between populus and plebs (three occurrences):
Cicero Red Sen 5,11 Leg II 12,31 and III 19,42;

3. Civitates (two occurrences):
Cicero Rep VI 13,13 and Fin III 9,63;

B. Non-political (twenty-nine occurrences):
Cicero Dom 28,74 Sext 14,32 [Att I 1,2]e QFr III 1,24 Tusq I 30,72 and IV 32,69 Rep I 17,28 Div I 24,49 bis ND I 8,18 Cato 23,84 Off III 5,25 and 9,38 Fin II 4,12 and 24,77
Livy I 21,3e II (28,1)e 38,4 [54,7]e IV 6,6e [17,3]e 48,4e 48,5 V 7,5e 47,7 VIII 29,2 [X 17,1 XXI 41,2]f XXII [15,2] 53,9 [XXV 14,3 25,7 38,23]f XXVII 35,4 [XXVII 29,10 XXIX 5,7]f XXX 21,7 [36,10 XXXII 6,2]f XXXIII 31,7 32,2 32,7 XXXIV 2,4 [XL 17,1]e

D. These data illustrate the strengths and weaknesses of both Laelius' and Botsford's definitions. Comitia tends to mean both an assembly of the populus as opposed to the plebs,

(59) For most of these passages I should translate consilium (if at all) as «company,» e.g. Cicero Tusq I 30,72 seclusum a concilio deorum «shut out of the company of the gods.» T. W. Deegan (M. Tullii Ciceronis Tusculanarum Disputatio ad loc) makes a trenchant distinction between consilium and concilium in such passages, which resemble others that I have listed here, e.g. Livy IV 6,6 consules...concilium principum domi balsent (cf. Livy IV 48,4 and 48,9). I include such passages under this heading because, while the concilium involved are political in nature, they are obviously not formal voting assemblies, but rather impromptu caucuses of various sorts. The same reasoning applies to the listing of military councils (e.g. Livy XXII 33,9). Note that in many such passages the MSS favor the reading consilium over the editor's concilium, and thus corroborate Deegan's observation. For more on this distinction see note 74.
A second group of non-political concilia listed here are festivals, such as the Ludi Maximi of 491 (Livy II 38,4); the Olympic festival of 207 (Livy XXVII 35,4); and the Isthmian festival of 196 (Livy XXXIII 32,2).
and an electoral as opposed to either a legislative or a judicial assembly. Concilium tends to
denote plebeian assemblies rather than those of the populius, and legislative or judicial
assemblies rather than elections. The statistical significance of exceptions to either rule is
not great. This tabulation also exposes a crucial fact which neither Laelius’ nor Botsford’s
definition takes into account. Both definitions pertain chiefly to comitia and concilium in
the Roman sphere. But there is overwhelming evidence indicating that concilium at any
rare refers usually not to a Roman voting assembly, but to an assembly made up of
delegates representing a number of (from the Roman point-of-view) foreign states.
Botsford cites the evidence that illustrates this point;[6] but he goes too far in assuming
that the Romans apply to foreign institutions in general the Latin terms with which they
are familiar, and in the same sense in which these terms are used of Roman institutions; in
this way only could they make themselves understood (emphasis mine).[6] So stated, this principle
appears unobjectionable. But when a Roman writer mentions a concilium, he is more apt to
be talking about a foreign assembly than a domestic one. Realizing this fact, one probably
ought to reverse Botsford’s procedure and attempt to explain what a Roman concilium had
in common with a foreign one instead of assuming that foreign concilia somehow conformed
to a putative Roman model.

E. Cicero, moreover, who seldom has occasion to mention foreign assemblies, rarely uses
concilium in a political sense. For him, any voting assembly, whether Roman or foreign, is
normally termed comitia, while concilium refers primarily to gatherings outside the
political sphere. Livy, although he most frequently applies the word to foreign national
assemblies, speaks of non-political concilia as well. This datum removes the basic semantic
field of concilium still farther from the sphere of the Roman constitution. Thus, while any
new definition must be based on the vast number of instances in which concilium denotes
a foreign assembly, it must not overlook the existence of non-political concilia.

F. The tables suggest further that the two words reflect two very different ways of looking
at assemblies. In both cases the categories included in the charts stem from the frequency
with which each word refers to one type of assembly or another. What is interesting is that
distinctions in the various meanings of each word betoken different patterns of usage and
meaning in our sources. In the case of comitia, the major categories of meaning are deter-
mined with reference to the various purposes of the assemblies in question, or else with
regard to their structure. For concilium on the other hand, the various categories of mean-
ing correspond more closely to differences in the composition or membership of assemblies.
This difference in the categories of meaning relevant to each word becomes clearer when
one considers the modifiers applied to each word by our sources. The following set of
tables will serve to detail these differences:

Table 2.1 comitia with modifiers (267 occurrences):

A. Modifiers denoting structure (forty-seven occurrences):
1. comitia centuriata (thirty-one occurrences):
Cicero Agr II 11,27 RabPerd 4,11 Mur 1,1 RedSen 11,27 Dom 14,38 30,79 bis 32,86 33,87 Har 6,11 Set 30,65 34,73 31,109 Pis 15,35 Phil 18,19 X 8,17 XIII 15,31 Fam I 9,16 VII 30,1 Att IV 1,4 Rep II 36,61 Livy I 60,3 II 2,11 III 34,6 34,7 37,4 55,3 V 52,16 VI 41,10 VIII 12,15 XLII 30,10;

2. comitia tributa (eight occurrences):
Cicero Agr II 11,27 bis Fam VII 30,1 Att IV 16,8 Leg III 19,45 Livy II 56,2 58,1 60,4;

3. comitia curiata (eight occurrences):
Cicero Agr II 11,27 bis Dom 14,38 Rep II 13,25 17,31 Livy V 46,10 52,16 VI 41,10;

B. Modifiers denoting purpose (190 occurrences):
1. Elections of magistrates (178 occurrences):
   a.) consuls (seventy-two occurrences):
      comitia consularia (fifty occurrences):
      Cicero Ver I 6,17 7,19 8,23 Catil I 5,11 Mur 18,38 26,53 Sal 18,51 Scaur 30 [Caelius] Fam VIII 2,2 Att IX 9,3
      Livy II 64,2 III 64,6 IV 13,5 25,1 25,5 25,14 36,4 43,8 50,8 53,13 57,9 V 31,1 VI 37,4 VII 17,10 21,1 21,4 22,9 22,22,10 22,11 26,12 IX 44,2 X 9,11 13,11 10,13,2 22,8 47,5 XXI 57,4 XXIV 43,5 XXV 2,3 XXVII 4,1 XXXIII 24,1 42,7 XXXV 10,1 XXXVII 47,1 47,6 XXXIX 6,1 XL 28,3 XLII 28,4 XLIII 11,5; comitia consultibus rogandis/creandis and comitia (pro)consulis (uni) rogando/creando (ten occurrences):
      Cicero Div I 27,33
      Livy III 37,5 XXII 31,12 XXVI 18,4 22,2 XXVIII 38,6 XXXV 24,3 XXXVIII 42,2 XL 18,1 XLII 11,3;
      comitia (pro) consulis (anius sub)rogandis/creandis (four occurrences):
      Livy III 19,2 X 11,3 XL 37,8 XI 17,5;
      comitia consulum (eight occurrences):
      Cicero QFr II 2,1
      Livy III 20,8 IV 7,8 12,4 16,6 54,8 VI 42,9 XXXIV 54,1;
   b.) praetors (twenty-two occurrences):

comitia praetorum (ten occurrences):
Cicero adBrut I 11,2
Livy XXII. 35,5 XXIV 9,6 XXVII 35,1 XXVIII 10,3 XXXII 7,13 and
27,6 XXXIII 21,9 XXXIX 32,14 XL 59,5;
comitia praetoria (nine occurrences):
Cicero Ver 18,23 Planc 29,69 [Caelius] Fam VIII 4,3 adBrut I 5,4
Livy X 22,8 XXVI 23,2 XXVIII 38,11 XXIX 38,4 XXXIV 42,4;
comitia praetoris subrogandi (two occurrences):
Livy XXXIX 39,7 and 39,14;
comitia praetoribus creandis:
Livy XXIV 23,1;
c.) censors (thirteen occurrences):
comitia censoribus creandis (six occurrences):
Livy VII 22,7 XXIV 10,2 and 11,6 XXVII 11,7 XXXII 7,1 XLIII 14,1;
comitia censorum (five occurrences):
Cicero Ver II 2,54,136 and Att IV 2,6
Livy XXXIV 44,4 XXXIX 41,5 XL 45,6;
comitia censoria (two occurrences):
Livy VII 22,11 IX 34,25;
d.) quaestors (five occurrences):
comitia quaestoria (four occurrences): Cicero Fam VII 30,1 Livy IV 54,2 54,5 54,8;
comitia quaestorum: Livy IV 44,2;
c.) aediles (five occurrences):62
comitia aedilicia (three occurrences):
Cicero Planc 4,10 and 28,68 Livy X 9,13;
comitia aedilium: Livy VI 35,10;
comitia aedilis plebis: Cicero [Caelius] Fam VIII 4,3;
f.) tribunes (twenty-five occurrences):
comitia tribunorum (plebis/militum) (sixteen occurrences):
Livy (plebis) V 10,10 VI 35,10 39,5
(militum) IV 7,8 16,6 57,9 V 9,8 13,2 14,1 26,1 VI 4,7 5,7 30,1 35,5 35,10
(unspecified [≡ militum]) IV 12,4;
comitia tribunicia63(five occurrences): Cicero Att I 1,1
Livy III 30,6 IV 44,1 and 54,2 VI 39,11;

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62 It will be noted that these passages distinguish between curule aediles and aediles of the plebs in only one instance (Fam VIII 4,3). Although one may infer that this passage therefore refers to an assembly of the plebs, the modifier itself refers only to the magistrate, and not to the directly to those voting in the assembly.
63 These examples include elections of tribuni plebis (Cicero Att I 1,1 Livy III 30,6 51,8 V 10,10 VI
comitia tribunis (plebis) creandis (two occurrences): Livy III 51,8 and VI 39,5;
comitia tribunis (militum/consulari potestate) creandis (two occurrences): Livy IV 6,9 and VI 35,9;
g.) priests (eight occurrences): comitia sacerdotum (three occurrences): Cicero adBrut I 5,3 5,4 14,1; comitia pontificia: Cicero Cael 8,19; comitia pontifici maximo creando: Livy XXV 5,2; comitia pontificis maximi: Cicero Agr II 7,18; comitia auguris creandi: Livy XXXIX 45,8; comitia maximi curionis: Livy XXVII 8,1;
h.) Miscellaneous (eleven occurrences): comitia collegae(4) (sub)rogando (four occurrences): Livy II 8,3 XXIII 35,2 and 31,7 XLI 16,5; comitia Xviris(5) creandis (three occurrences): Cicero Agr II 8,20 Livy III 35,1 40,12; comitia magistratum (two occurrences): Cicero Serf 51,109 and 53,113; comitia praetoris et Boeotarcharum: Livy XLII 43,7; comitia regi creando: Livy I 35,1;
i.) Candidates (seventeen occurrences): comitia mea/nostra (eight occurrences): Cicero Ver I 8,22 9,25 II 1,7,19 Agr II 2,4 Att I 1,2 10,6 [Caecius] Fam VIII 2,2 4,3; comitia eius: Livy IX 42,3; comitia eorum: Livy IV 7,3; comitia sua: Cicero Att IV 3,3; comitia sua: Cicero Pis 5,11; comitia Dolabella (two occurrences): Cicero Phil II 32,81 and 33,82; comitia Flavi: Livy IX 46,12; comitia Quinti fratis: Cicero Att I 4,1; comitia communia patrum ac plebis: Livy IV 35,6;
2. Legislation (seven occurrences):

35,10 39,5 35,11 and of tribuni militum consulari potestate (Livy IV 6,9 12,4 16,6 44,1 54,2 57,9 V 14,1 26,1 VI 4,7 5,7 30,1 35,5 35,10).
(4) These examples include elections of Xviri agris assignandis (Cicero Agr II 8,20) and of Xviri consulari imperio legibus scribendi (Livy III 35,1 40,12).
(5) All of these examples concern consular elections.
comitia legum: Cicero Sest 51,109;
comitia de lege: Livy III 24,7;
comitia legi perferenda: Livy III 16,6;
comitia ferendae legis: Livy XLV 35,7;
comitia privilegi: Cicero Leg III 19,45;
comitia rotationi ferenda: Livy XXXI 6,5;
comitia omnium earum rotationum: Livy VI 37,12;

3. Trials (five occurrences):

   a.) Genitive of the charge or penalty (three occurrences):
   comitia capitis: Cicero Leg III 19,45;
   comitia perduellionis: Livy XLIII 16,12;
   comitia falsi testis: Livy III 29,6;
   b.) Genitive of the defendant:
   comitia M. Volsci: Livy III 29,6;
   c.) Prepositional phrase:
   comitia de reo: Livy III 24,7;

C. Other modifiers (thirty occurrences):

1. Modifiers pertaining to voters⁶⁶ (thirteen occurrences):
   comitia populi (Romani) (three occurrences): Cicero Mil 3,7 Rep II 32,56 Div II 18,42;
   comitia militaria (two occurrences): Livy III 51,8 and XXV 37,8;
   comitia sua (two occurrences): Cicero Rep I 23,50 and Livy V 29,1;
   comitia buitis: Cicero Phil VIII 9,27;
   comitia populi ac multitudinis: Cicero Mur 19,38;
   comitia Transpadanorum: Cicero [Caelian] Fam VIII 2,2;
   comitia urbane: Livy III 51,8;
   comitia utriusque populi: Livy V 1,1;
   comitia veste: Cicero Agr II 11,27;

2. Modifiers pertaining to time⁶⁷ (seventeen occurrences):
   Cicero Ver 1 7,19 8,23 Catil I 5,11 Planc 20,49 22,53 22,54 Fam X 32,3 Div I 27,33
   Livy II 56,1 V 13,2 14,4 VI 42,14 VIII 22,4 IX 15,11 40,21 XXX 26,12

3. Incidental modifiers.⁶⁸

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⁶⁶ For discussion of these passages see paragraph 3 H-I below.
⁶⁷ This group may be further divided into modifiers that denote the time of the assembly itself (e.g.
   Ver 1 7,19 bodiems conitii) and those that denote the period of time for which the results of the vote will
   be operative (e.g. [Asinius Pollio] Fam X 32,3 comitia biennii), but this distinction does not concern the
   present study.
⁶⁸ This group comprises various adjectives, such as multas, orne, and so forth, as well as demonstratives,
   none of which I thought worth tabulating.
Table 22 concilium with modifiers (124 occurrences):

A. Modifiers denoting membership (124 occurrences):
   1. Genitive (102 occurrences):
      a.) denoting a group of people (88 occurrences):
         concilium plebis (seventeen occurrences):
         Livy II 57,1 III 18,6 54,15 VI 38,4 38,7 39,1 VII 5,5 XXII 25,17e XXIII
         4,44d XXV 3,14c 3,19 4,1 4,4 XXVI 16,9 XXVII 5,18 XXXVIII 53,6 XXXIX
         15,11;
         concilium Achaenorum (eleven occurrences):
         Livy XXVII 30,6 30,12 XXVIII 7,17e XXXI 25,2 XXXVI 6,4 31,1w 31,9
         31,10 XXXVIII 34,5 XXXIX 33,5 XLII 51,8;
         concilium gentis (eight occurrences):
         Livy II 2,3 XXXII 19,4 19,9 XXXV 34,1 XXXVI 6,3 XXXIX 25,11 33,8 XLV
         18,6;
         concilium Aetolorum (seven occurrences):
         Livy XXVI 24,1 XXXI 29,1 32,3 XXXIII 3,7 XXXV 49,9 XXXVI
         28,7 XXXVIII 10,2;
         concilium populi (seven occurrences):11
         Livy I 26,5 36,6 III 71,3 VI 20,11 XXI 14,1d XXIV 37,11 XXX 24,11d;
         concilium deorum (five occurrences):
         Cicero QF r III 1,24 Tusc I 30,72 IV 32,69 Div I 24,49 ND I 8,18;
         concilium (populorum) Latinorum (four occurrences): Livy I 51,9 VI 33,6 VII
         25,5 IX 42,11;
         concilium (omnium) Etruriae populorum (three occurrences): Livy II 44,8 X 10,11 14,3;
         concilium Boeotorum (three occurrences): Livy XLII 13,7 43,5e 47,3;
         concilium sociorum (two occurrences): Livy IX 7,1e XXVII 30,9;
         concilium Acranaeum (two occurrences): Livy XXXVI 12,4 XLV 31,12;
         concilium hominum (two occurrences): Cicero Rep I 17,28 VI 13,13;
         concilium principium (two occurrences): Livy IV 6,6e IV 48,4c;
         concilium Thessalorum (two occurrences): Livy XXXVI 8,2 XLII 38,6;
         concilium Arcadum: Livy XXXII 5,5;
         concilium caelestium: Cicero Off III 5,25;
         concilium divinum animorum: Cicero Cato 23,84;
         concilium earum (= Camenarum): Livy I 2,3c;

11 This group includes both Roman (II 26,5 36,6 71,3; VI 20,11) and foreign (XXI 14,1 XXIV 37,11
XXX 24,11) assemblies.
12 I take this construction as a metonymic equivalent to the genitive denoting a group of people.

(44) _concilii earum [l.c. Achaenorum] recensunt esc._
concilium Epictotarum: Livy XLII 38,1;
concilium iuvenum: Livy XXII 53,9;
concilium legatorum: Livy XXXIII 31,7;
concilium Macedonum: Livy XLV 32,1;
concilium Magistros: Livy XXXV 31,4;
concilium pastorum: Cicero Off III 9,38;
concilium patronum: Livy IV 48,5
concilium Samnitium: Livy VII 31,11;
concilium virtutum: Cicero Fin II 4,12;
concilium Gallorum: Livy V 36,17
b: denoting a region or territory (nine occurrences):73
concilium Etruriae (three occurrences): Livy V 5,8 17,6 X 16,4;
concilium Graeciae (two occurrences): Cicero Inv II 23,69 Livy XLV 31,6;
concilium Achaïae: Livy XXXIV 41,4;
concilium Galliae: Livy XXI 20,7;
concilium Hispaniae: Livy XXI 19,11;
concilium totius Peloponnes: XXXIX 37,7;
c: Joint conferences (five occurrences):
concilium Asiae Graeciae: Livy XXXIII 32,2;
concilium Gallorum et Ligurum: Livy XXIX 5,3;
concilium Romanorum Aetolorumque: Livy XXVIII 7,14;
concilium Romanorum ac sociorum: Livy XXXIII 13,2;
concilium Volscorum Aequorumque: Livy IV 25,7;

2. Adjective (twenty-two occurrences):
concilium Achaicum (fourteen occurrences):
Livy XXXVI 31,2 34,1 35,7 35,8 XXXVIII 30,2 30,3 XXXIX 37,15 48,3 48,4 48,6 50,9 XLII 12,6 37,9 XLIII 17,4;
concilium Panaetolicum (et aut Pyliacum) (three occurrences):
Livy XXXI 32,3 32,4 XXXV 32,7 (cf. XXXI 29,1);
concilium publicum (two occurrences): Livy [54,1] II 28,3 [54,7] VIII 29,2;
concilium Aetolicum: Livy XLII 6,1;
concilium Boeoticum: Livy XLII 44,6;
concilium nostrum: Livy XXXIX 37,7;

B. Other modifiers.74

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(73) Editors have generally rejected the word Gallorum as an interpollatio; therefore I have not counted this passage in my tabulation, but include it here for the sake of completeness.
(74) A further distinction between concilium and consilium lies in the ability of the latter to accept
G. From this evidence a clear distinction between the two words begins to emerge. The modern student of Roman institutions is concerned with the purpose, organization, and composition of all assemblies. Our ancient sources show the same concerns; but after studying the modifiers that they use to convey such information about the assemblies and after observing the distribution of these modifiers between the two available words for assemblies, comitia and concilium, one is forced to the following conclusion: when our ancient sources use comitia in speaking of an assembly they are primarily interested in the purpose or structure of that assembly rather than in its corporate identity or the identity of those in attendance; when they use concilium the converse is true, and their primary interest is precisely in the corporate identity of the assembly or the identity of those in attendance. This bifurcated pattern of usage must reflect the basic difference in meaning between the two words. This difference, which is nearly invisible however long one scrutinizes the words themselves, is clearly related to the inherent capacity of each word to accept modifiers; for each of the words takes a set of modifiers peculiar to itself, i.e. ones which it does not share with the other word.

H. The distinct groups of modifiers proper to each word clearly reflect the distinction in meaning between them. Comitia accepts three main types of complement: 1.) an adjective denoting either the magistratate to be elected (e.g. comitii consularibus Cicero Ver I 6,17; comitia tribunicia Livy IV 44,1) or the structure of the assembly regardless of its purpose (comitia centurias: electoral -- Cicero Agr II 11,27; legislative -- Cicero Red Sen 11,27; judicial -- Cicero Rab. Perd 4,11; general -- Cicero Dom 14,38; comitia tributa: electoral -- Livy II 60,4; legislative and judicial -- Cicero Leg III 19,45; general -- Cicero Att IV 16,8); 2.) a gerundive phrase in the dative or genitive denoting the specific purpose of the assembly (comitia consulibus rogandis Cicero Div I 27,33; comitia collegae subrogando Livy II 8,3); 3.) an objective genitive, again denoting the purpose of the assembly (comitia...sive magistratum placet sive legum Cicero Sest 51,109; comitia capitis Cicero Leg III 19,45). Occasionally the word is found with some other type of purpose construction (comitia de reo die leges Livy III 24,7). Concilium on the other hand takes no regular modifiers that concern structure or purpose. The one passage I have found in which concilium takes a construction denoting purpose is Livy XXXII 20,4 concilio ad eam rem indicto «a council convoked for this reason» which bears no relation to any of the purpose constructions so amply attested in connection with comitia. Concilium takes no modifiers related to the

modifiers of purpose similar to those found with comitia. On this basis, I would propose an emendation. As it stands, Livy III 16,5 concilium legis (O dett. augi: legi MUpOL: lege PPB) perferendas habere, avocato populo ab annis... means «an assembly or council about passing the law.» As I have shown however, concilium is nowhere else found with this type of complement. I therefore propose to read consilium, «a conference» or perhaps «a plan concerning the passage of the law.»
organization or structure of the meeting it designates. The distinction between the two words appears most clearly, perhaps, in the few cases where their modifiers most nearly resemble one another. Both comitia and concilium are capable of taking a noun in the genitive as a modifier; but the genitive with comitia is very different from that which follows concilium. Comitia plus the genitive, as I have remarked, is an explicit purpose construction similar to the gerundive phrases in the genitive and dative discussed above. The normal and almost the inevitable meaning of such a phrase is «elections of (consuls etc.)» In sharp contrast to this usage, concilium plus the genitive never means anything of the kind. Here the genitive always specifies those attending the assembly, as in the phrases concilium Aetolorum, Romanorum et sociorum, populorum Latinorum, etc. This genitive I take to be a genitive of the whole. It is therefore clear that it was virtually impossible to express purpose by using the word concilium. To illustrate this truth, I offer the hypothetical phrase «concilium consultum,» which, if it occurred, would obviously mean not «elections of consuls,» but «an assembly or meeting of consuls.» Comitia, on the other hand, is not quite so severely limited. Here one finds a number of phrases whose superficial resemblance to concilium plus the genitive seems to argue against the distinction that I am proposing. Several passages contain phrases such as comitia populi (Cicero Rep II 32,56), a fact which to Botsford «implies the existence of other comitia, for instance comitia plebis.» While Botsford is correct that comitia may refer to assemblies of both the populus and the plebs, and while, in the case of concilium, similar phrases are found (concilium populi Livy I 36,6; concilium plebis Livy III 18,6), the phrase «comitia plebis» never actually occurs; and in my opinion, it is a mistake to assume that it ever did. For the moment, however, I will postpone my defense of this position and simply note that those passages in which comitia populi appears are in any case too few to alter substantially the general impression that comitia tends to accept modifiers that relate to the structure or purpose of an assembly rather than its membership, while concilium takes modifiers related to the membership of an assembly rather than to its purpose or structure.

(5) RA 129.

(6) See paragraphs 3 I (with note 77) and 4 C-D below.

(7) They have, however, enjoyed an established place in scholarly usage (e.g. in the title of R. Devlin’s article Comitia tributa plebis, «Atheneum» LIII (1975) 302-337). But while the use of such Latin terms may be convenient, it is misleading in that it can lead to false assumptions about attested ancient usage.

In Table 2,1 section C.1 are listed thirteen examples of comitia with modifiers that pertain to those who controlled the assembly. While in most of these passages the modifier clearly refers to those in charge of the comitia rather than to those in attendance (e.g. comitia buiis, Cicero Phil VIII 9,27 of elections under the control of M. Antonius; comitia comitii Cicero Rep I 23,50 of imaginary elections under patrician control; cf. Agr II 11,27 and Livy V 29,1 for a similar view of plebeian elections; comitia militaria Livy III 51,8 [contrasted with comitia urbana] and XXV 37,6), a few seem at first to resemble the modifiers used with concilium to define the membership of an assembly (e.g. comitia populi, Cicero Fam 19,38 NH I 3,7 Rep II 32,56 Div II 18,42 Livy V 1,1; comitia Transpadanorum: Cicero [Caesius] Fam VIII 2,2). In light of what appears to be normal usage, however, it seems to me reasonable to postulate a difference in meaning between comitia
I. The evidence gleaned from examining the modifiers of *comitia* and *concilium* corroborates the impression that arises from studying the various meanings of the two words by frequency. *Comitia* is applied only to organized voting assemblies. While it is used to denote such assemblies outside of Rome, the word belongs particularly to the complex system of Roman voting assemblies, which varied greatly in their form. Accordingly, it is equipped with an impressive complement of modifiers corresponding to the various forms of assembly in which the Romans voted. Specific forms, moreover, corresponded to specific voting purposes; hence another array of modifiers that correspond to the various reasons for voting in the Roman state. When our sources speak of foreign *comitia*, we cannot necessarily infer an exact correspondence between the assembly in question and a cognate Roman assembly. In some cases such a relationship may exist, as in the case of the Sicilian assemblies mentioned by Cicero at *Ver.* II 2,52,128 - 2,54,136. In other cases, however, the term *comitia + modifier(s)* will have offered a Roman writer the only means of expressing what he wanted to say about a foreign assembly, namely that its purpose on the occasion in question was (e.g.) to elect magistrates, a bit of information that *concilium* and its modifiers were incapable of conveying. On the other hand, if the same writer wished to speak of such an assembly as a Roman assembly, a plebeian assembly, or (let us say) an Etruscan one -- regardless of its purpose or structure -- he would find the word *comitia* practically useless. To prove this point I adduce the hypothetical phrases *comitia Romana, plebs, Etruscorum*, etc. Phrases of this sort, meaning «gatherings of the Romans, of the plebs, etc.» simply do not occur in our sources. To express these ideas, ancient writers use the term *concilium + modifier(s)*. This helps to explain why *comitia* is used so freely of voting assemblies of the *populus, plebs*, foreign confederacies, and so forth: the word is neutral with respect to the composition or membership of an assembly. Conversely, *concilium* is neutral with respect to purpose and structure. Indeed, *concilium* refers not at all to the governmental aspect of an assembly, but rather defines an assembly as a meeting of some particular group: hence an abundance of *concilia deorum, virtutum, pastorum*, and so forth. The emphasis in such phrases is on the homogeneity of the group rather than on its principle of organization or political agenda; and the political character of a *concilium*, if it exists at all, is no more than a direct function of the inherently political character of the group in attendance. Thus a *concilium plebis* is a political assembly, while a *divinum animorum concilium* (Cicero *Cat.* 23,84) is manifestly not.

*populi* and *concilium populi*. While the latter clearly means «an assembly of the *populi*», I would render the former expression as «the people in assembly», i.e. properly arranged by curiae, centuries, or tribes in order to conduct public business. Similarly *comitia Transpadanorum* will mean not «an assembly of the Transpadani (= *concilium Tr.*),» but «officially recognized and properly organized assemblies for the various Transpadane municipia.» Of course the term *comitia plebis*, if it ever occurred, would be open to the same interpretation; but since it never is found in ancient sources, it seems to me best to avoid it.
4. Terminology in context.

A. With this distinction in mind, I will now attempt to explain the patterns of ancient usage that appear in the surviving testimonia. It should be remembered that neither Livy nor Cicero is a disinterested witness to the use of these words. One may expect both authors to use the words accurately; but because the two words are not mutually exclusive, an author's decision to use one instead of another where either might have been possible must represent his intention to emphasize one aspect of a particular assembly over all others. The appearance of *comitia* will reflect the writer's concern with the purpose or structure of the assembly in question, while the appearance of *concilium* will signify his concern with its composition. In some instances, as I will show, the same writer applies both words to the very same assembly in different contexts, in order to emphasize different aspects of the assembly as each becomes appropriate to his discourse. Finally, it must be noted that the assemblies changed over time, and that such changes may well be reflected in the development of usage. In short, our sources used the words *comitia* and *concilium* in a way that reflects their own rhetorical, political, and historical concerns as well as their concern with standard usage and official nomenclature.

B. The process of development is most easily viewed in reverse, and Cicero is our best witness to usage at the end of the Republic. His concern is overwhelmingly with the events of his own lifetime, and most of the assemblies he describes took place during his public career. The vast majority of these he terms *comitia*, a word which he uses in over 200 times. *Concilium* by way of contrast appears only 28 times in Cicero's works, and almost half of these passages do not concern voting assemblies at all. I therefore see no reason to doubt that *comitia* was the normal word used by all Romans to designate any voting assembly as such, whether electoral, legislative, or judicial. Botsford argues that the word was especially appropriate to elections; but in fact his own evidence shows that legislative and judicial assemblies were also called *comitia* far more often than anything else.78 It is true, of course, that *comitia* is applied to electoral assemblies far more frequently than to any other kind; also that these assemblies were the most regular feature of the Roman political calendar. It may even be true that most Romans automatically understood *comitia* with no modifier as the term for elections in general, as most modern scholars assume.79 Nevertheless, what these points illustrate is not so much the inherent meaning of *comitia* as the propensity of our sources (and, perhaps, of Romans in general) to record, discuss, and speculate on the yearly election of their public magistrates. Even so, this propensity is exaggerated by institutional development. By Cicero's time, nearly all judicial activity had been transferred from the assemblies to standing *quaestiones*.80 Judicial *comitia*, or at least

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78 Botsford's list of legislative and judicial *comitia* can be found at RA 134; cf. however my remarks in note 33.
79 Comitia is seemingly opposed to *leges* in (e.g.) Cicero Fam I 4,1 Livy III 24,9 VI 40,7.
80 RA 253.
those involving the centuries, were therefore so rare that the occurrence of one became a
cause célèbre.\(^{81}\) In Plautus' day, this was not so. In a number of passages we find Plautine
characters speaking metaphorically of decisions concerning their fate as their comitia, or
trial.\(^{82}\) In Cicero, corresponding phrases occur only in the case of electoral comitia and
mean 'my election' or 'my campaign'.\(^{83}\) Legislation, on the other hand, remained in the
assemblies; between the retirement of Sulla and the dictatorship of Caesar, a period of only
thirty years, well over a hundred bills were promulgated that we know of -- and there
were probably many more of which we know nothing. Cicero, however, mentions only a
few of these bills and seldom discusses the actual vote.\(^{84}\) Here the point is that Cicero,
especially in his letters, talks about the elections -- advising candidates, speculating on
results, congratulating victors, etc. -- more than any other kind of comitial activity. Elec-
tions were certainly no more and were probably much less common than legislation; during
the same thirty-year period between Sulla and Caesar, elections were held (generally) at only
one time during the year, in the month of July.\(^{85}\) For Cicero, however, and for his cor-
respondents as far as one can judge, the relatively less frequent electoral comitia were of
greater interest than the steady succession of legislative comitia. Furthermore, the
undeniable tendency of comitia in Cicero to denote elections is increased by the fact that
he mentions certain elections over and over again, always calling them comitia. Usually
these are elections in which he himself had a personal interest. Especially prominent are his
own consular, praetorian and aedilian elections;\(^{86}\) the consular elections of 62, at which he
officiated;\(^{87}\) the elections of 50, about which, when he was serving as proconsul in
Cilicia, he corresponded frequently with M. Caelius Rufus during the latter's campaign for
the aediliius;\(^{88}\) and so forth.\(^{89}\) In view of these facts, it is no wonder that comitia in Cicero

\(^{81}\) E. g. the trial of C. Rabirius in 63 for perduellio, the only known post-Sullan trial before the cent-
turies (Dio 37,27; Suetonius Iul 12).

\(^{82}\) Att 700 die intro ubi de capite meo sunt comitia; Pseud 1232 Pseudolus mihi centuriae habent capitis
comitia; Truc 819 mecum non sunt capitis comitia.

\(^{83}\) See Table 2,1 section B,1,i above.

\(^{84}\) Agr II 11,27 quater 11,29 12,31 all concern the lex curiaria de imperio; Redfern 1,17 Dom 30,79
bis 33,87 Har 6,11 Sex 38,82 51,109 Pit 13,35 Fam 1 9,16 Att IV 1,4 Leg III 19,43 bis all concern legislation
pertaining to Cicero's exile and recall; Phil 1 8,19 X 8,17 Att XIV 12,1 concern Caesar's dictatorial legis-
ation; Att I 14,5 concerns the rogatio Popia de inestus Clodi of 61 (LPFR 385); Att II 15,2 concerns Caesar's
attempted agrarian legislation in 60.

\(^{85}\) Cf. note 24.

\(^{86}\) Ver I 8,22 9,24 bis 9,25 II 1,7,19 Man 1,2 Agr II 2,4.

\(^{87}\) Catil I 5,11 Man 1,1 bis 25,51 Sest 18,51.

\(^{88}\) Fam II 10,1; VIII 2,2 [Caelius] and 4,3; other elections of the same year: Fam VIII [Caelius] 2,2
4,3 quater 14,1.

\(^{89}\) The impending tribunical election of Caelius: Att II 20,6 21,5 23,3; the subsequent consular elec-
tions: Att III 12,1 13,1 bis 14,1 14,2 18,1; elections of curule aediles for 56: Fam I 4,1 Att IV 3,3 bis 3,4
3,5; and the consular elections of 162: Qfr II 2,1 Div I 27,35 ter ND II 4,10 bis 4,11.
the occurrence of one became a matter of passages we find Plautine ging their fate as their *comitia*, or in the case of electoral *comitia* and the other hand, remained in the orship of Caesar, a period of on-ed that we know of -- and there cero, however, mentions only a Here the point is that Cicero's candidates, speculating on kind of comitial activity. Electron- common than legislation; during ions were held (generally) at on-cero, however, and for his con- quent electoral *comitia* were of re *comitia*. Furthermore, the is increased by the fact that calling them *comitia*. Usually t. Especially prominent are his sular elections of 62, at which: t was serving as proconsul in uring the latter's campaign for wonder that *comitia* in Cicero .

Cicero however usually calls legislative assemblies *comitia* as well, in violation of Botsford's formulation, as I have shown. It is instructive to note the exceptions to Cicero's normal usage, i.e. passages in which he actually does call legislative assemblies *concilium* — a word that he uses only infrequently in a political sense -- rather than by the normal *comitia*. An illuminating set of examples are his references to the various assemblies that voted his exile and subsequent recall. The measures passed in these assemblies lend substance to his discussion of *privilegia* and capital trials at *Leg III* 19,44-45 (italics indicate emphasis):

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... tum leges praecariusae de XII tabulis tralatae cluse, quorum altera privilegia tollit, altera de capite civis rogari nisi maximo comitisatu vetat. et nondum inventis sediscis tribunis plebis, ne concilis quidem, administrandum tantaee maiore in posternum providisse. in privatis homines leges ferri noluerunt; id est nullum privilegium. quo quidem juris haec vis sit, scitum et iussum in omnia feri de singulari nisi centuriaeis comitibus noluerunt; descriptus enim populus censu ordinibus acutibus plus adhibet ad suffragium cumili quum fuit in tribus convocatus. [4] quod verius in causa nostra vir magni ingenii summaque prudence, L. Cotta, dicat nihil omnis actum esse de nobis; praeter enim quam quod comitia ilia essent armis gesta servilibus, praeterea neque tribus acta comitia rata esse posse neque silla privilegia. quocirca nihil epus nobis esse leges, de quibus nihil omnis actum esse legitum. sed visum est et volunti et clarissimis viris nulius, de quo servi et latrones scivisse se aliquid dicerent, de hoc eodem sanctum Italian quid sentiret ostendere.
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Whenever he gloats over this episode, Cicero never fails to mention that he was recalled by the centuriate assembly. His reasons for stressing the organization of this assembly are several, and can be seen in this passage. First, the bill depriving him of fire and water was passed -- illegally, as he maintains -- in the *tribal* assembly; but, he claims, such action could only be taken by the *centuriate* assembly, which a tribune was powerless to convince. Here Cicero's argument demonstrates the intimate connection between form and purpose in the word *comitia*. Second, he seems to regard the centuriate assembly as inherently more authoritative than the tribal assembly. Here form alone is specifically at issue; but the question of form can hardly be detached from that of purpose, for it is a fact that the centuriate form of assembly was the one that voted on all the most important decisions that the Roman people had to make -- electing magistrates with *imperium*, declaring war, judg-

(90) While a tribal assembly under the presidency of a curule magistrate also constituted the *universus populus*, this phrase is especially associated with the centuriate assembly: see note 93.
(91) See Table 1,1 section A,1.
(92) *Redean* 11,27 ... *comitia centuriatia, quae maxime maiores comitia hacta dicit ab herique voluerint*...
ing capital cases, and so forth. It is the immense prestige of this assembly that is summed up in the phrase maximus comitiatum; and it is this prestige that Cicero contrasts with that of the less august tribal assembly that sent him into exile. Third, in a related passage Cicero creates a different contrast between the prestige of the centuriate assembly that recalled him from exile and the return of other famous exiles by order of the less grand comitia tributa: cuncte Metellum unius tribuni plebis rogatio, me universa res publica duce senatu, comitante Italia, promulgantibus omnibus magistratibus, comitibus centuriatibus, cunctis ordinibus hominibus incumbentibus, omnibus denique viribus reciperravisset. *Fam I* 9, 16; cf. *Dom* 32, 86-33, 87

D. Conversely, there are also occasions when Cicero prefers to call the assembly which brought about his exile a concilium. This is the situation at *Dom 30, 79* and *Sest 30, 65*. In these passages, his purpose is not (as in *Leg III 19, 44-45*) to emphasize the constitutional irregularity involved in his being exiled by a tribal (instead of by a centuriate) assembly, but rather to inspire his listeners with moral outrage at the thought of a Roman citizen and ex-consul being deprived of his civil rights by a seditious faction within the state.44 In this connection, Cicero’s remark at *Sest 14, 32* takes on greater significance: nihil erat Italiae municipium, nulla praefectura, nulla Romae societas vectigalium, nullum conlegium aut concilium aut omnino aliquod commune consilium quod tum non honorificissimae de mea salute decrevisset.

Cicero’s diction in this passage (conlegium and concilium) seems intended to recall two important components of Clodius’ party, the collegia from which he recruited his henchmen and the concilium plebis, which he used to effect his illegal legislation. I regard this use of concilium as a slight extension of its natural meaning. It seems clear from the genitive modifier that so often accompanies the word that the basic meaning of concilium is an exclusive gathering of some homogeneous group. Moreover, the relatively large number of occurrences of concilium in a non-political sense suggest that the word is not in origin a terminus technicus proper to the realm of politics, as is comitia, but that instead it is simply an ordinary word which applies equally well to political and non-political gatherings. The development of concilium in the political sphere must have been as follows. The primitive gathering of the plebs, before it had attained any official constitutional status, was naturally referred to as the concilium plebis, i.e., the meeting of the many as opposed to the oligarchical patricii. This usage is exactly parallel to Ciceronian expressions like in deorum concilio (ND I 8, 18) where the emphasis is simply on the homogeneous character of the gathering. But it is a short step from homogeneity to exclusivity. When the concilium


(44) *Sest 30, 65*: cur, cum de capite civis — non disputo causas modi civis — et de bonis proscriptio ferretur, cum et sacratim legibus et XII tabulis sanctum esset ut ne cui privilegium inrogeri liceret neve de capite nisi comitibus centurialibus rogari, nulla vox est audita consilium, constitutumque est illo anno, quantum in illis duabus auis imperi postibus facti, ture posse per operas concitatis quemvis cinem nominatim tribuni plebis concilio ex civitate est?
plebis achieved recognition as a legitimate voting assembly organized by tribes (Livy II 56), it became known formally by the technical term of Roman constitutional law, comitia tributa, as well; but it remained possible to use the traditional and less formal concilium plebis. The latter term will have been used to distinguish tribal assemblies of the plebs (i.e. those convoked by a tribune) from tribal assemblies of the populus. This is a distinction which the established technical terminology (comitia tributa) could not express, but one which was to the point in an era when measures passed by a plebeian assembly (plebis civitas) did not have the same binding power as measures passed by the populus (leges), and when patricians were certainly excluded from the plebeian assembly. Livy, interestingly, uses concilium plebis chiefly in the early books of his history in his account of the struggles between the ordines, where the exclusively plebeian membership of this assembly is a more relevant datum than the fact that it was organized by tribes. But in later books, particularly those covering the period after the passage of the lex Hortensia of 287, concilium plebis appears very infrequently. The reason is that this measure, by setting plebis civitas equal to leges, removed the last important barrier to political equality between the ordines, rendering emphasis on the exclusive character of plebeian assemblies pointless. Consequently, concilium in the later books of Livy refers almost solely to foreign assemblies. It remained possible, however, to call the tribal assembly meeting under a tribune by the term concilium plebis whenever a writer wished to connote the historically factious and seditious character of such assemblies. The surviving books of Livy do not cover the second great period of tribunical innovation, from the time of the Gracchi to the end of the Republic. For this period I return to Cicero, who exploits the seditious connotation of concilium plebis in the passages quoted above and in Vet 7,18: num quem ex omnibus tribunis plebis, quicumque seditionis fuerunt, tam audacem audacter suasisse, ut quosquam contra leges Aeliam et Fufiam concilium advocaret? (cf. 2,5 and 6,15)

It seems in fact that Cicero’s frequent use of concilium in this speech may reflect his overall rhetorical plan: tota interroga mea nihil habuit nisi reprehensionem illius tribunatus (Fam I 9,7). In cases such as these, the basic meaning of concilium plebis remains a meeting of the plebs, inherently perhaps no less honorable than Livy’s patrum concilium (IV 48,5), but with the extended meaning of a factious, seditious conclave. I might add that, while the historically exclusive character of the concilium plebis may have contributed to Cicero’s derogatory use of the term, it is difficult to imagine that this tactic would have been very effective if the concilium plebis of the Late Republic had not remained, at least notionally, an assembly that excluded patricians in contrast to the all-inclusive assemblies of the populus.

E. The general meaning of concilium is therefore not far removed from Laelius Felix’s definition of the word in the political sphere as a part of the people in assembly; for while the plebs was the most numerous and important group within the state to be

(9) Seven occurrences in books I-VII, ten in the next twenty-eight books: see Table 2,2 section A,1.a.

The periochae place Livy’s account of the secessio plebis in Book 11.
distinguished in assembly on the basis of membership, Livy and Cicero also distinguish gatherings of other exclusive groups, political and non-political, by using concilium. As for Botsford’s objection on the basis of the phrase concilium populi, I point out that this phrase, too, occurs only in the early books of Livy’s history, where he is interested in distinguishing the young populus Romanus, the «chosen peoples» of his history, from their Latin brethren. He wishes, in other words, to emphasize what is unique about the populus, and hence concentrates on the exclusivity of its first assemblies. This practice parallels his use of concilium to designate the exclusive gatherings of other nations throughout his history. In the later books, however, he has no need to labor the distinction between the Romans and other peoples; populus consequently becomes the inclusive term, in contrast to the exclusive terms plebs and concilium plebis.

F. On the whole, however, the proper term for assemblies at Rome was comitia + modifier(s), since the constitution distinguished the competence of the various assemblies solely with regard to their organization and presidency. This is at any rate the term preferred by both Livy and Cicero when discussing electoral, legislative, and judicial assemblies of either the populus or the plebs; and while some passages seem to indicate that comitia is incompatible with concilium (e.g. RedSen 5,11 concilio aut comitii), in fact it is not, since both authors apply both words not merely to similar assemblies, but to the very same assemblies.

G. To sum up: Comitia, usually in combination with modifiers denoting either the purpose or the internal organization of an assembly, is the normal word used to refer to any Roman voting assembly. Concilium, a word that denotes any exclusive, homogeneous gathering, is often applied to Roman assemblies which are exclusive in some sense, particularly assemblies of the plebs, sometimes with the extended meaning of «a self-serving faction.» This distinction is clear, simple, and securely grounded in ancient usage. It admits of no exceptions.

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(96) Botsford RA 120-21. Concilium populi in the early books of Livy: I 26,5 36,6 III 71,3 VI 20,11.
(97) See note 35.