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DURHAM UNIVERSITY

# 'Without Body or Form'

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*Res Publica and the Roman Republic*

LOUISE LOVELACE HODGSON

2013

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## 1. DEFINING TERMS

I do not intend here to weary you with more than a small portion of even my present knowledge, for I have great collections of facts that I keep only to compare with those of other hunters of the wild idea, and which in their present state are valueless to the cabinet ethnologist. Some of these may be rank lies, some of them mere individual mind-freaks, others have underlying them some idea I am not at present in touch with.

Mary H. Kingsley, *Travels in West Africa* (2003: 430).

In 1893, Mary Kingsley went to West Africa to hunt the wild idea. In contrast, this thesis is the work of a cabinet historian who went only to various libraries to recover a fossilised idea: the *res publica* of the Roman Republic. It explores the increasing politicisation of a key concept in the Roman political vocabulary, that of the political sphere itself. Since this concept was politically ubiquitous, often used emotively, and is consequently very hard to define, the temptation to take it as a universally understood and relatively uncontroversial given is rarely resisted. A closer look at how *res publica* was perceived and manipulated helps to clarify not just the crisis of legitimacy that occurred in the late Republic but also various attempts to clean it up through dubiously legal (and often outright illegal) emergency measures. It should be noted that this is not a contribution to the debate over just what sort of political system the Republic was, i.e. whether it can or should be classed as a democracy, a debate that might be characterised in the broadest terms as a disagreement between those who argue that the Republic was formally democratic and those who argue that it functionally was not.<sup>1</sup> I am not concerned with the mechanics of how Republican politics worked, nor am I trying to locate the sources of ‘true’ legitimacy or examining whether people were actually justified in doing the things they did. Rather,

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<sup>1</sup> On the democratic side, cf. especially Millar 1984, 1986, 1998, also Williamson 1990: 274-5, Yakobson 1992, 2006, Morstein-Marx 1998; *contra*: North 1990, Burckhardt 1990: 89-98, Jehne 1995, Flaig 1995, Mouritsen 2001: 128ff, Hölkeskamp 1995, 2010: 1-52. The current scholarly debate is a largely semantic one over whether the formal role of the *populus* in political decision-making was sufficient to justify describing Rome as some form of “democracy”.

my argument concerns what people *said* to justify themselves and how they thereby contributed to the disintegration of civic life.

To explain why I raise ‘politicisation’ as a problem, it will be worth reviewing some recent contributions to the field by K.-J. Hölkescamp, not least *Reconstructing the Roman Republic* (2010), a survey of modern scholarship on the hotly contested issue of where power and sovereignty should really be located in the classic (that is, functioning) Roman Republic. Since this is the subject of much modern debate, it should be sufficient to describe the classic Republic as a complex and delicately calibrated system regulated largely by custom and tradition rather than legal prescriptions; the absence of a formal constitution meant political practice was characterised by both flexibility (because there was space to adjust to new circumstances) and instability (because when accepted practice was disrupted by unprecedented and divisive issues, formal controls were lacking to stop the situation spiralling out of hand). Whatever rights and concepts of sovereignty may have been technically vested in the citizen body, it lacked initiative; it had no formal way to express opinions, desires, resentment and so on other than by electing magistrates and voting on matters put to it by those elected magistrates<sup>2</sup> (although individual sections of the *populus* could make their opinions felt in various venues, such as in *contiones* or at the games<sup>3</sup>). In contrast, while the senate could express opinions, desires, resentments and so on as loudly as it wanted, it could act only indirectly, by exerting influence on the elected magistrates (who were responsible for summoning it, as they were responsible for convoking the popular assemblies) to take whatever action it deemed necessary.<sup>4</sup> These elected magistrates were drawn from the ranks of the highly competitive Roman elite and would go on to become, or continue to be, senators.<sup>5</sup>

The ways in which this system was maintained form the subject of Hölkescamp’s complex and densely layered discussion, in which he sets out a model of Republican civic and political identity as ‘based on a broad consensus about social norms and values’.<sup>6</sup> This ‘broad consensus’ concerns the way in which political activity should be carried out, rather than the particulars of everyday politics, where

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<sup>2</sup> North 1990: 16.

<sup>3</sup> Cf. Flaig 1994.

<sup>4</sup> Lintott 1999b: 65-88, Hölkescamp 2000: 213-4.

<sup>5</sup> On the role of the magistrates, cf. Richardson 1991: 2, Rosenstein 2007: 142, Beck 2011.

<sup>6</sup> Hölkescamp 2010: 56; cf. also Meier 1966: 56, Gruen 1996: 216.

consensus demonstrably did not exist,<sup>7</sup> and Hölkeskamp's interest lies not with 'actual politics, such as the decisions and actions of magistrates',<sup>8</sup> nor with 'the social framework and/or the "subsystem" of the political institutions and formal procedures of decision making', at least as an isolated subject of enquiry.<sup>9</sup> For Hölkeskamp, the dog that did not bark in the night is 'the peculiar "degree of obedience" of the *populus Romanus*'<sup>10</sup> and the area for study becomes 'what was *not* (and could not be) politically addressed, explicitly debated, and put on the agenda of decision making': anything 'that remains implicit in the discourse of politics, but must nevertheless be considered a fundamental part of the system and its basis of legitimacy'.<sup>11</sup>

As heuristic models go, this has its merits; as a programme for future scholarship in the area, one expressed purpose of the book,<sup>12</sup> it is less straightforward, since (as Hölkeskamp concedes<sup>13</sup>) disconnecting our attention from concrete issues such as institutions or political actions renders it hard to specify exactly what anyone working in the field should be interested in. It is difficult to recover evidence of what was *not* said and 'not debatable and *not* discussed', which is to say this 'deeply-rooted', 'pre-theoretical and unreflected' shared consensus.<sup>14</sup> If consensus is defined more by what is not said than by what is, modern observers are at risk of perceiving consensus only when it is on the wane or lost altogether, because people can be seen to talk explicitly about issues that were formerly the subject of general consensus, or we are obliged to impose modern conceptions of the sort of things that should be a matter for political debate on the ancient world. Furthermore, for those (early) periods when the appearance of consensus prevails, we generally lack the sort of evidence that would allow us access to contemporary political debates; it is easy to conclude that consensus prevailed when we have no way to detect the politicisation of the fundamentals of politics. Finally, the model in its simplest form appears to consist of the assertion that the Roman Republic survived for so long because most of its politicians for most of the time accepted the system into which they were born

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<sup>7</sup> Hölkeskamp 2010: 39.

<sup>8</sup> Hölkeskamp 2010: 53.

<sup>9</sup> Hölkeskamp 2010: 54.

<sup>10</sup> Hölkeskamp 2010: 52, citing Flaig 1993: 194.

<sup>11</sup> Hölkeskamp 2010: 54; cf. also Gruen 1996: 216.

<sup>12</sup> Hölkeskamp 2010: 98.

<sup>13</sup> Hölkeskamp 2010: 54.

<sup>14</sup> Hölkeskamp 2010: 54.

and through which they gained power and social status; and while this model has the great merit of being obviously true, it is also somewhat banal. It would be one thing to talk about a consensus model of *doing* politics, both because it is possible (where the evidence exists) to trace what people actually did and also because Republican political activity does seem to have been characterised by a search, not always successful, for a generally acceptable consensus among its different elements. Since Hölkeskamp is explicitly not interested in actual political activity, however, this cannot be quite what he has in mind. Rather, his ‘broad consensus’ seems to be a way of saying that most people played by the rules, which is not only not unique to the Roman Republic, but is in fact a necessary feature of any functioning political system. As Syme remarked, ‘no oligarchy could survive if its members refused to abide by the rules, to respect “liberty” and “laws”’.<sup>15</sup>

It may be unfair to reduce Hölkeskamp’s complex arguments to this level, and in any case he concedes that this broad consensus was in meltdown towards the end of the Republic,<sup>16</sup> which presumably implies that the basis of political activity (rather than the particulars of everyday politics) became itself a matter for political debate and dissension. Since Hölkeskamp is not interested in how this happened, however, it is hard to tell how he thinks things broke down, or even where he locates the beginning of the end. This is a problem, because hints of debate over the rules of political engagement can be traced at most stages of the Republic’s development. We might, for example, take the formalisation of the *cursus honorum* by the *lex Villia annalis* in 180 BC and associated legislation to be an expression of waning consensus in the face of a surplus of candidates and correspondingly ferocious competition for office. That is to say, the system of holding office had become so politicised that the *cursus honorum* could no longer be left to customary practice, so legislation had to be imposed to keep things from getting out of hand. Once the *cursus honorum* was subject to legal requirements, however, it became even more contentious when individuals diverged from it, most prominently P. Scipio Aemilianus, who managed to make himself so popular with the plebs that when he stood for the aedileship in 148 he was exempted from the *lex annalis* by popular demand and elected consul instead.<sup>17</sup> His career continued on this uneven keel,<sup>18</sup> but

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<sup>15</sup> Syme 1939: 57-8.

<sup>16</sup> Hölkeskamp 2010: 22.

<sup>17</sup> App. *Lib.* 112; Scullard 1960: 60, Astin 1967: 61, Develin 1978.

he was not the only person involved in controversial behaviour during this period, just the most prominent. Morgan and Walsh list examples of the politicians of the period engaged in decidedly non-consensual activity<sup>19</sup> and conclude that ‘to maintain that the Roman oligarchy was pursuing consensus politics between 146 and 133, therefore, flies in the face of a substantial body of evidence’.<sup>20</sup>

The year 133 supplies the classic failure of consensus politics: the death of the plebeian tribune Tiberius Sempronius Gracchus at the hands of Publius Scipio Nasica, *pontifex maximus* and private citizen, and a mob of senators armed with broken benches. Between 133 and 88, similar violence was deliberately used twice on the domestic political stage in Rome (in 121 against Gaius Gracchus and in 100 against Saturninus and Glaucia). After 88 (to pass over the Social War of 91–88, a political failure of a different sort and on a larger stage), five years of civil war, capped by Sulla’s victorious return in 83 and political settlement of 82–1, was followed by political instability (Lepidus’s rising in 78, the ‘Catilinarian Conspiracy’ in 63) and eventually yet more civil war (from Caesar in 49 to Octavian’s victory at Actium in 31). Such violent outbreaks are both symptoms (civic violence arising from the failure of political consensus) and causes (their legacy being resentment and an increased willingness to take up arms the next time the opportunity comes round). One important theme in all these incidents was the stress laid on the *res publica*, a concept that had always been politically charged but which became increasingly politicised as the Republic stumbled towards collapse. From Nasica’s efforts to keep the *res publica salva* to Sulla’s *res publica constituta* and Pompey’s fight to defend the *res publica* against Caesar, the perceived condition and needs of the *res publica* were a source of concern, controversy, division and self-justification throughout this period. In particular, private citizens invoked the needs of the *res publica* to legitimise often strikingly illegal actions. Just what it meant to appeal to the *res publica* and how far this marked tendency to do so contributed to the dangerous fragmentation of political legitimacy and the breakdown of the consensual Republican political system are the key questions for this thesis.

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<sup>18</sup> He was elected consul again in 134, despite the law of 151 that forbade iteration of the consulship, and raised an army using private funds when the senate proved uncooperative with his special command against Numantia; on this cf. Scullard 1960: 72, and further Raschke 1987 on the increasingly tense relationship between Aemilianus and his political peers and his movement towards the *populus*.

<sup>19</sup> Morgan-Walsh 1978: 208-9.

<sup>20</sup> Morgan-Walsh 1978: 210; cf. also Hillard 2005: 10-11.

The first challenge for such a discussion is to work out what *res publica* meant. Drexler (1957, 1958) has examined the range of vocabulary and metaphors associated with *res publica*, Stark (1967) provides ‘semasiologische Untersuchungen’ that aim to reconstruct *res publica* from its constituent parts (*res*, *populus*, *publicus*, *privatus*, *sacer* and other relevant terms), Suerbaum (1977) explores the relationship between *res publica* and monarchic power in Cicero’s *De Republica* and various imperial authors, and Turcan (2011) discusses Roman ‘notions de l’État’ chiefly from the perspective of *status rei publicae*, the condition of the *res publica*. Others engage with iterations of *res publica* in specific ancient texts, most commonly Cicero’s *De Republica*; so Schofield (1999) examines Cicero’s use of a property metaphor to describe it, Kempshall (2001) traces the reception of Cicero’s definition of *res publica* in mediaeval and Renaissance thought and Márquez (2012) addresses the conception of the political community it reveals. The main problem is that *res publica* is a common term in our surviving sources, is used in a variety of ways across those sources, and very few Romans themselves ever seem to have tried to produce any sort of theoretical definition (in, again, our surviving sources). The marked lack of ancient theorising, whether political or philosophical or legal, over what *res publica* entailed suggests the Romans were more interested in engaging with it than in developing a fully articulated concept of what it might be.

This is a problem for modern readers: either we struggle to translate *res publica* in a way that accurately captures the nuances of a given context, in which case any one of a dozen different translations may stand in for the Latin term, or we resort to leaving it untranslated and assuming that everyone knows what we mean by it, which risks resulting in an equally misleading (because dangerously vague) reification. Julius Caesar might be taken to have been expressing just such a conceptual hollowness when he said notoriously that ‘*res publica* is nothing, a mere name without body or form’.<sup>21</sup> Morgan, in fact, in the course of arguing that Caesar was making an extremely pedantic grammatical point, dismisses *res publica* as a meaningful concept at all on the basis that it was by this point a ‘slogan’.<sup>22</sup> While it is true that ‘in the interests of the *res publica*’ (the slogan in question) might be little more than an empty refrain, this does not mean that the concepts it appeals to are

<sup>21</sup> Suet. *Jul.* 77, *nihil esse rem publicam, appellationem modo sine corpore ac specie.*

<sup>22</sup> Morgan 1997: 27.

meaningless; although ‘the public interest’ may be a slogan, for example, ‘the public’ is not. To put it another way, Morgan fails to distinguish between *rei publicae causa*, which is indeed a slogan, and *res publica*, which is simply a concept. As I will argue in section 5.2, Caesar’s engagement with this concept was much more imaginative than taking his words at face value would suggest. Without understanding what *res publica* did or could mean, however, it is impossible to understand what people like Caesar were doing (or perceived to be doing) when they invoked it in order to further their political activities.

It may be easiest to start with what *res publica* was not. Despite the temptation for translators, it did not mean ‘the Roman Republic’ in the sense of the political superstructure that succeeded the monarchy and lasted until the Augustan principate.<sup>23</sup> Nor was it the term for Rome’s corporate identity: ‘Die offizielle römische Staatsbezeichnung ist nämlich nicht etwa *res publica*, sondern *populus Romanus*, in offiziellen Dokumenten meist noch erweitert zu *senatus populusque Romanus (SPQR)*’.<sup>24</sup> However, it also was not ‘a republic’ in the sense of a specific type of political system,<sup>25</sup> defined by the *Shorter Oxford English Dictionary* as any state ‘in which supreme power is held by the people or their elected representatives’ or by Flower as fundamentally “government with the participation of the governed”, rather than anarchy or tyranny’. Flower considers *res publica* to be the term through which ‘Romans who came after the end of the hereditary monarchy defined the new government as the “public matter”’,<sup>26</sup> but Feig Vishnia points out that *res publica* only acquired the sense of ‘a state that was not subject to the rule of one man’ under the emperors<sup>27</sup> and the Republican evidence bears her out. Cicero writes in *De Republica* that ‘when the supreme authority is in the hands of one man, we call him a *rex*, and the form (*status*) of this *res publica* a *regnum*’,<sup>28</sup> Livy has Tullus Hostilius express his intention of making ‘one city, one *res publica*’ by resettling the Albans in

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<sup>23</sup> As pointed out by Meier 1966: 1, Schofield 1999: 180-1, Flower 2010: 10-11, Barlow 2012: 218; for less careful associations of *res publica*/the Republic, cf. for example Mitchell 1979: 86, Ramage 1987: 39, Nicgorski 1991: 233, Millar 2002, Vasaly 2009: 123, Arena 2012: 215, Tracy 2012: 90, Feig Vishnia 2012: 57.

<sup>24</sup> Suerbaum 1977: 3-4.

<sup>25</sup> Suerbaum 1977: 11-14, 15.

<sup>26</sup> Flower 2010: 11; cf. also Taylor 1949: 167, Wirszubski 1950: 14, 88, Stark 1967: 90, Seager 1977: 10, or the casual translation of *res publica* as ‘republic’ by e.g. Dyer 1990.

<sup>27</sup> Feig Vishnia 2012: 61, Suerbaum 1977: 16; cf. Tac. *Ann.* 1.3, for example.

<sup>28</sup> Cic. *Rep.* 1.42.

Rome,<sup>29</sup> and Sallust's potted history of the strengths and downfall of regal Rome is revealing: the early Romans had a commanding element based on laws (*imperium legitimum*) which they called *rex*, and a select few 'Fathers', elderly but wise, who took counsel (*consultabant*) for the *res publica*. Later, however, 'when the command of kings (*regium imperium*), which in the beginning had tended to preserve freedom (*conservandae libertatis*) and advance (*augendae*) the *res publica*, had degenerated into pride and domination (*in superbiam dominationemque*), they altered their custom (*immutato more*) and appointed two commanders (*imperatores*) with annual power (*annua imperia*)'.<sup>30</sup>

It is impossible to recover the terms used by the early Romans themselves, and these are late sources, but this usage is casual enough to indicate that these writers saw no inherent conflict between *regnum* and *res publica* because they were not equivalent concepts. *Regnum* was a system of political organisation, whereas *res publica* was not. A fragment of Pomponius on the beginnings of law, which relates that after the *civitas* expanded to a certain size Romulus divided the *populus* into thirty *curiae* 'because he managed the care (*cura*) of the *res publica* through the votes of those parts',<sup>31</sup> suggests what *res publica* was instead: not a system of organisation or government, but rather the public affairs and property that the *civitas* was organised to take care of. When P. Lucilius erected an inscription to commemorate his aedileship, for example, he stressed his exemplary use of public funds and his restoration of various temples with his own money; this presumably explains his boast that he had donated *HS XV CC* to the *res publica*.<sup>32</sup> In a regal system, the king was in charge, but *res publica* refers to neither the king nor the system of government. These sources suggest a genuinely literal reading of the term: fundamentally, the *res publica* is something that should be managed *for* the public good, but need not necessarily be managed *by* the public and certainly should not be read as synonymous *with* the public.

I stress this last point because Schofield, for example, expresses surprise that *res publica* is translated into Greek in inscriptions as *ta dêmosia pragmata*, 'public

<sup>29</sup> Liv. 1.28, *unam urbem, unam rem publicam facere*.

<sup>30</sup> Sall. *BC* 6.6.

<sup>31</sup> Millar 2002: 52-3.

<sup>32</sup> *CIL* I.ii.iv 3031a; the date is debated, but it may be imperial.

affairs’, rather than *to koinon*, ‘the community’.<sup>33</sup> *Res publica* does not refer to ‘the’ or even ‘a’ community, except insofar as a *res publica* belongs to a community and is administered by an elite, highly politicised subsection of that community that may get very confused about the difference between *its* interests and those of the public affairs entrusted to its administration for the common good. This foreshadows the reason why, despite everything that has just been said, reading *res publica* literally as ‘the public thing’ can often be misleading and should usually be avoided: different parts of the same community will have different perspectives on their shared *res publica*. On the one hand, the *res publica* is the communally possessed property/business that needs to be administered. On the other hand, it is clear from our texts that this was not the only way to relate to the *res publica*: not only is *in re publica* a common idiom meaning ‘in public affairs’,<sup>34</sup> but junior politicians are said to enter ‘into public life’ (*ad rem publicam*).<sup>35</sup> Opposed to this is the conscious retreat from public life, *a re publica*, a much rarer phrase.<sup>36</sup> These idioms convey a sense of metaphorical space or motion: within, into, or away from. From the perspective of the political insider, then, the *res publica* is the communal space within which those concerned with the administration of public affairs move, and so means something closer to ‘the internal political space (however it may be organised) of a given civic community’. This distinction might be described as a concrete reading versus a metaphorical reading, since P. Lucilius’s inscription suggests a distinctly concrete *res publica*, except for two things: (1) these readings are not necessarily in opposition to one another; (2) the crucial difference here is between *res publica* as public business (which must be managed) and *res publica* as a sphere of action (within which political actors move). *Res publica* may be better expressed as a field of positions that changes in meaning dependent on where a person stands in socio-political space: whether, for example, someone moves within the field, is responsible for managing public business, represents the field to outsiders, elects

<sup>33</sup> Schofield 1999: 182; on τὰ δημόσια πράγματα see further Stark 1967: 86-9. Also taking *res publica* to be a (political) community: Ando 1999: 15, Márquez 2012: 192, 195.

<sup>34</sup> E.g. Sall. *BJ* 31.28, *Rhet. Her.* 1.8, Q. Cic. *Pet.* 41, Cic. *Fam.* 1.9.18, 1.9.21, 2.3.1, 2.8.2, 2.11.1, 6.12.4, 8.1.2, 11.1.1, 12.1.2, 12.5.3, 13.29.7, *Att.* 1.13.2, 1.16.1, 1.16.9, 1.18.2, 1.19.2, 1.19.6, 2.1.6, 2.7.4, 2.11.1, 2.15.1, 3.8.3, 5.13.3, 5.14.3, 8.14.2, 9.9.3, 15.10.1, 16.5.2, *Q. fr.* 3.2.2, 3.3.2, 3.4.2, 3.5.1, *ad Brut.* 1.1.8, 2.1.1, 2.3.16, 5.3.2, 18.3.17, 23.9.6, *Div. Caec.* 8, *Ver.* 2.5.152, 2.5.153, 2.5.177, *Font.* 26, *Chu.* 85, *Agr.* 1.22, *Rab. Per.* 27, *Sull.* 9, 11, *Dom.* 113, *De Or.* 1.78.

<sup>35</sup> E.g. Sall. *BC* 3.3, Cic. *S. Rosc.* 3.7, *Ver.* 2.1.33, *Har. Resp.* 43; used also of those who *have* entered *ad rem publicam*, e.g. Cic. *Q. fr.* 1.2.2, *Leg. Man.* 70.

<sup>36</sup> E.g. Sall. *BC* 4.1, *BJ* 4.3.

administrators to manage the field, or discusses the field with other cohabitants.

This point is worth considering in more detail, since most of the surviving texts that relate to *res publica* were produced by political insiders and keeping in mind the particular perspective adopted by particular speakers or authors makes the muddle produced by translating *res publica* using terms like ‘community’ and ‘state’ and ‘the Roman government’ interchangeably much clearer. One text in particular that demands closer examination in this context is Cicero’s *De Republica*, not least because the existence of a dialogue *de re publica* in the middle of the first century BC might make it surprising that even by this point the concept of *res publica* seems to have remained mostly unarticulated. Although the dialogue is often read as a rather unsatisfactory attempt at a Roman version of Plato’s *Politeia* that equates the ideal ‘state’ or ‘constitution’ with an idealised form of the Roman Republic,<sup>37</sup> *de re publica* is another very common idiom, usually translated as ‘about political matters’,<sup>38</sup> and the principal speaker of the *De Republica*, Scipio Aemilianus, explicitly denies any intention of philosophical precision or comprehensiveness, since, he says, his audience consists of ‘intelligent men (*prudentes homines*) who have been involved with great glory (*summa cum gloria*), both in war and at home (*belli domique*), in the greatest *res publica*’.<sup>39</sup> While Cicero’s Aemilianus goes along with the prevailing philosophical tradition of beginning by defining his terms, he claims to have the luxury of providing only cursory definitions, because he is talking

<sup>37</sup> So Degraff 1940: 149, Taylor 1949: 153, Wood 1988: 66, 126, Nicgorski 1991: 231, 234-8, Schofield 1999: 155, Lintott 1997: 80-81, Morford 2002: 70, 77, Asmis 2005: 377-9, Turcan 2011: 625. *Contra* cf. Barlow 1987, arguing that Cicero’s main concern in the *Rep.* is with civic education of future politicians, and that philosophy is a means to this end; Gabba 1991: 207, ‘Cicero’s aim in the *De re publica*, written in 54–1 BC, was to show the historical development of the Roman state, which, through wise adjustments and increased political acquisitions, had eventually attained its finest stage after the Decemvirate, achieving a balance of the different political powers in what amounted to a true mixed constitution’; Powell 2001: 20-32, who argues against the presumption that the dialogue discusses an ‘ideal state’ along Platonic lines; Cornell 2001: 55-6, Cicero is ‘outlining the essential features of the principal forms of government, and the changes to which they are subject, using the historical example of Rome; it is essentially a theoretical discussion within a historical framework’; Fox 2007: 80-110, for whom Cicero’s ‘ironic’ use of history in the *Rep.* represents an interesting and imaginative engagement with Plato and ‘*De re publica* does not provide a clear outline of the Roman state; what it does instead is confront the very question of how to combine an understanding of Rome’s history with theoretical discussions of ways of making states work more effectively’ (104). The issue is complicated by the dialogue’s fragmentary condition and its genre, which invites scepticism over which, if any, of the characters speaks for their Academic author; so Barlow 1987: 357, Nicgorski 1991: 232, Annas 1997: 172, Fox 2007: viii, 2-8, 43-67, 80-82. On possible relevance to contemporary events cf. Geiger 1984.

<sup>38</sup> E.g. Caes. *BG* 1.34, 6.20, Sall. *BJ* 85.44, 110.6, Q. Cic. *Pet.* 5, Cic. *Fam.* 1.9.6, 2.4.1, 2.10.4, 5.2.8, 7.32.3, *Att.* 1.20.2, 2.4.4, 2.21.1, 2.22.6, 3.7.3, 4.6.2, *S. Rosc.* 2, *Ver.* 2.1.37, *Clu.* 141, *Cat.* 1.9, *Mur.* 54, *Sull.* 65, *Dom.* 3.

<sup>39</sup> Cic. *Rep.* 1.38, *apud prudentes enim homines et in maxima re publica summa cum gloria belli domique versatos cum loquar.*

to people who already know what he means. The dialogue therefore features a Roman political insider talking to other Roman political insiders about how Roman politics should be conducted (albeit using a Greek theoretical framework to do so), although the fragmentary condition of the text leaves us struggling to recover much of what this entails. Scipio's distinctly cursory definition of *res publica* is provided as a stage along the way to explaining how said *res publica* should be managed and the emphasis is on almost everything but *res publica* itself, as at 1.39 where the famous dictum that 'the *res publica* (public thing) is the *res populi* (thing of the people)' leads into a definition not of what that thing might entail but of how to define a *populus*:

*'Est igitur' inquit Africanus 'res publica res populi; populus autem non omnis hominum coetus quoquo modo congregatus, sed coetus multitudinis iuris consensu et utilitatis communione sociatus.'*

"The *res publica* is therefore," said Africanus, "the thing of the people. But a people is not any collection of human beings brought together in any sort of way, but an assemblage of people in large numbers associated in an agreement with respect to justice and a partnership for the common good." (Cic. *Rep.* 1.39.)

This is a definition, as Zetzel observes, that 'implies no presupposition about the form of the *res publica*, which may include even monarchy';<sup>40</sup> it is 'defined not in "organizational" or "legal" terms (as the *civitas* is) but in "affective" terms as whatever the people care about in common or can be understood as their common property'.<sup>41</sup> Such vagueness should not be taken to be a Ciceronian innovation, even though Aemilianus notoriously expresses a preference for monarchy as the best 'pure' (*simplex*) form of political organisation,<sup>42</sup> but rather as supplementary evidence that *regnum* and *res publica* are indeed neither equivalent terms nor mutually exclusive.<sup>43</sup> The focus on the *populus* continues (insofar as we can tell,

<sup>40</sup> Zetzel 1995: 128.

<sup>41</sup> Márquez 2012: 192; cf. also Stark 1967: 43, Suerbaum 1977: 1-2.

<sup>42</sup> Cic. *Rep.* 1.54; cf. Fox 1996: 9-12, Powell 1994: 26-7, 2001: 27-9, Gallagher 2001: 511-12, Stevenson 2005: 148.

<sup>43</sup> Suerbaum 1977: 15-24.

since about fifteen lines of it have fallen into a lacuna) throughout 1.39–41, which covers the first cause of such an association, the nature of humans that leads them to associate with others and the eventual establishment of a physical dwelling for this human association, the *oppidum* or *urbs*. At 1.41, the definition is recapped:

*‘Omnis ergo populus, qui est talis coetus multitudinis, qualem exposui; omnis civitas, quae est constitutio populi; omnis res publica, quae, ut dixi, populi res est, consilio quodam regenda est, ut diuturna sit.’*

“Therefore every people, which is such a gathering of large numbers as I have described, every *civitas*, which is an orderly settlement of the people, and every *res publica*, which, as I said, is the property of the people, must be ruled by some decision-making process if it is to be permanent.” (Cic. *Rep.* 1.41.<sup>44</sup>)

Again, the cursory definition of *res publica* is repeated to provide a stepping-stone to Scipio’s next topic: that the key to the longevity of a *res publica* is that it is ruled by a decision-making element (*consilium*), the discussion of which occupies the rest of Book 1. The *publica* half of the equation is thus fully accounted for – that is, it is clear to whom a *res publica* belongs (the organised *populus*, or *civitas*) – but the thing itself, the *res ipsa*, has not been discussed at all.<sup>45</sup> All we know is that it belongs to the *populus* and must be ruled by some form of *consilium*, a definition that suggests more than the management of public property; *regere* is a strong verb.

Kempshall’s study shows how much influence Augustine’s interpretation of Cicero’s definition at *De Republica* 1.39 had on what *res publica* came to mean for later writers.<sup>46</sup> As far as recovering a Republican understanding of *res publica* goes, however, Cicero’s brevity is further evidence that *res publica* was not equivalent to ‘state’ or ‘government’, since his omissions might raise eyebrows if he were thinking about it in such terms. What powers does a *res publica* have and how should it use them? Is it concerned with the assignment of magistracies, or the administration of justice, or police action within the *civitas*, or raising taxes, or commanding armies

<sup>44</sup> Cf. also Cic. *Rep.* 1.43, 1.48, 3.43–4, 3.46.

<sup>45</sup> Schofield 1999: 183, Cornell 2001: 50–52, 55.

<sup>46</sup> Kempshall 2001.

and waging war? None of this is discussed. It is significant, however, that Cicero distinguishes between *populus* and *civitas*, and that the burden of the discussion feeds into the definition of a *civitas* as an organised *populus*, or, as it will later be characterised, as a ‘partnership in justice’ (*iuris societas*).<sup>47</sup> Cicero had his own reasons for setting up such a definition,<sup>48</sup> to which I shall return in section 2.4; for my current purposes, the important thing to abstract from the *De Republica* is the distinction between *civitas* and *res publica*, and the notion of a *res publica* as the political (that is, public) sphere of a given autonomous civic community (*civitas*). This is not actually a distinction much observed throughout the rest of the dialogue, where *res publica* and *civitas* tend to be used almost interchangeably.<sup>49</sup> This semantic blurring may be at least partly due to the ‘insider’s perspective’ presented in the *De Republica*, since in texts that discuss communities external to Rome the distinction is clear and maintained. When Caesar addresses non-Roman communities in the *Bellum Gallicum* and the *Bellum Civile*, for example, he consistently uses the term *civitas*, rather than *res publica*;<sup>50</sup> and when he mentions local notables, they are not the *principes* in their *res publicae* (as Cicero characterises Pompey, among others<sup>51</sup>) but the *nobilissimi* or *principes* or *primi* of their *civitates*.<sup>52</sup> The reason is not that *res publica* is a concept restricted to Rome, as *BG* 6.20 makes clear:

*Quae civitates commodius suam rem publicam administrare existimantur habent legibus sanctum, si quis quid de re publica a finitimis rumore aut fama acceperit, uti ad magistratum deferat neve cum quo alio communicet.*

<sup>47</sup> Cic. *Rep.* 1.49; cf. also Cic. *Leg.* 1.23, 2.12.

<sup>48</sup> On this cf. Schofield 1999: 178-194, Cornell 2001: 50-55.

<sup>49</sup> Schofield 1999: 182; e.g. *status civitatis* (1.33, 1.49, 1.70, 1.71, 2.2, 2.39) / *status rei publicae* (1.42, 1.68, 2.60, 2.62); cf. Turcan 2011: 626-41 on *status* in Cicero and imperial authors.

<sup>50</sup> Caes. *BG* 1.2, 1.3, 1.4, 1.7, 1.9, 1.10, 1.12, 1.18, 1.19, 1.30, 1.31, 1.44, 1.47, 2.3, 2.4, 2.5, 2.13, 2.14, 2.15, 2.24, 2.28, 2.32, 2.34, 2.35, 3.7, 3.8, 3.9, 3.10, 3.17, 3.19, 3.20, 3.23, 3.29, 4.3, 4.6, 4.12, 4.18, 4.21, 4.27, 4.38, 5.1, 5.3, 5.4, 5.6, 5.7, 5.11, 5.12, 5.20, 5.22, 5.24, 5.25, 5.27, 5.28, 5.47, 5.53, 5.54, 5.55, 5.56, 5.57, 5.58, 6.2, 6.3, 6.4, 6.5, 6.8, 6.9, 6.11, 6.17, 6.20, 6.23, 6.34, 6.43, 7.3, 7.4, 7.7, 7.13, 7.15, 7.17, 7.19, 7.20, 7.28, 7.29, 7.30, 7.31, 7.32, 7.33, 7.36, 7.37, 7.38, 7.39, 7.40, 7.41, 7.43, 7.54, 7.55, 7.57, 7.59, 7.63, 7.64, 7.71, 7.75, 7.76, 7.77, 7.83, 7.88, 7.89, 7.90, 8.1, 8.3, 8.5, 8.6, 8.11, 8.12, 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, 8.26, 8.27, 8.30, 8.31, 8.38, 8.39, 8.46, 8.47, 8.49, 8.52; *BC* 1.30, 1.35, 1.39, 1.40, 1.48, 1.51, 1.52, 1.60, 1.61, 2.4, 2.18, 2.19; cf. also *FHR* 14.40b (Gell. 3.8.6-8 = F41 Peter), 14.63 (Liv. 33.30.1-10 = F63 Peter), 14.77 (Gell. 13.29.1 = F76 Peter), 15.25 (Liv. 26.49.1-6 = F24 Peter), 15.26 (Gell. 7.8.3-6 = F25 Peter), 15.33.1-11 (= F33 Peter), 15.44 (Liv. 37.60.1-7 = F43 Peter), 15.47 (Liv. 39.22.8-10 = F46 Peter).

<sup>51</sup> Cic. *Fam.* 1.9.11.

<sup>52</sup> Caes. *BG* 1.7, 1.30, 1.31, 2.3, 2.13, 4.27, 5.5, 8.12.

Those (Gallic) *civitates* which are thought to administer their *res publica* to greater advantage have it prescribed by law that anyone who has learnt anything concerning the *res publica* from his neighbours by rumour or report must bring the information to a magistrate and not impart it to anyone else. (Caes. *BG* 6.20.<sup>53</sup>)

It is the *civitas* that manages *sua res publica*, its public business. Likewise, when Cicero accuses Verres of mismanaging the appointment of local censors during his praetorship in Sicily, he says that ‘in that census, the *res publica* of no *civitas* could be administered’.<sup>54</sup> In both examples, the *res publica*, in accordance with the definition of *De Republica* or Sallust’s summary history, belongs to the *civitas*: that is, the civic community. Hence, in a despairing rhetorical fragment used as an example of antistrophe (*conversio*) in the *Rhetorica ad Herennium*, a rhetorical handbook written by an unknown author and generally dated to somewhere between 86 and 82 BC,<sup>55</sup> it is the *res publica* that is said to have vanished from the *civitas*, rather than the other way round.<sup>56</sup> Without a *civitas*, there can be no *res publica*, because without a concrete public, there is no public sphere. In contrast, a group of people can physically coexist in the absence of shared legal, political and civic structures, although the rhetorical point comes from the fact that they may not be able to coexist for very long.

The pains Cicero takes to move from *populus* to *civitas* at *Rep.* 1.39–41 are remarkable mostly because, unless a similar point has fallen into the lacuna, he passes up the most obvious etymological option, as used by Varro, who notes that ‘*civis* (“citizen”) and *civitas* (“civic community”) are not the same, but both come

<sup>53</sup> Cf. also the *Epistula Praetoris ad Tiburtes* of 159 (*CIL* I.ii 586; cf. Clackson-Horrocks 2011: 147–8), which uses the phrase ‘neither for you nor your *res publica*’ (*neque id vobis neque rei poplicae vestrae*), *Cic. Ver.* 2.2.112 and *Mur.* 74 for examples of foreign *res publicae* where *res publica* has the sense of ‘public affairs’, *Flacc.* 16 for a contrast between *res publica* and *civitas* (when inexperienced men gain control, bad men are put in charge of the *res publica* while good citizens are ejected from the *civitas*), *Phil.* 4.14 for historic enemies of the Roman people who had possessed a *res publica*.

<sup>54</sup> *Cic. Ver.* 2.2.138.

<sup>55</sup> Cf. Marx 1966 (1894): 69–73, 152, Clarke 1953: 14, Kennedy 1972: 192, Corbeill 2002a: 33, Fantham 2004: 92, although Douglas 1960 argues for the viability of a much later *terminus ante quem*; cf. also Winkel 1979: 332. Marx read the *Rhet. Her.* as a *popularis* document and connected it to the Latin rhetors attacked by a censors’ edict of 92 BC (Marx 1966 (1894): 151–2; cf. also Gwynn 1926: 67–8, Clarke 1953: 14, Leeman 1963: 26). These days, the *Rhet. Her.* is usually taken at face value as a straightforward rhetorical handbook; cf. Kennedy 1972: 95, von Ungern-Sternberg 1973: 148, Kaster 1995: 273–4, Gruen 1990: 180ff.

<sup>56</sup> *Rhet. Her.* 4.19.

from the same origin and are connected'.<sup>57</sup> Feig Vishnia explains the etymological derivation of *civitas* from *co-viria (curia)*, 'meaning "a congregation of men/men assembled together"'.<sup>58</sup> It would have been simple to define a *civitas* as a community of *cives*: anyone with Roman citizenship was a member of the Roman civic community. Quintus Cicero had previously characterised Rome in the *Commentariolum Petitionis* as 'a *civitas* constituted from an assembly of nations (*ex nationum conventu*)' with attendant vices and snares for the up-and-coming politician, a description that may reflect the greatly enlarged *civitas* of the post-Social War period.<sup>59</sup> Because all the (male, adult) *cives* of the *civitas* are imagined as being technically capable of and/or expected to take part in public life (the *res publica*) in one way or another, the practical distinction between *res publica* and *civitas* is a fine and often rhetorically blurry one, especially when Roman politicians are talking to other Roman politicians about the internal workings of Roman politics. The *Rhetorica ad Herennium*, for example, demonstrates synonymy with an angry accusation: 'you have overturned the *res publica* from its roots, you have demolished the *civitas* from its foundations'.<sup>60</sup> This goes some way towards explaining the semantic slippage observable in Cicero's *De Republica*, where the difference between talking about the organisation of the shared public sphere (*res publica*) and that of the civic community (*civitas*) shrinks to irrelevance. The civic community is the public sphere.

*Res publica*, then, can mean both the public property/affairs of a given *civitas* and the communal political spaces within which those who administer the property and affairs of the *civitas* move. In itself, the term implies no particular political organisation, and the version that dominates in a given text will depend on the socio-political position and immediate aims of the text's author. In most of our surviving texts, of course, the authors are Romans and referring to the *res publica* that belongs to the *populus Romanus*. Now, while referring to a generic *res publica* might not connote any particular political organisation, talking about the *res publica* that belonged to the Roman *civitas* at any given historical moment certainly did. I isolate 'any given historical moment' because Roman political structures were as subject to change and development as those of any other polity; to take the most obvious

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<sup>57</sup> Var. *L.* 10.39.

<sup>58</sup> Feig Vishnia 2012: 60; cf. also Stark 1967: 80-1.

<sup>59</sup> Q. Cic. *Pet.* 54.

<sup>60</sup> *Rhet. Her.* 4.38.

example, the *res publica* of the regal period (or indeed the later imperial period) was organised in a markedly different way from the *res publica* of the Republic, and even the classic, pre-crisis Republic did not comprise an unchanging political system held static in a kind of metaphysical amber, as Flower's recent *Roman Republics* (2010) shows.<sup>61</sup> Rather than a written constitution to articulate and give permanent shape to its political structures, Rome had laws and traditional ways of doing things (*mos maiorum*),<sup>62</sup> and laws and traditions change over time.

It is at this point that *res publica* does begin to look deceptively like a slogan. The politicians of the late Republic were not thinking about Rome's *res publica* from the truly external perspective of modern scholars seeking a holistic, theoretically-informed account of Roman political structures and superstructures; rather, like Cicero's Scipio Aemilianus and his audience, they were political insiders concerned with specific aspects and problems of contemporary public life. When they complained about the state of the *res publica* or the loss of the *res publica*,<sup>63</sup> what they meant was not so much that a coherent political superstructure ('the Republic') was crashing down as that established political structures, as inherited from the *maiores*, were being corrupted or discarded. To appeal to "the *res publica*" in the late Roman Republic was therefore to invoke an inherently fluid concept in a condition of particular flux, both because political turbulence was impacting materially on the organisation of "the Roman *res publica*" and also because quarrelling public figures exploited, appealed to, or aimed to create diverging perspectives on what that system of organisation was or should be. Since *res publica* was used as a key prop by all and sundry, the different ways in which it was used inflected its meaning. That this was more than an interesting phenomenon, in fact (as I hope to show) an important element of the disintegration of the political superstructure now known as the Roman Republic, is the main reason to examine the invocation and manipulation of this protean *res publica* by Republican politicians; that it happened at all, however, makes it important to be sensitive to conceptual negotiation and innovation on the topic in *all* ancient texts.

There are serious problems with the evidence to be explained and choices in handling these problems to be justified at this point. On the one hand, *res publica* is

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<sup>61</sup> Cf. also Hillard 2005: 22 on Republican politics as 'a situational affair'.

<sup>62</sup> Eder 1990: 83, Bringmann 2002: 114, Flower 2010: 65.

<sup>63</sup> Cf. Bringman 2002 on the popular cry of *res publica amissa*.

a very common term in Latin political literature, thanks in no small part to Cicero; on the other hand, Cicero aside, the material is sparse, unrepresentative, frequently fragmentary and often lacking useful context. This puts us in the unhappy position of having both too much evidence to analyse each piece on its own merits and too little evidence to stitch together an intelligible narrative easily from the lacelike, moth-eaten material that remains. I have therefore organised the material thematically, as follows:

- Chapter 2 (*rem publicam administrare*) focuses on the *res publica* as public business, which is discussed in terms of (2.1) purely formal claims to legitimacy resting on the occupation of a magistracy; (2.2) ‘acceptable self-aggrandisement’: the traditional contest for personal *dignitas* accumulated by capitalising on successful past activity on behalf of the *res publica* and how this was contested by other politicians; (2.3) ‘personal integrity’: somewhat subtler claims to personal *dignitas* based on impeccable behaviour within/on behalf of the *res publica* (and disclaiming other people’s claims to personal *dignitas* by decrying their personal qualities, rather than their political achievements on behalf of the *res publica*); (2.4) ‘paradigm shift via technicality’: the decidedly non-traditional subversion of elite claims to *dignitas* by shifting responsibility and credit for administering the *res publica* onto the *populus Romanus*.
- Chapter 3 (*res publica salva*) focuses on various concerns for the long-term wellbeing of the *res publica* as the structured political sphere, which is discussed in terms of (3.1) the distinction between ‘moral decline’ (the concern that the *res publica* is endangered by the declining morals of those responsible for administering it) and ‘sporadic anticipations of imminent danger’ (the concern that the *res publica* is endangered by the specific activities of specific individuals), leading to (3.2) the concern that the *res publica* has passed the point of no return and requires rebuilding from the ground up; (3.3) ‘*res publica constituta*’: inheriting Sulla’s *res publica* and the development of *res publica* as rhetorical fiction to conceal unease with aspects of the current political situation.

- Chapter 4 (*res publica ipsa*) traces the interplay between these aspects of *res publica* in our main source of continuous contemporary political evidence, M. Tullius Cicero. The main strands of discussion for this chapter concern the changing relationship between Cicero and the *res publica* over the course of Cicero's public life, covering (4.1) a consul's duty to the *res publica*, the expression of which locates said *res publica* very firmly in Rome; (4.2) the "Catilinarian Conspiracy", a sporadic anticipation of imminent danger; (4.3) Cicero's vulnerability after his consulship; (4.4–5) 'self and state': working out new relationships between private individuals and the *res publica* in the aftermath of exile, with particular resort to the rhetorical fiction of the *res publica* that first appears in uneasy reaction to Sulla's *res publica constituta*.
- Chapter 5 (*res publica reciperata*) explores the impact of Caesar's civil war, which falls into (5.1) the 'Republicans' and the defence of *res publica* abroad, which challenged the *res publica*'s geographical location in Rome; (5.2) Caesar's reduction of *res publica* to public business, which located it firmly in Rome; (5.3) Cicero's *res publica reciperata* and general despair in the face of both versions; (5.4) the *res publica libera* of the 'Liberators' after Caesar's death, which specifies a political condition ('free'); (5.5) Cicero's attempts to reconstruct a *res publica* in the *Philippics* in the hope of resurrecting a new and improved political order.
- Chapter 6 (*pro re publica*) examines how individuals invoked the *res publica* to legitimise illegal and divisive political activity (sometimes euphemised as *privatum consilium*, as at Aug. *RG* 1.1). This chapter traces the development from P. Scipio Nasica's murder of Tiberius Gracchus to Cicero's promotion of the *privatum consilium* of Octavian and Decimus Brutus during the difficult period following Caesar's death. Section (6.1) examines how Augustus's *Res Gestae* echoes the rhetoric used to justify Nasica's actions in 133, and how this rhetoric was used against Cicero during the 50s. Section (6.2) considers other acts of *privatum consilium*, including Pompey's early career and Caesar's decision to cross the Rubicon *nullo publico consilio*. Section (6.3) looks at Cicero's strategy in the *Philippics* and (6.4) explores some of the opposition Cicero faced.

Except where otherwise indicated, I cite *OCT* texts and Loeb translations (slightly amended). The terminal limit for my enquiry is Cicero's death, which I take to be the end, if perhaps not of the Republic itself, then at least of clear and direct access to Republican discourse. I am not going to chase *res publica* through the thickets of the 'Second Triumvirate', let alone into the dark wood of the Augustan principate, although Augustus's epitaph reflects usefully on the conventions of the political system he helped to bring to an end. Finally, to return to the quotation with which I began, it may well be (in fact, it is certain) that my chosen themes do not exhaust the range of things that can be said about *res publica* and the Roman Republic. I hope, however, that within these limits it will be possible to say something constructive about the ways in which *res publica* was perceived and manipulated during this period.

## 2. REM PUBLICAM ADMINISTRARE

The key heuristic tool for my discussion, both here and in following chapters, is the point that *res publica* meant different things to different people at different times. At its simplest, it means either ‘the public business to be administered’ or ‘the metaphorical arena in which the administration of the public business is considered/organised’. In ordinary politics, these positions express complementary, in fact overlapping, perspectives, rather than contradictory ones; still, the perspective that individual speakers choose to foreground in addressing specific audiences can be revealing. This chapter is concerned with the most literal position on this spectrum of possibilities: *res publica* as ‘public business’, which manifests most transparently in the intimate relationship between the *res publica* and the magistrates, who managed it (2.1). It was through this relationship, and more precisely through any notable achievements carried out while managing the *res publica*, that most individual politicians established their personal *dignitas* within the *res publica*, which led their rivals to seek ways to circumvent it (2.2). The most obvious attack was on the achievements for which individuals claimed credit, but it is possible to trace at least two more subversive tactics: the elder Cato’s valorisation of impeccable behaviour while engaged *in re publica* (2.3) and the *popularis* focus not on the magistrates but on the *populus*, which elected managers to manage its *res* (2.4).

### 2.1 THE GARBAGE AND THE FLOWERS

When Verres governed Sicily, ‘the *res publica* of no *civitas* could be administered’.<sup>64</sup> *Administrare* (‘to administer’) and *gerere* (‘to conduct, engage in’) *rem publicam* are two of the most common terms for magistrates managing public business, whether that business is overseeing law-courts, administering provinces or waging war.<sup>65</sup>

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<sup>64</sup> Cic. *Ver.* 2.2.138.

<sup>65</sup> For *administrare*, cf. Caes. *BG* 6.20, *BC* 1.32, 2.18, *B. Alex.* 65, Sall. *BJ* 85.2, *Rhet. Her.* 3.3, 4.31, *Var. R.* 3.2.4, *Men.* 278, Cic. *Fam.* 1.9.2, 1.9.21, 10.11.2, 10.17.3, 10.34a.2, 11.10.1, 12.11.1, 13.11.3, *Q. fr.* 1.1.43, *Ver.* 2.1.34, 2.2.138, 2.5.22, *Agr.* 2.11, *Cat.* 2.14, *Arch.* 14, *Sest.* 79, *Vat.* 41. For *gerere*, cf. Pl. *Am.* 196, 524, Caes. *B. Alex.* 65, Cic. *Fam.* 2.7.3, 2.8.1, 10.3.3, 15.12.2, *Q. fr.* 1.1.4, *Leg. Man.*

Those who held office stood in the position of managers to the *res publica*, whereas the relationship of the senate to the *res publica* was more oblique (hence the usual term for senatorial activity, *consulere rei publicae*, ‘to look after the interests of the *res publica*’<sup>66</sup>). While *res publica* perceived as political space implies horizontal relationships, because it concerns political insiders talking to each other about matters of shared interest *within* a metaphorical arena, *res publica* perceived as public business implies vertical relationships, since it concerns property or affairs that must be directly managed by one or more managers. It is therefore also possible to describe this relationship in terms of direction: so, for example, as far as the consuls and other magistrates were concerned, their vertical perspective on the *res publica* was a top-down one, since they were the managers. All magistrates were responsible for administering aspects of the *res publica* (their *provincia*), especially the consuls, who traditionally began their term in office by taking the auspices, dressing themselves in the magisterial *toga praetexta* in front of their Penates and holding a *salutatio* before making separate processions to the Capitol, where they would sacrifice an ox each to Jupiter and make vows ‘for the welfare (*pro salute*) of the *res publica*’.<sup>67</sup> The actual words of the vow are not known, if there was even a standard formula,<sup>68</sup> but Pina Polo argues that the vows should be seen as ‘public vows (*vota publica*)’ and that ‘the consuls did not act as individuals but as supreme magistrates, and, as a result, they did not plead in their vow for the success of a specific venture that they might have to undertake, but for the welfare and safety of the Roman state in general during their term of office’.<sup>69</sup> Circumstantial evidence that such public vows invoked the *salus rei publicae* comes from Varro’s report, extracted from the censors’ records, of what the censor commanded the herald to tell the men after the censor had gone to the *templum* to take the auspices: ‘May this be good, fortunate, happy and salutary (*bonum fortunatum felix salutareque*) to the Roman people – the Quirites – and to the *res publica* of the Roman people – the

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62, *Dom.* 28. Cf. also Stark 1967: 69-72.

<sup>66</sup> E.g. *Rhet. Her.* 4.26, *Cic. Fam.* 10.35.2, 11.23.1, *Cat.* 3.13, *Dom.* 68, *Prov. Con.* 30, 47, *Pis.* 23; hence the outcome of senatorial votes were *senatus consulta*. On the senate’s role as the *consilium* of the magistrates, especially the consuls, cf. Crook 1955: 5-6, Balsdon 1960: 43-4, Beard-Crawford 1985: 66, Crawford 1992: 25, Kunkel 1995: 140, Lintott 1999b: 72, 85-6, Hölkeskamp 2000: 213-4.

<sup>67</sup> Pina Polo 2011: 18.

<sup>68</sup> Pina Polo 2011: 21.

<sup>69</sup> Pina Polo 2011: 21-2; cf. also Bell 1997: 12-13, Beck *et al* 2011: 2, 8.

Quirites – and to me and my colleague, to our good faith (*fides*) and our office (*magistratus*)’.<sup>70</sup>

Although a late source, Caesar’s *Bellum Gallicum* is highly revealing on the relationship that Republican magistrates enjoyed with Roman *res publica* and the ways in which they might draw on this relationship to legitimise their actions, since it preserves the sole extant, extensive account of a legally appointed senior Republican magistrate’s exploits abroad in office. Caesar was in Gaul as a proconsul, but prior to Sulla’s reforms most consuls would have spent most of their term of office commanding armies in the field;<sup>71</sup> this, too, was ‘managing the *res publica*’. In Plautus’s *Amphitruo*, the slave Sosia has been sent by his master Amphitryon to tell Amphitryon’s wife, Alcmena, ‘how he had managed (*ut gesserit*) the *res publica* under his leadership, command, auspices’ by successfully waging war on the Telaboians;<sup>72</sup> later in the play, Jupiter, masquerading as Amphitryon, tells Alcmena that he had stolen away from the legion in secret ‘so that first from me you might know the first news about how I managed (*ut gessissem*) the *res publica*’.<sup>73</sup> Plautus’s characters are Greeks in a Greek setting and embroiled in a Greek mythological plot (the unlikely circumstances surrounding the conception of Hercules), but the language is Latin and the terms used are those appropriate to a Roman commander on campaign away from the city.<sup>74</sup> To wage war for the Roman people was to manage their public business. Those magistrates sent abroad kept the senate and people informed on how their affairs were being managed through letters and reports, *commentarii*,<sup>75</sup> a genre for which the Caesarian corpus now forms our entire data set. While the lack of literary ornament in all Caesar’s *commentarii* is notoriously misleading,<sup>76</sup> the technique relies on creating an impression of artlessness and innocent fact. It would have been counterproductive to innovate too

<sup>70</sup> Var. L. 6.86.4, *quod bonum fortunatum felix salutareque siet populo Romano Quiritibus reique publicae populi Romani Quiritium mihiue collegaeque meo, fidei magistratuique nostro.*

<sup>71</sup> Beck *et al.* 2011: 6. Pina Polo 2011: 225-48 follows Balsdon, Valgiglio and especially Giovannini *contra* Mommsen in the argument that there never was a Sullan *lex Cornelia de provinciis ordinandis* (as Mommsen supposed) that actually mandated the presence in Rome of the consuls and stripped them of their military *imperium*; however, it remains the case that the consuls from Sulla onwards seem to have spent much, if not all, of the consular year in Rome.

<sup>72</sup> Pl. *Am.* 196, *ut gesserit rem publicam ductu, imperio, auspicio suo.*

<sup>73</sup> Pl. *Am.* 524, *ex me primo <ut> prima scires rem ut gessissem publicam.*

<sup>74</sup> On *res publica* elsewhere in Plautus cf. Stark 1967: 65-9, 71-2.

<sup>75</sup> For the *commentarius* genre cf. Rambaud 1953: 19-24, Adcock 1956: 7-9, Balsdon 1957: 19, Carter 1990: 16-17, Hall 1998: 15, 17.

<sup>76</sup> Carter 1990: 16-17, Damon 1993-4: 184, Hall 1998: 11, Levick 1998: 71, Welch 1998, Powell 1998, Rossi 2000: 239.

obviously on generally accepted topics, so it is noteworthy that Caesar, when invoking the *res publica* to justify his various actions as proconsul in Gaul, consistently depicts insults or injuries to the *res publica* as insults or injuries to himself, or vice versa. Reflecting on the sorry state of the Aedui in Book 1, for example, Caesar takes their condition personally:

*Et secundum ea multae res eum hortabantur quare sibi eam rem cogitandam et suscipiendam putaret; in primis quod Aeduos, fratres consanguineosque saepe numero a senatu appellatos, in servitute atque in ditione videbat Germanorum teneri eorumque obsides esse apud Ariovistum ac Sequanos intellegebat; quod in tanto imperio populi Romani turpissimum sibi et rei publicae esse arbitrabatur.*

And straightaway many considerations induced him to suppose that he must take thought and action in the matter. In the first place, he could see that the Aedui, often hailed by the senate as brethren and kinsmen, were fast bound in slavery and subjection to the Germans, and he was aware that their hostages were with Ariovistus and the Sequani. This, considering how great the rule of the Roman people was, he considered to be an utter disgrace to himself and to the *res publica*. (Caes. *BG* 1.33.)

The subjection of the pro-Roman Aedui to the Germans is a disgrace both to Caesar and to Roman interests, *sibi et rei publicae*, because of the greatness of the *imperium* of the *populus Romanus*. Since it is not obvious from the text how Caesar could be considered personally responsible for the degradation of the Aedui, he must shoulder the public responsibility as the local Roman magistrate, even though this is expressed as reflecting not just on the Roman *res publica* as a corporate identity but also on Caesar himself in a distinctly personal way. As Raditsa notes, ‘there is no discrepancy, certainly no antagonism between his self-respect and the public interest’.<sup>77</sup>

This duality, responsibility of (or injury to) both the *res publica* and its local representative, occurs again in the *Bellum Gallicum*. At 1.20, petitioned by the loyal

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<sup>77</sup> Raditsa 1973: 451.

Diviciacus to show mercy to his erring brother Dumnorix, Caesar ‘consoled him, bidding him end his entreaty, and showing that his influence with Caesar was so great that he excused the injury to the *res publica* and the vexation (*dolor*) felt by himself’.<sup>78</sup> At 2.5, appealing to the same Diviciacus to back up his preferred military strategy by attacking the Bellovaci, Caesar explains ‘how important it was for the *res publica* and for the communal welfare to keep the contingents of the enemy apart’.<sup>79</sup> At 5.7, Caesar decides to see to it that the overly ambitious Dumnorix should not be able to harm ‘himself (Caesar) or the *res publica*’.<sup>80</sup> When the proconsular Pompey accedes to Caesar’s request to lend him previously levied recruits, he concedes to ‘*res publica* and private friendship (*amicitia*)’;<sup>81</sup> this is murkier than the other examples, because it links *res publica* with doing a favour to an *amicus* rather than with the welfare of a specific person or their campaigns, but it reflects the same dual perspective: not a choice between *res publica* or *amicitia*, but rather a combination of *res publica* and *amicitia*. The duality makes the public personal and the personal public: we are concerned not just with the *res publica*, but with the specific individual(s) legitimately entrusted with the power to act in the *res publica*’s interests. An insult or injury to the holder of such power is an insult or injury to the Roman *res publica*, whose representative he is; he is obliged to respond to it as a public, not just a personal, insult or injury. Correspondingly, the interests of the *res publica* are cited to legitimise actions taken while acting on its behalf.

All of this is interesting not so much because it is surprising (after all, it is obvious that any disaster incurred by Roman magistrates engaged on public business would be a disaster for the Roman *res publica*) but because it is spelt out, not just once but repeatedly, and because it invests the specific responsible individual with a prominence that makes him more than a mere spokesman for some kind of corporate Roman identity. It is well within the bounds of probability that Caesar’s political aims in publishing this particular set of *commentarii* might have encouraged him to bring the specific individual magistrate concerned (himself) to the fore in the *Bellum Gallicum*.<sup>82</sup> That said, however, while it may not be possible to compare Caesar’s approach to the *commentarii* of other magistrates, what does exist is a number of

<sup>78</sup> Caes. BG 1.20, *consolatus rogat finem orandi faciat; tanti eius apud se gratiam esse ostendit uti et rei publicae iniuriam et suum dolorem eius voluntati ac precibus condonet.*

<sup>79</sup> Caes. BG. 2.5, *quanto opere rei publicae communisque salutis intersit manus hostium distineri.*

<sup>80</sup> Caes. BG 5.7, *ne quid sibi ac rei publicae nocere posset.*

<sup>81</sup> Caes. BG 6.1.

<sup>82</sup> Cf. section 2.2 below.

letters written by Cicero from his proconsular province in Cilicia in 51–50 BC. Here again the same duality crops up. Writing to the magistrates and senate on 21 or 22 September 51, Cicero explained that having arrived at his province on 31 July, ‘I considered that I should best conform to my duty and the public interest (*officium meum resque publica*) by making appropriate provisions for the army and for military security’.<sup>83</sup> Probably in early April 50, Cicero wrote to Minucius Thermus about M. Anneius, a legate lent to Thermus and now required back in Cicero’s train, that ‘his services, advice, and military experience can clearly be invaluable to me and to the *res publica*’.<sup>84</sup> Joining Cicero in Cilicia, Cicero told Coelius Calvus in June 50, would be ‘in my and the public interest and most of all in your own’.<sup>85</sup> Cicero tends to use more sophisticated variation in his phrasing (or, perhaps, Caesar’s *commentarii* employ more careful artlessness), but again the link between public and personal is made: the balance of magistrate and *res publica*. Cicero, like Caesar, had reasons eminently open to analysis to identify himself with the *res publica* whenever possible,<sup>86</sup> but the banality of these references addressed to the senate and private individuals alike suggests that self-promotion is not the only thing at work here. Something similar appears in a fragment of the elder Cato’s *Origines*, where a brave military tribune (Q. Caecidius) volunteers himself and four hundred unlucky non-volunteers for certain death in order to save a reckless consul: “‘If you find no one else,” said the tribune, “you may use me for that dangerous enterprise. I offer this life of mine to you and to the *res publica*”’.<sup>87</sup> Either the unnamed consul or the *res publica* would have been sufficient; the hero of the hour, however, expresses his willingness to sacrifice himself for both.

It is hard to access discourse, political or otherwise, outside the golden decades of the late Republic. The Tabula Bembina, a fragmentary inscription with a *lex repetundarum* on the obverse and a *lex agraria* on the reverse, is therefore a gift from antiquity.<sup>88</sup> It preserves a formula that occurs at least once on a fragment of the

<sup>83</sup> Cic. *Fam.* 15.2.1, *maxime convenire officio meo rei publicae conducere putavi parare ea quae ad exercitum quaeque ad rem militarem pertinerent.*

<sup>84</sup> Cic. *Fam.* 13.57.1, *nam eius opera consilio scientia rei militaris vel maxime intellego me et rem publicam adiuvari posse.*

<sup>85</sup> Cic. *Fam.* 2.19.2, *et mea et rei publicae et maxime tua interesse.*

<sup>86</sup> Cf. especially sections 4.4-5 below.

<sup>87</sup> *FHR* 3.4.7a Beck-Walter, Gell. 3.7.1-19 (= F83 Peter), ‘*si alium*’ inquit tribunus ‘*neminem reperis, me licet ad hoc periculum utare; ego hanc tibi et rei publicae animam do*’; on this anecdote cf. Gruen 1992: 82, Gotter 2010: 111-12.

<sup>88</sup> *CIL* I.ii 583, 585; cf. Badian 1954, 1962b: 203-14, Mattingly 1969a, 1970, Sherwin-White 1972,

*lex agraria*, which can be firmly dated to 111 BC:<sup>89</sup> the injunction that in certain circumstances, ‘the consul, praetor or censor, whoever [he shall be,] is to have jurisdiction [concerning that matter] and the right to grant trial and appoint a judge or *recuperatores*, just as shall seem to him [to be] according to the public interest (*e re publica*) and his own good faith (*fides*)’.<sup>90</sup> Two Greek translations of Latin decrees provide supplementary epigraphic material: (1) the *Senatus Consultum de Thisbensibus* (170 BC), which records the senate directing the Roman magistrate Q. Maenius to delegate five senators ‘who[se selection] seemed to him consistent with the interests of the republic and his personal integrity’; here Clackson and Horrocks detect a translation of *ita utei/queie ei e re publica fideque sua videatur/videantur*;<sup>91</sup> and (2) the *Lex de Provinciis Praetoriis*,<sup>92</sup> a law that may date to 100 BC on which there has been a substantial amount of scholarship and to which Crawford 1996a provides a substantial introduction;<sup>93</sup> the editors propose to reconstruct a Latin original in which ‘[*ita uti e re publica*] *fideque sua* [*videbitur esse*] *consulito*’ lurks behind the Greek of the Delphi copy.<sup>94</sup> Prior to either Caesar or Cicero, then, and in purely abstract contexts – that is, absent any specific individual with an interest in self-promotion – the magistrate’s personal good faith was placed on a par with the good of the *res publica*.<sup>95</sup> Furthermore, this is not just empty rhetoric. *Senatus consulta* are unlikely locations for such material and the *lex agraria* is a legal document; the duality was enshrined in Roman law. This is reflected in Varro’s censorial proclamation, which invokes not just the *bonum, fortuna, felicitas, salusque* of the Quirites and their *res publica*, but also the *fides magistratusque* of the censor and his colleague.<sup>96</sup> Well before Varro, Caesar or Cicero, Ennius had placed a similar blessing in Romulus’s mouth:

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Lintott 1992: 10-87, Crawford 1996a (Law 2).

<sup>89</sup> *CIL* I.ii 585 = Crawford 1996a Law 2.

<sup>90</sup> Crawford 1996a 2.35, *co(n)s(ulis) pr(aetoris) cens(or)is, queiquom[que erit, de ea re iu]ris dictio iudici iudicis recuperatorum datio esto i(ta) u(tei) e(i) e r(e) p(ublica) f(ide)que s(ua) u(ide)bitur [e(ss)e]*. Mommsen, Lintott 1992 and Crawford 1996a all reconstruct *ita utei re publica fideque sua* at line 34; Crawford 1996a proposes to repeat the formula at line 78.

<sup>91</sup> *Sylloge Inscriptionum Graecarum*<sup>3</sup> II.646.10-15, οἱ ἄν αὐτῶι ἐκ τῶν δημοσίων προα[γμ]άτων καὶ τῆς ἰδίας πίστεως φαίνωνται; Clackson-Horrocks 2011: 153-4 (their translation).

<sup>92</sup> Crawford 1996a Law 12.

<sup>93</sup> Crawford 1996a: 234-7.

<sup>94</sup> Block B, ll. 14-15, [καθὼς ἄν φαίνηται ἐκ τῶν δημοσίων πραγμάτων] πίστεως τε ἰδίας βουλευέσθω; cf. Crawford 1996a: 12.14-15.

<sup>95</sup> On *fides* cf. Hellegouarc’h 1963: 23-8, 275-6, Lind 1989: 5-13.

<sup>96</sup> Var. *L.* 6.86.4.

*Quod mihi rei que fidei regno vobisque, Quirites,  
Se fortunatim feliciter ac bene vortat.*

And may this, I pray, turn out in fortune prosperous and fair for me, our task, our plighted troth, our kingdom, and for you, Quirites. (Enn. *Ann.* 102–3.<sup>97</sup>)

When he identified himself with the *res publica* in the *Bellum Gallicum*, Caesar was therefore exploiting an existing relationship rather than creating one. Roman magistrates were not faceless civil servants. Rather, the *res publica* and the individual magistrate entrusted with managing it were placed on a par. It was understood and expected that a magistrate with something to justify could invoke either his *fides* or his special relationship with the *res publica*, or preferably (as enjoined by the *lex agraria* of the Tabula Bembina) both. During the magistrate's term in office, especially when he was commanding in the field or governing a province and so separated from Rome and the political insider's metaphorical *res publica*, the community of consulting political peers, his personal interests were bound up with the public affairs he managed. He was not just responsible for administering the local interests of the *res publica*; in some sense, thanks to his office, he embodied it.

## 2.2 HEROES

Magistrates, then, enjoyed a particularly intimate relationship with the *res publica*. On the one hand, they managed (*administrare, gerere*) the *res publica*, a position that implies a top-down relationship of managers to the thing managed. On the other hand, this relationship did not subsume the individual into his office: rather, his individual character became all the more important, because he was entrusted with the conduct of public business. He could say, as Caesar and Cicero did, that a particular action was beneficial or detrimental to both himself and the *res publica*. This was of immediate political advantage to the magistrate while he was in office and could benefit his political future too, since a magistrate's management of the *res*

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<sup>97</sup> I use Skutsch's text for the fragments. He prints *reique* rather than the *reliquae* of the mss. and observes in the commentary ad loc. that '*regno* may correspond to *magistratui*, and there would thus be room for a mention of the state (Livy 3.54.8 *vobis reique publicae*; cf. 3.34.2; 10.8.11; 24.16.9). It would be easy enough to find *reique* in *reliquae*, which is senseless and unmetrical'.

*publica*, if carried out successfully and preferably including some significant achievement marked by a thanksgiving, ovation or triumph, gave him a base for future activity as a *privatus* within the *res publica* of political space.

This is apparent from one relatively substantial source of surviving evidence for elite self-aggrandisement in the ‘classic’ Republic: the funerary context, attested principally by *laudatio* fragments and funerary inscriptions, in particular the Scipionic *elogia*.<sup>98</sup> The ways in which elite families commemorated their deceased members were far from innocent, since, as Flower observes, ‘from the late third century BC onwards the *laudationes* which we know about are overtly political’.<sup>99</sup> It is therefore significant that these fragments generally depict the great deeds of the individuals they commemorate as deeds of management, while foregrounding not activity within the *res publica* (that is, the political sphere) but rather primacy within the *civitas* (that is, the community of citizens). Consider, for example, this fragment of Q. Caecilius Metellus’s funeral *laudatio* for his father, L. Caecilius Metellus, given in 221 BC:

*voluisse enim primum bellatorem esse, optimum oratorem, fortissimum imperatorem, auspicio suo maximas res geri, maximo honore uti, summa sapientia esse, summum senatorem haberi, pecuniam magnam bono modo invenire, multos liberos relinquere et clarissimum in civitate esse. Haec contigisse ei nec ulli alii post Romam conditam.*

for he wished to be a prime war-maker, an excellent orator, a very brave general, to manage the greatest affairs under his own auspices, to hold the greatest office, to be supremely wise, to be held the supreme senator, to acquire great wealth in a good way, to leave many children and to be outstanding in the civic community. This he achieved, unlike anyone else since the founding of Rome. (*ORF* 6.1.2 = Pliny *NH* 7.139–40.)

If *res publica* can be recovered here, it must be seen as being subsumed into *maximae res*, the greatest (military) affairs. What is stressed is L. Metellus’s position

<sup>98</sup> On these *elogia* cf. Flower 1996: 159–80, Moir 1986 and Tatum-Moir 1988, van Sickle 1987, Radke 1991. On the tomb itself cf. Pagola 2002: 302, Flower 1996: 160.

<sup>99</sup> Flower 1996: 132; cf. also Flower 1996 generally on the political importance of funeral *imagines* and van Sickle 1987: 44–7 on the different roles of men and women at funerals.

in the *civitas*, achieved by ending this particular rendition of “what a Roman *nobilis* wants to be” with it. Flower points out the significance of such a speech praising ‘the man who was in effect the founder of the family’s name and fortunes’: since there had been a dearth of office-holding Metelli prior to Lucius, apart from the consul of 284 who was defeated and killed at Arretium, Q. Metellus ‘worked to stress his father’s excellence in comparison with earlier Romans in general’.<sup>100</sup> These are the ‘ten most important aristocratic virtues’ and L. Metellus is presented as having excelled in all of them, thereby winning a competition not only with his contemporaries but with past generations.<sup>101</sup> Similarly, not one of the Scipionic *elogia* contains a *res publica* but all of them go to considerable lengths to place their subject *apud vos*, ‘among you’, where ‘you’ presumably refers to the massed ranks of ancestor-adoring Scipiones in the first place, but also functions generally as a way to locate a given Scipio within the civic body.<sup>102</sup>

Van Sickle highlights the themes shared by the Metellan fragment and the oldest two *elogia*;<sup>103</sup> he also argues that the *elogia* should be read as epigrams, in which case (*contra Zevi*, who takes *apud vos* as indicating a real civic audience<sup>104</sup>) the imagined civic audience of *apud vos* need not be taken literally, but rather as a convention of the genre.<sup>105</sup> The contentious issue of whether the *elogia* were viewed by anyone other than the Scipiones is not at stake, however; what matters is the message conveyed, which is similar to that of Q. Metellus’s *laudatio*. So the oldest *elogium*, that of L. Cornelius Scipio Barbatus (consul in 298, censor possibly in 280), runs:

*Cornelius Lucius Scipio Barbatus Gnaivod patre | prognatus fortis vir  
sapiensque – quouis forma virtutei parisuma | fuit – consul censor aidilis  
quei fuit apud vos – Taurasia Cisauna | Samnio cepit – subigit omne  
Loucanam opsidesque abducit.*

Cornelius Lucius Scipio Barbatus, born of his father Gnaeus, a brave and wise man – whose beauty was equal to his manliness – who was consul,

<sup>100</sup> Flower 1996: 138.

<sup>101</sup> For the texts see van Sickle 1987: 61-3; cf. also Flower 1996: 139, Sciarrino 2011: 122-3.

<sup>102</sup> Zevi 1970: 66-7, van Sickle 1987: 47.

<sup>103</sup> Van Sickle 1987: 47-8.

<sup>104</sup> Zevi 1970: 66.

<sup>105</sup> Van Sickle 1987: 49.

ensor and aedile among you – he took Taurasia, Cisana and Samnia – he subjected all Lucania and led off hostages. (*CIL* 1.ii.7.<sup>106</sup>)

The date of composition for this *elogium* is debated, since it seems to have replaced an erased inscription.<sup>107</sup> It seems reasonable to take it as c. 270–250 BC, rather than a later composition, despite the peculiarities of the sarcophagus.<sup>108</sup> Flower suggests the erased inscription ‘must have been controversial or unsatisfactory from the family’s point of view’, possibly the claim to have been first of the family.<sup>109</sup> The valorised properties in its replacement are: (1) lineage; (2) character-based; (3) physical; (4) offices held; (5) military achievements. What is not invoked is any explicit conception of the *res publica* or indeed any kind of public service clause, despite the common interpretation of the *elogia* as a group that ‘reflejado el ideal aristocratico romano de servicio simultaneo a su propia familia y al Estado’.<sup>110</sup> Rather than talking about such texts in terms of simultaneity (or indeed service), it might be better to view this as a reflection of Roman *nobiles* taking it for granted that their public activities, which they report to honour themselves and their families report to add to the corporate family lustre, also served the common interest: instead of an equal duality, in other words, these funerary scripts betray a subordination of abstract public interests to concrete personal achievements.

All this testimony, both in the Scipionic *elogia* and Q. Metellus’s laudation of his father, is principally concerned with jockeying for position within the citizen body. These gentlemen are interested in themselves and their own achievements (or those of their family), which are measured against those of their fellow citizens. Their end-of-life resumés stress not that they have contributed to the shared public property, the *res publica*, in their magisterial roles but simply their achievements: holding office, outstanding reputations, position within the *civitas* (whether the microscopic version of Cicero’s *societas iuris*, the family, or the macroscopic version, the citizen body as a whole), military victories. This ultimately self-aggrandising focus fleshes out the magistrate’s half of the *res publica*/magistrate duality: such decisions as a magistrate makes on behalf of the *res publica* he will

<sup>106</sup> Cf. also *CIL* 1.ii.9-15, van Sickle 1987: 51 (2). For a thorough overview of the *elogium* in its physical and literary context cf. Radke 1991.

<sup>107</sup> Cf. van Sickle 1987: 51-2.

<sup>108</sup> van Sickle 1987: 42-3, Radke 1991: 70, Flower 1996: 170-76.

<sup>109</sup> Flower 1996: 176; cf. also van Sickle 1987.

<sup>110</sup> Pagola 2002: 299.

eventually be able to claim (or be obliged to disclaim) in his own right as a private individual. When L. Aemilius Paullus appropriated the Macedonian king Perseus's monument at Delphi to advertise Perseus's defeat at Pydna in 168, Rome was nowhere to be seen on the inscription; it was Paullus, the responsible *imperator*, whose victory over King Perseus and the Macedonians was commemorated.<sup>111</sup> Likewise when L. Mummius Achaicus, the consul of 146 and conqueror of Corinth, dedicated a temple promised in the field to Hercules Victor in c. 142, his inscription emphasised his personal responsibility for the victory:

*L. Mummi(us). L.f. cos. duct(u) | auspicio imperioque | eius Achaia capt(a),  
Corinto | deleteo, Romam redieit | triumphans. Ob hasce | res bene gestas  
quod | in bello voverat, |hanc aedem et signu(m) | Herculis Victoris |  
imperator dedicat.*

Lucius Mummius, son of Lucius, consul, Achaia having been captured and Corinth destroyed under his leadership, auspices and command, returned to triumph in Rome. Because these affairs were achieved successfully, the commander dedicates what he vowed during the war, this shrine and image of Hercules Victor. (*CIL* 1.ii.626 = *CIL* 6.331, *Tabula Lapidis Tiburtini*, my translation.)

There is no suggestion of any broader public interest here: the inscription begins with the individual consul, *L. Mummi(us) L.f. cos.*, and ends with him, *imperator dedicat*. This temple was erected during a flurry of temple-building by self-promoting politicians; also significant is the temple dedicated to Jupiter Stator c. 143 by Q. Caecilius Metellus Macedonicus (who defeated Andriscus and turned Macedonia into a province as praetor in 146, then almost stole the war in Greece from Mummius), and the temple dedicated to Mars *in Circo* c. 132 by D. Junius Brutus Callaicus. Ziolkowski points out that all three generals followed the outstanding P. Scipio Aemilianus Africanus by adopting new names based on their significant military achievements, indicating their competition with him in the

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<sup>111</sup> Flower 2006: 62-3.

military arena.<sup>112</sup> Military achievements on behalf of the *res publica* were excellent material for individual self-aggrandisement; even if consuls began their year in office by praying to the gods on behalf of the *res publica*, any vows they might make on the battlefield established a personal contract between general and god. Similarly, public buildings constructed by the proceeds of *manubiae* won in foreign wars enabled the victor to carve his name on Rome's civic landscape at no personal cost, assuming he did his sums correctly when dividing up the spoils. 'The credit claimed by Augustus in the *Res Gestae* and by every other magistrate who financed public projects from *manubiae* testifies to the fact that Roman magistrates could, to this extent, have their cake and eat it, too: they were credited for the public benefit from projects funded from *manubiae* even though they did not own them'.<sup>113</sup>

This indicates one major reason why most politicians were unlikely to challenge the principle that actions performed by magistrates holding public office could afterwards be chalked up to individual credit: it was one that they all expected, or at least hoped, eventually to employ on their own behalf. Further, it gave their descendants a place to start *their* climb up the ladder to public office. What politicians could and did challenge, however, was whether such actions actually were in the common interest or demonstrated suitable *virtus/fides* on the individual magistrate's part. This tension is prominent in the tradition concerning Fabius Maximus Cunctator, who earned his name for the delaying strategy he used against Hannibal in Italy and is the subject of a famous fragment of Ennius:

*Unus homo nobis cunctando restituit rem.  
Noenum rumores ponebat ante salutem.  
Ergo postque magisque viri nunc gloria claret.*

One man by his delays restored the state;  
Hearsay he would not put before our safety;  
Hence to this day the warrior's glory shines –  
In after time, and more than it shone once. (Enn. *Ann.* 363–5.)

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<sup>112</sup> Ziolkowski 1988: 327-8.

<sup>113</sup> Churchill 1999: 100.

A recent article by Roller dissects the ‘unusual moral ambiguity’<sup>114</sup> of the Fabian *exemplum*, for which the historiographical tradition preserves both praise and criticism. The criticisms cited by Ennius attacked Fabius on a personal level (because his failure to attack Hannibal when given the opportunity indicated a lack of the *virtus* appropriate to a Roman commander)<sup>115</sup> and on a moral level (because leaving the colonies and Italian towns vulnerable to Hannibal’s slash and burn tactics was dishonourable).<sup>116</sup> In response, Fabius argued that he held back in the interests of the *res publica*.<sup>117</sup> Rather than defending his *virtus* or his *fides* (either rhetorically or materially, i.e. by attacking Hannibal), Fabius justified his apparent personal failings as the result of a deliberate strategy carried out in the public interest. Attacked on one count, he defended himself by way of the other.

Roller observes that the tradition allows Fabius’s critics only moral arguments ‘couched in terms of courage versus cowardice and honor versus dishonor’, while Fabius alone ‘is given a monopoly on the larger *pro re publica* argument’.<sup>118</sup> Ultimately, it was Fabius whose claims were validated. Had Fabius’s tactics failed against Hannibal, however, he might have faced worse than criticism, since a general’s personal *virtus* could be the decisive factor when disaster loomed. In his study of *imperatores victi*, Rosenstein outlines how generals might get away with being defeated if they managed to display sufficient *virtus* in the process: ‘a general was expected to display courage and self-control when things were falling apart all around him – a willingness to fight hard, take risks, and, if necessary, meet death fighting bravely’.<sup>119</sup> A defeat was in no way in the public interest, but the individual concerned might manage to shake off responsibility for it if he could convince everyone that he had behaved in every way as an exemplary Roman magistrate, getting defeated aside.<sup>120</sup> It helped considerably if he got killed in the process: ‘to die resisting desperately was thus not only to avoid the shame of capture but possibly even to achieve a certain measure of *gloria* as well’,<sup>121</sup> whereas emerging alive from a disaster invited awkward questions about how the general had

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<sup>114</sup> Roller 2011: 184.

<sup>115</sup> Roller 2011: 188-9.

<sup>116</sup> Roller 2011: 190.

<sup>117</sup> Roller 2011: 191.

<sup>118</sup> Roller 2011: 192.

<sup>119</sup> Rosenstein 1990: 117.

<sup>120</sup> Rosenstein 1990: 120, 128-33.

<sup>121</sup> Rosenstein 1990: 122.

survived amid the slaughter of his men.<sup>122</sup> All of this indicates not only that the tension between *virtus* and *res publica* was genuinely two-sided but also that pushing for the good of the *res publica* as the pre-eminent criterion for judging an action, rather than prioritising what said action expressed about the personal (the commander's) and collective (the soldiers') character of the actor(s), was actually a rather unusual tactic. Fabian caution, it seems, was generally remembered rather than imitated: he was viewed 'as an exceptional man in exceptional circumstances' and his model, 'although enduring, does not seem to have played a major part in shaping the Roman aristocratic ideal of the proper behaviour for a general', which was consistently aggressive.<sup>123</sup>

This is a good note on which to return to the supremely aggressive Caesar and his exploitation of his magisterial claim to administer and embody the *res publica* in Gaul. Above, I focused on the *Bellum Gallicum* as evidence for the formal relationship between magistrates and *res publica*,<sup>124</sup> but like the fragmentary *laudationes* and the Scipionic *elogia* these *commentarii* are not innocent texts. It is generally accepted that the *Bellum Gallicum* is not just an artless account of Caesar's campaigns but a highly artful work of 'personal propaganda',<sup>125</sup> and furthermore that Caesar wanted to establish himself as a world-class general to rival the resident Roman Alexander, Cn. Pompeius Magnus.<sup>126</sup> Caesar in Gaul was doing what Scipio Aemilianus, Mummius and the elder Scipiones had done before him: using his time in office to construct a personal reputation to compete with current and historic Roman generals. The *Bellum Gallicum* was written and published at least partly to further this aim.<sup>127</sup> In principle, there was nothing wrong or remarkable about accumulating personal political capital from exploits carried out in office; in practice, however, Caesar could expect to face opposition, firstly because his consulship had earned him enemies in Rome<sup>128</sup> and secondly because the legality of conquering Gaul was dubious: Caesar 'had no instruction to make conquests, no authority to do

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<sup>122</sup> Rosenstein 1990: 123.

<sup>123</sup> Goldsworthy 1998: 201; cf. Richardson 2012: 57-112 for the influence of the model on the Fabian *gens*, however.

<sup>124</sup> Cf. section 2.1 above.

<sup>125</sup> Levick 1998: 71; cf. also Taylor 1949: 157-8, Rambaud 1953, Meier 1996: 259, Wiseman 1998: 4-5, Hall 1998: 11, Goldsworthy 1998: 193, Brown 1999: 330, Osgood 2009: 350-1.

<sup>126</sup> Levick 1998: 71, Welch 1998: 85, Goldsworthy 1998: 194, 212.

<sup>127</sup> There is some debate about whether it was published in stages during the 50s (Adcock 1956: 22, Wiseman 1998: 2, Welch 1998: 85-7, 94) or as a complete text towards the end of the decade (Levick 1998: 73, Osgood 2009: 352).

<sup>128</sup> Meier 1996: 223, Hall 1998: 28, Levick 1998: 71, Powell 1998: 111.

so. For there were laws – including his own *lex repetundarum* – that forbade a governor to make war on his own initiative'.<sup>129</sup> At best, he may have had the right to get involved in military operations beyond his borders if it was in the national interest, but only to sort out trouble spots, not take over whole countries. His aggression was particularly ugly because the villain of the first book of the *Bellum Gallicum*, Ariovistus, had been named *rex et amicus* during Caesar's own consulship. Caesar therefore exaggerates the danger and arrogance of the enemy,<sup>130</sup> depicts his campaigns as stemming from a series of defensive acts on behalf of Rome's local allies and presents himself 'in all innocence as a Roman governor who performs his multifarious tasks in a traditional fashion, conscientiously and circumspectly, as duty requires'.<sup>131</sup> When Caesar represents himself as thinking that the sorry state of Rome's regional allies is 'most disgraceful for him and for the *res publica*',<sup>132</sup> he trots out a standard formula in order to justify starting a war that may or may not be good for the *res publica* but which he certainly expects will benefit himself. Conversely, when his opponents in Rome attacked him in 55, it was not because his Gallic activities up until then had done any material damage to the *res publica*, but rather on the grounds (specious or otherwise) that Caesar had broken faith with his Germanic opponents. This breach of *fides*, the younger M. Porcius Cato argued, should be repaired in the traditional fashion: by handing the offender (Caesar) over to the Germans, thus averting from the soldiers and Rome itself any divine wrath Caesar might have incurred.<sup>133</sup> In short, a magistrate or pro-magistrate's claim to represent the *res publica* could be turned against him if he failed to demonstrate the *virtus* or uphold the *fides* appropriate to a Roman commander and, by extension, the Roman *res publica* as a whole. Given the rewards available to a magistrate who substantially outperformed his fellows, it was by no means guaranteed that such a magistrate's claim to be acting *pro re publica* would be accepted uncritically.

### 2.3 HIS LONELY WOODEN TOWER

What I outline above is straightforward: when those who had held office made political hay out of their public achievements, their peers generally retaliated by

<sup>129</sup> Meier 1996: 235; cf. Badian 1990: 32.

<sup>130</sup> Meier 1996: 242-3.

<sup>131</sup> Meier 1996: 256; cf. Hall 1998: 11, Steel 2001: 208, Mehl 2011: 73.

<sup>132</sup> Caes. *BG* 1.33, *turpissimum sibi et rei publicae esse*.

<sup>133</sup> Plut. *Caes.* 22, *Cat. Min.* 51; Meier 1996: 282-3, Steel 2001: 204.

challenging whether those achievements had been appropriately conducted rather than their right to do so in the first place. Having said this, however, there were at least two ways to circumvent the link between public achievement and personal *dignitas* entirely. The first can be most securely identified with the famous forebear of Caesar's Catonian opponent, the elder M. Porcius Cato, consul of 195, censor in 184 and the first writer of Latin historiography, for whom an unusually substantial collection of rhetorical and historiographical fragments survives.<sup>134</sup> As a *homo novus*, Cato faced various well-examined challenges which he surmounted in various well-examined ways,<sup>135</sup> thereby establishing himself in 'the Roman historical memory' as someone who built his political career 'by challenging the notion that aristocratic authority was the exclusive possession of a few clans even while affirming the aristocratic commitment to the replication or reperformance of ancestral practices and behaviours'.<sup>136</sup> Since Cato lacked the sort of family that accumulates in impressive tombs and produces inherently competitive epitaphs, in other words, he competed not with his own uninspiring family history but with the serried ranks of Rome's collective past; and his principal strategy of self-promotion relied not so much on his individual achievements in office as on the construction of a public persona as one who devoted himself to the public sphere even when not even holding any public office at all. On the one hand, Cato held that such offices were 'duties to be performed in the interests of the *res publica*, with strict attention to the particular tasks and proper procedures, and with equally strict avoidance of all personal gain from the opportunities afforded by public offices and commands', and on the other hand he thought prominent men were obliged to spend their time usefully in the public interest.<sup>137</sup>

Cato *did* promote his various individual achievements as well. Like most other consuls of the pre-Sullan period, he commanded an army abroad during his year in office;<sup>138</sup> this was, however, his only active military command held under his

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<sup>134</sup> For general remarks on Cato's oratory and literary output cf. Smith 1940: 163, Astin 1978: 131-56, 182-239, Gruen 1992: 53-83 (especially Cato's relationship to Hellenism), Forsythe 1994: 79-80, Churchill 1995, Beck 2011: 259-62, Jefferson 2012 (on Cato's audience for the *Origines*).

<sup>135</sup> Cf. Ruebel 1977: 172-3, Astin 1978: 1-27, Williams 2004: 286-7. Burckhardt 1990 provides a concise survey of scholarship on the topic of *nobilitas/novitas*; cf. also Hellegouarc'h 1963: 430-48, 472-83 (on *homines novi*), Brunt 1982, Hopkins-Burton 1983 (on political succession), Shackleton Bailey 1986.

<sup>136</sup> Sciarrino 2011: 123; cf. also Reay 2005: 333.

<sup>137</sup> Astin 1978: 87; Smith 1940: 159-60, Churchill 1995: 95-6, 99-100, Beck 2007: 259.

<sup>138</sup> Cf. Astin 1978: 28-50.

own auspices, and although his activities in Spain earned him three days of public thanksgiving, a triumph and an opportunity to promote himself as a military hero on his return, it is noteworthy that most of his preserved remarks to do with his Spanish campaign concern the propriety of his personal behaviour (what he ate and drank, that he did everything as cheaply as he could, that he behaved scrupulously in regard to public money).<sup>139</sup> A few years later, he made as much political capital as possible out of a flanking mission performed against the Aetolians at Thermopylae in 191,<sup>140</sup> but this mission, while successful and pleasingly dramatic, was carried out as a military tribune under the command and auspices of the consul, M<sup>r</sup>. Acilius Glabrio, to whom the credit for the victory properly belonged.<sup>141</sup> Cato was not averse to self-promotion on military grounds; his problem was that his achievements could not compete with those of such genuinely outstanding contemporary generals as the elder P. Scipio Africanus and his brother L. Scipio Asiaticus. He cemented his reputation as *summus imperator* for posterity by writing a handbook on military matters,<sup>142</sup> but this was not what underpinned his political self-promotion. Rather, he downplayed the extraordinary occasional efforts of individuals and valorised instead extraordinary long-term devotion (especially his own) to the *res publica* in the sense both of public affairs and of the communal political arena within which he and his political peers moved.

This is reflected in the fragments of his historical work on the origins of the various Italian communities. Cato notoriously left generals (other than himself) unnamed in the *Origines*,<sup>143</sup> thereby breaking the accepted public achievement/individual credit link (for other people). The anecdote of the brave tribune and the escaping consul was cited above;<sup>144</sup> in the actual fragment from Cato, even the tribune (eventually named by Gellius as Quintus Caedicius, although Gellius reports that Claudius Quadrigarius calls him Laberius) is unnamed, and in the paraphrase of Cato's anecdote that precedes the quotation neither the tribune nor the consul is named. While this spares the anonymous consul discredit for having led his army into a dangerous situation, the tale as preserved by Gellius imputes no

<sup>139</sup> Astin 1978: 52-3; cf. also Shatzman 1972: 184-5 n.31, Churchill 1999: 92.

<sup>140</sup> Astin 1978: 57-8, Ruebel 1977: 169-70.

<sup>141</sup> Astin 1978: 58.

<sup>142</sup> Nap 1927, Astin 1978: 49, 184.

<sup>143</sup> Nep. *Cato* 3.3; cf. Smith 1940: 164, Levene 2000: 175-6, Sciarrino 2004: 324-5, Gotter 2010: 111, 116, Jefferson 2012: 321.

<sup>144</sup> *FHR* 3.4.7a Beck-Walter, Gell. 3.7.1-19 (= F83 Peter); cf. section 2.1 above.

explicit guilt but does transfer credit for escaping the Carthaginian trap from the consul to the self-sacrificing tribune. (Cato's own stint as a heroic military tribune may be relevant to this point.) Gotter argues that the absence of names 'is a matter of devaluing individual heroics as a whole'; it is not 'a devaluation of norms' (since the stressed norm remains *virtus*) but rather a matter of shifting those norms from the individual actor to 'the Roman people as a whole'.<sup>145</sup> In other words, Cato's refusal to name (other people's) names brings the *exemplum* to the fore, as opposed to the person or their *gens*. Whereas wandering Greek heroes and the protagonists of foundation myths are named, 'the entire aristocracy of the "classical" Republic' coalesces into a collective mass.<sup>146</sup> This marked absence may also be taken as 'an application of Cato's concept of duty: service for the state, not for personal glory',<sup>147</sup> albeit one not applied to Cato himself, who included two of his own speeches in the *Origines* and must have done so in a context that made his own role clear.<sup>148</sup> To quote Gotter, 'Catonian historiography is politics by other means'.<sup>149</sup>

To place the *res publica* above the individuals who managed or moved within it was to render anonymous those (other, extraordinary) individuals and opened up opportunities for self-promotion on the grounds of ordinary political activities excellently conducted. Cato stressed fiscal propriety throughout his life, whether in opposing the repeal of the Oppian sumptuary law during his consulship or inveighing against extravagance and misuse of public funds and going to extreme lengths to ensure profitable contracts for public works and *vectigalia* as censor.<sup>150</sup> Furthermore, Cato's treatment of *past* Romans like the military tribune (who are identified 'through the political and military offices that provide the key to their place in Rome's civic and social hierarchy, but which fail to individualize them'<sup>151</sup>) stands in contrast to his treatment of contemporaries, who are denounced and attacked by name in a very personal way (so, for example, Ser. Servius Galba, praetor in 151 and consul in 144, is roughly treated).<sup>152</sup> While praise is anonymous, criticism involves named names. Mehl takes this to indicate more than Cato making

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<sup>145</sup> Gotter 2010: 112.

<sup>146</sup> Gotter 2010: 116; cf. also Jefferson 2012: 323.

<sup>147</sup> Astin 1978: 233.

<sup>148</sup> Astin 1978: 234, Sciarrino 2011: 132.

<sup>149</sup> Gotter 2010: 109.

<sup>150</sup> Astin 1978: 25-6, 85-8, Sciarrino 2011: 102-3.

<sup>151</sup> Mehl 2011: 54.

<sup>152</sup> Mehl 2011: 55; on this episode see also Astin 1956: 164-5, Gotter 2010: 108-9.

points against select contemporaries; rather, it is part of Cato's crusade against the influences that he perceived as corrupting the *mos maiorum* during his own lifetime and should be read as 'moral critique'.<sup>153</sup> Appeal to the *res publica* is prominent in Cato's oratorical fragments,<sup>154</sup> of which the most relevant comes from the speech *De Sumptu Suo* of 164:

*Iussi caudicem proferri, ubi mea oratio scripta erat de ea re, quod sponsonem feceram cum M. Cornelio. Tabulae prolatae: maiorum benefacta perlecta: deinde quae ego pro re p. fecissem leguntur. Ubi id utrumque perlectum est, deinde scriptum erat in oratione: 'numquam ego pecuniam neque meam neque sociorum per ambitionem dilargitus sum'. Attat, noli, noli <s>cribere, inquam, istud: nolunt audire. Deinde recitavit: 'numquam <ego> praefectos per sociorum vestrorum oppida imposivi, qui eorum bona liberos diriperent'. Istud quoque dele; nolunt audire: recita porro. 'numquam ego praedam neque quod de hostibus captum esset neque manubias inter pauculos amicos meos divisi, ut illis eriperem qui cepissent'. Istuc quoque dele: nihil <e>o minus volunt dici; non opus est recitato. 'Numquam ego evectionem datavi, quo amici mei per symbolos pecunias magnas caperent'. Perge istuc quoque uti cum maxime delere. 'Numquam ego argentum pro vino congiario inter apparitores atque amicos meos disdidi, neque eos malo publico divites feci'. Enimvero usque istuc ad lignum dele. Vide sis quo loco re<s> p. siet, uti quod rei p. bene fecissem, unde gratiam capiebam, nunc idem illud memorare non audeo, ne invidiae siet. Ita inductum est male facere inpoene, bene facere non inpoene licere.*

I ordered the book to be brought out in which had been written my speech on that matter concerning which I had made a judicial wager with Marcus Cornelius. The tablets were brought out; the services of my ancestors were read out; then those things which I had done for the *res publica* were read. When the reading out of both of these was finished, the speech went on as follows: "Never have I lavished my own money or that of the allies in order

<sup>153</sup> Mehl 2011: 55.

<sup>154</sup> ORF 8.4.21, 8.4.50, 8.7.64, 8.8.83, 8.29.117, 8.32.133, 8.45.176, 8.72.227, 8.252 (*incertae sedis reliquae*). On the publication of Cato's speeches (perhaps as late as the 40s BC, other than those included in the *Origines*), cf. Kennedy 1972: 57-9, Carawan 1990: 324-5.

to win favour.” “Oh no!” I said, “Don’t, don’t write that.” Then he read out, “Never have I imposed prefects on the towns of your allies, to plunder their property and children.” “Delete that too; they don’t want to hear it. Read further.” “Never have I divided booty taken from the enemy or prize money among the small circle of my friends and thus snatched it away from those who had captured it.” “Erase as far as that as well: there is nothing they less want said than that. It is not needed; read on.” Never have I granted a travel-order to enable my friends to gain large sums by means of the warrants.” “Get on and delete there too, immediately.” “The money intended for wine distribution I have never shared out among my attendants and friends nor have I made them rich to the detriment of the public.” “Most certainly erase that, right down to the wood. See, if you please, what condition the *res publica* is in, when for fear it should be a cause of ill will I dare not recall the very services I performed for the *res publica*, from which I used to gain gratitude. Thus it has become normal practice to do ill with impunity, but not to be permitted to do well with impunity.” (*ORF* 8.44.173 = Fronto, *Ad A. Imp.* 1.2.9; translation from Astin 1978: 135–6, slightly amended.)

Unsurprisingly, the *homo novus* Cato does not linger on the *maiorum benefacta*, the services of his ancestors. At the same time, however, he passes just as fast over ‘what I had done for the *res publica*’, that is, his actual achievements in office. Rather, the stress is solely on the negative: what Cato had not done, from misusing his own or allied money to enriching his friends at public expense. Cato concludes that all these disreputable activities are now common practice and his audience will not thank him for reminding them of his own pristine career; it will only harm his cause to stress his exemplary past conduct. The implicit competitive claim involves not what Cato did (which plenty of consuls past and future could reasonably claim to have matched or surpassed) but how he did it (with a clean-handedness no one in these debased days will appreciate). For Cato, it is through this clean-handedness, rather than any specific office or act, that he served (*bene fecissem*) the *res publica*; and it is through such service to the *res publica* that one gains gratitude (*gratia*) and thus political capital. This tactic neatly circumvents the standard public office/personal credit political economy apparent in the funerary texts and might have produced a different outcome for the Roman Republic had more major

politicians seen fit to stake their careers on it. Since it was a tactic available to anyone with a talent for literary self-promotion, however, and did little to differentiate a given individual from his competitors (recall L. Caecilius Metellus's wish to be *clarissimus in civitate* and the Scipionic stress on where a given Scipio stood *apud vos*), it is obvious why most of them did not.

## 2.4 THE MIRROR

Cato's subversion of the aristocratic code remains just that, however: aristocratic. The promotion of one's perfectly proper conduct in the administration of the *res publica* was a strategy available only to those who had been involved in administering the *res publica*, having undergone the aristocratic business of election to (preferably high) office. Furthermore, as subversions go, it is not particularly subversive; it politicises the *res publica* only insofar as it lays stress on individual conduct within the *res publica* rather than individual achievement on behalf of the *res publica*, a shift of emphasis that is hardly inimical to the principle of elite administration. From an elite perspective, the other way in which the public office/individual credit link was circumvented was much more worrying: the *popularis* invocation of the supreme authority of the *populus Romanus*.

One anecdote sometimes cited as a *locus classicus* of elite/*populus* interaction is retailed by Valerius Maximus and concerns the consul of 138:

*Qui enim licet hoc loci Nasicam praeterire, fidentis animi dictique clarissimum auctorem? Annonae caritate increscente C. Curvatus tr. pl. productos in contionem consules compellebat ut de frumento emendo adque id negotium explicandum mittendis legatis in curia referrent. Cuius instituti minime utilis interpellandi gratia Nasica contrariam actionem ordiri coepit. Obstrepente deinde plebe, 'tacete, quaeso, Quirites,' inquit: 'plus ego enim quam vos quid rei publicae expediat intellego.' Qua voce audita omnes pleno venerationis silentio maiorem auctoritatis eius quam suorum alimentorum respectum egerunt.*

For how at this point can I pass over Nasica, the famous author of a saying that expressed his confident spirit? The price of corn was on the rise and the

tribune of the plebs C. Curiatius brought the consuls before a *contio* and urged them to make a motion in the senate about buying corn and sending envoys to arrange the matter. Nasica began to speak in a contrary sense, in order to obstruct this highly inexpedient course of action. Then, when the people shouted in protest, “Be silent, I ask you, Quirites,” he said, “for I more than you grasp what is expedient for the *res publica*.” When they heard that, all fell reverently silent, paying more regard to his authority than to their own nourishment. (*ORF* 38.1.3 = Val. Max. 3.7.3.)

P. Scipio Nasica’s later political activities will be discussed in due course; here, it is sufficient to observe that the man who as a *privatus* five years later would invoke the welfare of the *res publica* to suppress with violence the tribune Tiberius Gracchus was on record as consul invoking the *res publica* to shut down the activities of an earlier tribune channelling popular discontent. Reading between the lines, Nasica’s comment indicates something to the effect of “You selfish plebs may *think* a grain law would be in your interests, but actually this is an expression of your narrow-minded self-interest; *I* can see the broader picture and therefore you should sit down and shut up when I tell you that a grain law would not be in the interests of that broader picture, that is to say: *res publica*.” Nasica exerts the consul’s claim to know what was best for the *res publica* (since the consul was, after all, responsible for its administration) when his audience proved unreceptive to more reasoned arguments.

This incident has occasionally been treated as representative of how the elite classes kept the *populus* under their thumb during the classic Republic (that is, through the exertion of sheer *auctoritas*),<sup>155</sup> probably because of Valerius Maximus’s claim that Nasica’s audience dutifully shut up, but the broader historical context is one of general and increasing tension between the tribunes and their senior colleagues. Taylor’s 1962 study of tribunician conduct in the two decades prior to 133, which emphasises the ‘revolutionary character’ of incidents like the imprisonment of the consuls in 151 and 138,<sup>156</sup> has recently been expanded by Williams, who argues that such behaviour was normal tribunician activity; although some tribunes at any given point in Roman history may have acted as tools of the senate or individual politicians, the tribune body as a whole functioned to further the

<sup>155</sup> E.g. Mackie 1992: 54-5, Bell 1997: 7.

<sup>156</sup> Taylor 1962: 19.

interests of the *populus*.<sup>157</sup> The *contio* encounter Valerius Maximus describes is the antagonistic sort: the consul had been dragged before a presumably hostile *contio* by a definitely hostile tribune in an attempt to compel him to do something about the high price of grain. Nasica's eventual response was not conciliatory, but rather a straightforward appeal to authority: to tell the *contio* to stop nagging because he knew best. Even if this particular *contio* did fall silent, as Valerius Maximus claims, 138 was a difficult year for all concerned; at some point the levies for the Spanish war became a hot issue and Nasica and his colleague, having refused to accede to the demand by two tribunes to release a number of men from the levy, were hauled off to prison by the same tribunes in a repeat of an incident in 151.<sup>158</sup> In short, Nasica's relationship with the tribunes and by inference any section of the *populus* for which such tribunes could claim to speak was antagonistic from the start. (Either this Nasica or his son is also the subject of another famous anecdote from Valerius Maximus in which an untimely witticism on a voter's calloused hands won the wit a *repulsus* at the elections for the curule aedileship;<sup>159</sup> the family was not known for its ingratiating approach to the electorate.) It seems unduly generous to take Nasica's autocratic shortness as characteristic of elite dealings with the *populus* in general, since the year was not one of 'politics as usual' and Nasica had begun by attempting to talk his way out of a sticky situation. On the other hand, it is comprehensible that Nasica, backed into a corner by a hostile audience, should resort to exploiting the consul's responsibility for managing the *res publica* (more usually exhibited on the battlefield) to shut down popular discontent in a domestic political spat.

The incident reflects two important issues: firstly the growth of political tensions surrounding popular interests and secondly the use of magisterial *auctoritas*, derived especially from the magistrate's privileged position in relation to the *res publica*, to silence discussion when argument fails. This nasty little nexus gave rise to the disastrous tribunate of Nasica's eventual *bête noire*, Tiberius Gracchus. The events of 133 will be examined below in sections 3.1 and 6.1, but it is pertinent that when Tiberius was attacked for arranging the deposition of a fellow tribune, Marcus Octavius, he defended himself on the grounds that whereas a tribune who engaged in something illegal like arson was a bad tribune, a tribune who annulled the power of

<sup>157</sup> Williams 2004: 294; cf. also Badian 1972: 709-10.

<sup>158</sup> Taylor 1962: 26, Keaveney 1992: 2 (on L. Licinius Lucullus, one of the consuls of 151).

<sup>159</sup> Val. Max. 7.5.2; Morstein-Marx 1998: 267, following Broughton 1991: 40-41.

the people was no tribune at all (and could therefore be removed from office, as Octavius had been).<sup>160</sup> Tiberius and his turbulent successors in the tribunate represented themselves, as tribunes, as the instruments of the *populus*; whereas Cato had subverted the public achievement/personal credit link in the interests of co-opting more personal credit for himself, the *populares* generally aimed to break through elite opposition in order to pass whatever the controversial bill of the day happened to be. Their attitude to magisterial *dignitas* derived from the administration of the *res publica* was consequently considerably less respectful.

It is difficult to find examples of genuinely *popularis* rhetoric, let alone *popularis* rhetoric on any specific topic, but an illuminating fragment of Gaius Gracchus does survive:

*Nam vos, Quirites, si velitis sapientia atque virtute uti, etsi quaeritis, neminem nostrum invenietis sine pretio huc prodire. Omnes nos, qui verba facimus, aliquid petimus, neque ullius rei causa quisquam ad vos prodit, nisi ut aliquid auferat. Ego ipse, qui aput vos verba facio, ut vectigalia vestra augeatis, quo facilius vestra commoda et rempublicam administrare possitis, non gratis prodeo; verum peto a vobis non pecuniam, sed bonam existimationem atque honorem. Qui prodeunt dissuasuri ne hanc legem accipiatis, petunt non honorem a vobis, verum a Nicomede pecuniam; qui suadent ut accipiatis, hi quoque petunt non a vobis bonam existimationem, verum a Mithridate rei familiari suae pretium et praemium; qui autem ex eodem loco atque ordine tacent, hi vel acerrimi sunt; nam ab omnibus pretium accipiunt et omnis fallunt. Vos, cum putatis eos ab his rebus remotos esse, impertitis bonam existimationem; legationes autem a regibus, cum putant eos sua causa reticere, sumptus atque pecunias maximas praebent, item uti in terra Graecia, quo in tempore Graecus tragoedus gloriae sibi ducebat talentum magnum ob unam fabulam datum esse, homo eloquentissimus civitatis suae Demades ei respondisse dicitur: ‘mirum tibi videtur, si tu loquendo talentum quaesisti? Ego, ut tacerem, decem talenta a rege accepi’. Item nunc isti pretia maxima ob tacendum accipiunt.*

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<sup>160</sup> Plut. *TG* 15; cf. Astin 1967: 206, Stockton 1979: 71-2, Arena 2012: 124-6.

For you, fellow citizens, if you wish to be wise and virtuous, and if you inquire into the matter, will find that none of us comes forward here without pay. All of us who address you are after something, and no one appears before you for any purpose except to carry something away. I myself, who am now recommending you to increase your taxes, in order that you may the more easily serve your own advantage and administer the *res publica*, do not come here for nothing; but I ask of you, not money, but honour and your good opinion. Those who come forward to persuade you not to accept this law, do not seek honour from you, but money from Nicomedes; those also who advise you to accept it are not seeking a good opinion from you, but from Mithridates a reward and an increase of their possessions; those, however, of the same rank and order who are silent are your very bitterest enemies, since they take money from all and are false to all. You, thinking that they are innocent of such conduct, give them your esteem; but the embassies from the kings, thinking it is for their sake that they are silent, give them great gifts and rewards. So in the land of Greece, when a Greek tragic actor boasted that he had received a whole talent for one play, Demades, the most eloquent man of his community, is said to have replied to him: ‘Does it seem wonderful to you that you have gained a talent by speaking? I was paid ten talents by the king for holding my tongue.’ Just so, these men now receive a very high price for holding their tongues.” (*ORF* 48.12.44 = Gell. 11.10.1.)

The fragment comes from Gaius’s speech against a proposed law of 123, the *lex Aufeia*, on a quarrel between Mithridates V of Pontus and Nicomedes II of Bithynia over the proposal to give Phrygia to Mithridates.<sup>161</sup> Gaius makes a show of letting the *populus* in on the great political secret of the day: those who propose legislation, or attack proposed legislation, or are involved in politics in any way whatsoever, himself included, are motivated by self-interest. This enables him to set up a contrast between his own laudably self-interested motivation (*bona existimatio*, ‘good opinion’, and *honor*, which might be ‘honour’ or ‘office’) and the purely mercenary motives of those currently arguing against him or keeping quiet, who do so in the

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<sup>161</sup> Stockton 1979: 221.

hope of monetary reward from one king or the other. What is interesting is how Gaius justifies his opinion that the *vectigalia* should be increased on the grounds that this will make it easier for ‘you’ (his audience, the *populus*), to administer to ‘your’ good (*vestra commoda*) and the *res publica*. By now *administrare rem publicam* should be familiar as a standard term for carrying out public business; in the majority of cases, however, it refers to the activities of magistrates and those who advise them (that is, the senate).<sup>162</sup> It is easy to see Gaius’s logic, which rests on the familiar premise that the *populus*, comprising the civic body (*civitas*) to which the *res publica* ultimately belongs, elects magistrates to administer the *res publica* on its behalf.<sup>163</sup> Gaius removes the middleman: his *populus*, by passing laws and electing magistrates, directly administers its *res publica*. Mackie argues that the *populares* ‘constructed ideological justifications for extending the rights and powers of the populace, justifications based on values which the proponents of senatorial power also shared’.<sup>164</sup> This particular justification up-ends the magisterial perspective on the *res publica*; the perspective Gaius Gracchus provides here is that of a vertical relationship seen from the *bottom*, in which the focus is less on the administration of the *res publica* than on the selection of the administrators (and potentially also the removal of those who administer unsatisfactorily).

Gaius’s perspective both clarifies and may be clarified by a minor puzzle that was partially addressed in Chapter 1: Cicero’s definition of a *res publica* as the *res populi* in the *De Republica*. Schofield, approaching *De Republica* from the angle of the Greek theoretical models Cicero employs, is struck by Cicero’s use of a property metaphor; he argues that the definition of *res publica* as *res populi* is ‘designed to furnish the grounds of a distinction between constitutions/*politeiai*/set-ups/“regimes” (in the Straussian parlance) that are legitimate and those that are not’, and furthermore that ‘this interest in discriminating between set-ups on grounds of

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<sup>162</sup> See n. 65 above.

<sup>163</sup> Hence Cicero’s contional rhetoric (cf. especially *Agr.* 2.1-7) during his consulship plays on his gratitude for the *beneficia* of the *populus*; as Morstein-Marx 1998: 267 puts it, ‘Election was a *beneficium* conferred by the Roman People for one’s “worthiness,” conceived of essentially in personal and moral terms; and to gain this *beneficium* the candidate was expected to “supplicate” the People (*supplicare populo Romano*)’. Similarly, Cicero makes an analogy at *Planc.* 62 with buying slaves: if selecting someone for a specific task, e.g. plastering, you expect your purchase to know how to carry out that task, but if buying a steward (*vilicus*) you only care about his character: ‘This is how the Roman people selects its magistrates, for they are, as it were, stewards of the *res publica*’. Dyck 2004: 305 considers ‘the idea of owing gratitude or action for the benefits conferred by the people (i.e. office)’ to be ‘a *topos* of public officials at Rome’.

<sup>164</sup> Mackie 1992: 55-6, 66.

legitimacy is a *distinctly Roman and Ciceronian input* into the theory of *Rep.*' (his italics).<sup>165</sup> While this argument is broadly plausible, the novelty of Cicero's metaphors is questionable, since much of my discussion so far leads to the conclusion that the *res publica* was *precisely* conceived of as the property (amorphous and undefined a property as it may be) of its constituent public, whether that be the citizens of Rome or the Gallic and Sicilian *civitates* of Caesar's *Bellum Gallicum* and Cicero's *Verrines* or the *nationes* of *ORF* 48.3.22 which Gaius Gracchus says have lost their *res publicae* through avarice and foolishness (*avaritia atque stultitia*). If a *res publica* can be 'handed down' (*tradere*) by the *maiores* to the current generation, or by the current generation to future magistrates,<sup>166</sup> it must be conceived of as property in some respect. Moreover, several fragments of Ennius follow the *res maximae* of the Scipionic *elogium* for L. Scipio Barbatus by compressing *res publica* into simply *res*;<sup>167</sup> historically it was *res* that was the indispensable part of the formula, the 'thing', not *publica*, perhaps because such texts address a stratum of society that took for granted its unquestioned right/duty to administer said thing(s) and had no particular concern to stress that it did so on the public's behalf. Conversely, the point may be that it is precisely *not* the public that is administered: the *populus* selects its stewards to manage matters of communal concern, not to manage itself. In any case, Cicero's definition aligns perfectly well with existing traditions of Roman thought and practice, even if it causes problems for those who want to map his categories onto Greek theorising. What does begin to look odd, however, is Cicero's insistent stress on defining the *publica* (that is, the *populus*) to which the *res* belongs.

The Gracchan fragment indicates the more contentious political circumstances in play well before and during the time *De Republica* was written, and also suggests a reason why this concept of the *res publica* as the property of the *populus* might be obscured in what remains of 'live' Republican discourse. As the discussion of popular government at *De Republica* 1.47–50 shows, the 'raw' claim that *res publica res populi est* lends itself very easily and very obviously to *popularis* political exploitation. This discussion disembowels the jingle in a way that lays out the political capital available for those inclined to take such a definition at face value:

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<sup>165</sup> Schofield 1999: 178.

<sup>166</sup> Cic. *Agr.* 1.6 and *Red. Pop.* 17 respectively.

<sup>167</sup> Enn. *Ann.* 102-3, 156, 363-5, 494; cf. also Liv. 1.30.6, 1.33.1, 8.13.16.

*Si vero ius suum populi teneant, negant quicquam esse praestantius, liberius, beatius, quippe qui domini sint legum, iudiciorum, belli, pacis, foederum, capitis unius cuiusque, pecuniae. hanc unam rite rem publicam, id est rem populi, appellari putant.*

But if the people would maintain their rights, they [those arguing in favour of popular government] say that nothing would be more outstanding, more free or more happy, for they themselves would be masters of the laws and of the courts, of war and peace, of international agreements, and of everyone's life and property. For this alone, they think, can rightly be called a *res publica*, that is, 'the property of the people'. (Cic. *Rep.* 1.48.)

For those inclined to popular politics, that is, defining a *res publica* explicitly as the *res populi* supports the idea that the *populus* should exert direct control over all aspects of public affairs. All three 'pure' forms of government (monarchy, aristocracy, popular) come in for criticism in the *De Republica*, but it is harder to deny that a *res publica* controlled by the people does not count as a *res populi*: 'there may seem to be logical difficulties' (*videbuntur fortasse angustiae*), says Scipio, in denying that a *res publica* exists when everything is in the power of the *populus*.<sup>168</sup> Of course his interlocutors are vehement that this is not the case (perhaps especially so because of the apparent paradox involved) and triumphantly declare that no *res publica* exists here either, mostly by way of rejecting the claims of a disorganised rabble (*multitudo*) to call itself a *populus* – and at this point the reasoning behind Cicero's emphatic definition of a *populus* as a community held together by common bonds of justice (*consensus iuris*), rather than simply a *civitas* of fellow *cives*, becomes clear. Once again, it is not the definition of *res* that is attacked, but rather the *publica/populus* half of the equation. What exists in the classic popularly governed community, according to Laelius, is not the rule of the *populus* but rather a beast (*belua*) that imitates the name and appearance of the people (*quae populi*

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<sup>168</sup> Cic. *Rep.* 3.45.

*speciem et nomen imitatur*).<sup>169</sup> It is generally agreed that a popular government is the worst of the three possible ‘pure’ forms.<sup>170</sup>

While there is more to be said about what Cicero is doing with these arguments, especially in relation to his Greek models,<sup>171</sup> my main point here is the way in which casting the *res publica* as property played into a certain theme of contemporary Roman politics. The *populares* insisted on the formal powers of the *populus*, which they used to break through senatorial and magisterial opposition;<sup>172</sup> to make the point that the *res publica* belonged to the *populus*, rather than to the magistrates who administered it or the senators who advised them, was, at the very least, a way to ingratiate oneself with a popular audience. Although only fragments survive for the most important figures in the *popularis* tradition, comparisons can be drawn with Cicero’s *contio* speech on the *lex Manilia* of 66, in particular the section setting the (pro-Pompeian) judgement of the *populus* against the (anti-Pompeian) judgement of the elite.<sup>173</sup> Tan argues that prior to the events of the Catilinarian crisis Cicero ‘was actively, vehemently and *successfully* fostering a *popularis* image’,<sup>174</sup> and the argument in the *Pro Lege Manilia* echoes the Gracchan line that the *populus* has, or at least should have, the final word on political affairs (assuming – an important caveat that does not appear in the fragment from Gracchus – that what the *populus* wants is indeed what is best for the *res publica*). At stake is Q. Catulus’s protest that the proposed command for Pompey is a novelty. ‘Let no innovation be made contrary to usage and the principles of our ancestors’,<sup>175</sup> Catulus said, according to Cicero, who passes over (at considerable length) various historic novelties in order to focus on the novelties already committed by Pompey with Catulus’s approval.<sup>176</sup> It would be unjust and not to be borne (*periniquum et non ferendum*) if, after the positive judgement of men such as Catulus upon Pompey had

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<sup>169</sup> Cic. *Rep.* 3.45.

<sup>170</sup> Cic. *Rep.* 3.46-7.

<sup>171</sup> On this cf. Stark 1967: 44, Schofield 1999: 183-4, Arena 2012: 119-24, 165-7, Barlow 2012: 227-9, Márquez 2012.

<sup>172</sup> On the formal role of the *populus* in Republican political life cf. Millar 1984, 1986, 1998, Mackie 1992: 60-61, Yakobson 1992, 1995.

<sup>173</sup> Cic. *Leg. Man.* 51-64; on this speech generally see Mitchell 1979: 153-6, Steel 2001: 114-61.

<sup>174</sup> Tan 2008: 165; *contra*, however, Mitchell 1979: 150, Steel 2001: 174-81 (suggesting that ‘Cicero is very careful indeed to limit his *popularis* pronouncements’), Vasaly 2009: 126-7 (stressing Cicero’s avoidance of the tribunate, senatorial mentors and careful separation of himself from ‘the popular demagogues’ in the *Verrines*), Duplá 2011: 282.

<sup>175</sup> Cic. *Leg. Man.* 60, *ne quid novi fiat contra exempla atque instituta maiorum*; cf. Steel 2001: 118-22 on Catulus’s arguments.

<sup>176</sup> Cic. *Leg. Man.* 61-2.

previously been confirmed by the *populus*, the current ‘judgement and authority of the Roman people’ (*iudicium populi Romani auctoritatem*) about Pompey (that is, that he should have the extraordinary command proposed by Manilius) were to be disapproved by Catulus and his supporters (*Man.* 63), especially after the *populus* had chosen Pompey (despite the outcry of the same elite gentlemen) to command the war against the pirates:

*Hoc si vos temere fecistis et rei publicae parum consuluistis, recte isti studia vestra suis consiliis regere conantur. Sin autem vos plus tum in re publica vidistis, vos eis repugnantibus per vosmet ipsos dignitatem huic imperio, salutem orbi terrarum attulistis, aliquando isti principes et sibi et ceteris populi Romani universi auctoritati parendum esse fateantur.*

If you [the Roman people] did this rashly and with too little care for the interests of the *res publica*, these men are right in trying to rule your enthusiasm by their counsel. But if it was you, rather, who at that time saw more clearly for the *res publica*, you who, in their despite and by yourselves alone, brought honour to this empire and safety to the world, these great ones should at last admit that they and all other men must bow to the authority of the Roman people. (*Cic. Leg. Man.* 64.)

Strikingly, Cicero uses terms that would more usually be used in connection with the senate (*consulo, consilium, auctoritas*), but here applies them to the *populus*. He casts his audience, the *populus Romanus*, as a decision-making body capable of taking political action against the wishes of the elite.

Steel points out how the exordium and peroration of the speech combine ‘unashamedly *popularis* language’ with ‘a conservative view of what the people can and ought to do’,<sup>177</sup> and it is noteworthy that Cicero here talks not about senators generally but about *isti principes*; that is, he depicts the opposition, who wish to ‘rule’ (*regere*) the enthusiasm of the people, as overbearing individuals rather than the senate as a whole. This is still half a step away from talking explicitly about the *populus* as administering its *res publica* in its own right (rather than elected

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<sup>177</sup> Steel 2001: 176.

magistrates or senatorially appointed pro-magistrates administering the *res publica* on its behalf),<sup>178</sup> even if the same implications lurk beneath the surface. Something similar appears in Sallust, who describes the ancient *populus* as having ‘watched over (*curare*) itself and the *res publica*’ by practising ‘boldness in warfare’ and ‘equity when peace came’,<sup>179</sup> and who elsewhere narrates that before the destruction of Carthage, the senate and people ‘held the *res publica* between themselves peacefully and with moderation’.<sup>180</sup> Such ideas were evidently in circulation and available for use by anyone pushing a popular cause on which elite politicians looked with disfavour, something that in itself explains why such ideas are hard to recover from the rhetorical record. Cicero might have begun his career as a *popularis*, but he was never a *popularis* on the order of a Gracchus or a Saturninus and after his consulship he consistently identified himself and his policies with elite interests, if only because the execution of the ‘Catilinarian conspirators’ made him a target for *popularis* politicians. It is Cicero, however, who dominates the surviving material. Finally, it is worth noting how emphasising the role of the *populus* in administering the *res publica* de-emphasises the responsibility of individual elite politicians, which is only one reason why it might have annoyed them but is nonetheless significant given how far the *dignitas* of politicians rested on their achievements in public office. For those who credited the Roman public with the administration of its own *res*, the claims of more senior magistrates and politicians to know better how to advance the *res publica* were not impressive: what mattered was whether the *populus* agreed.

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<sup>178</sup> Compare Steel 2001: 176 on Cicero’s use of *vestram causam defendere* at *Man.* 2, which ‘suggests that the people are in the position of a *cliens*, being protected, in court, by his *patronus*’, an adoption of ‘the conservative model of popular participation’.

<sup>179</sup> Sall. *BC* 9.4.

<sup>180</sup> Sall. *BJ* 41.2.

### 3. RES PUBLICA SALVA

Chapter 2 focused on *res publica* as the object of management: the *res publica* that magistrates were responsible for administering and from the administration of which they gained credit; in the administration of which Cato stressed his perfectly proper and clean-handed behaviour; and which the *populares* proposed as the property, and therefore responsibility, of the *populus*. Even if the debate was not always explicit, *res publica* was the site of significant political negotiation: it provided cover for the actions of the magistrates elected to manage it and supplied those magistrates with a source of self-aggrandisement once their term in office was up, which led political rivals to develop methods of challenging this. The obvious line of attack was on the personal *virtus* and *fides* exhibited by the vaunted achievements, but there were also ways to subvert the link between achievement and *dignitas*: the Catonian emphasis on good behaviour and the *popularis* paradigm shift by which responsibility was transferred from the elected magistrates to the electorate.

These were all aspects of everyday political behaviour and it seems reasonable to assume that most of these aspects were grist to the political mill right from the start, even if the evidence is patchy; the *popularis* paradigm shift may be to some extent the product of historical developments in the second and first century. I turn now to something grimmer: how politicians reacted to the conviction that the behaviour of their competitors endangered the *res publica*. It would be too simple to say that what follows in this section is devoted to the *res publica* as an arena for political interaction, largely because it would be difficult and probably misleading to impose such a clear-cut distinction on the surviving evidence, but in the various critical episodes in which “the Roman *res publica*” was conceived to be at stake due to the actions of Roman citizens, politicians appealed to a conception of *res publica* that was at least as much concerned with constituent persons, their political activity and the traditional organisation of the political arena (*lex, cursus honorum, mos maiorum* and various institutions such as the senate and the magistracies) as with ordinary public business. This chapter therefore breaks down into: (3.1) the conviction that Rome’s *res publica* is endangered, and not just by a general moral malaise brought on by personal immorality and fiscal corruption in elite circles, but

rather that specific policies promoted by one or several politicians present an immediate danger to the *res publica*. Closely linked to this is the belief that the *res publica* has *already* collapsed, in which case only reconstruction (*res publica constituta*) will suffice (3.2). Finally, I examine the unease with this *res publica constituta* apparent in Cicero's early speeches, which feature 'res publica as rhetorical fiction', a rather tentative personification that glosses over awkward political truths (3.3).

### 3.1 THE PANIC

Whether sincere or assumed, concern for the morals of one's political peers could be positioned not as a way to eliminate rivals but as a farsighted awareness of the dangers that personal corruption posed to Rome's internal political world. One notorious moraliser was Cato Censorius, whose self-promotion as a clean-handed politician went in tandem with his censorial severity<sup>181</sup> and denunciation of various named and unnamed contemporaries as precisely the opposite;<sup>182</sup> he feared that the bad habits of individuals were setting in place a downwards spiral for the Roman *res publica*. Cato is often thought to have been behind 'a number of tribunician assaults on the foremost personalities of the day',<sup>183</sup> especially P. Scipio Africanus, the hero of the Second Punic War. During the 180s, the tribunes seem to have been particularly concerned about such excessively powerful individuals,<sup>184</sup> in the 170s, though, Cato, the senate and the tribunes apparently acted in conjunction against various *homines novi* who were plundering the provinces, such as Popillius Laenas, for whom a special *quaestio* was set up in 172.<sup>185</sup> Such activity against top-heavy

<sup>181</sup> Carawan 1990: 323, 327-8 (Cato was so severe that there was a backlash against his censorship).

<sup>182</sup> See Churchill 2000: 554-5 exonerating Cato of political treachery for giving character testimony against his competitor for the censorship, M'. Acilius Glabrio, on the grounds that 'it was a principle of Roman society that the good of the *res publica* trumped personal considerations' (for more on this affair cf. Shatzman 1972: 191-2, Churchill 1999: 101-5, 112 n.54). Also Carawan 1990, on Cato's censorial speech against L. Flaminius, who hints that the common 'presumption of Cato's veracity' might be unduly uncritical of both modern scholars and ancient authors like Livy, given 'indications, both in Plutarch and in Livy, that Cato shamelessly glorified his own achievements and viciously slandered his opponents' (328-9 and n.31), although Carawan's concern is to recover Cato's speech rather than the truth of Flaminius's antics. On Cato's denunciations more generally cf. Shatzman 1972: 198-9.

<sup>183</sup> Williams 2004: 287; cf. also McDonald 1938: 161-2, Dunkle 1967: 156-7, Shatzman 1972: 198. On the "trials of the Scipios" see McDonald 1938: 163-4, Scullard 1970: 216-24, Balsdon 1972: 231-3, Shatzman 1972: 192-4, Ruebel 1977, Feig Vishnia 1996: 129-30.

<sup>184</sup> Williams 2004: 286-7.

<sup>185</sup> Williams 2004: 288.

*nobiles* and overreaching *homines novi* had the same aim, whoever was behind it: to curb magisterial abuses.<sup>186</sup> Africanus should not be mistaken for ‘the familiar haughty patrician who lashes out against the plebeians and their tribunes’ of the Livian tradition; rather, he was ‘a new phenomenon: a member of a most distinguished patrician family, a brilliant and charismatic general who did not hesitate to turn directly to the people over the senate’s head to achieve his goals and who showed contempt towards sacred traditional values – in short, a *popularis* in an age when the *via popularis* had not yet been defined’.<sup>187</sup> Not unnaturally, this made him more popular with posterity than with his political peers.<sup>188</sup> Cato’s gloomy views on his contemporaries’ political morals may have influenced Polybius<sup>189</sup> and the historian L. Calpurnius Piso Frugi, who proposed a *lex de repetundis* as tribune in 149 and went on to be consul in 133 and censor in 120.<sup>190</sup> Forsythe perceives a Catonian theme in the fragments;<sup>191</sup> he remarks on the ‘patriotic, moralizing and austere character’ of various fragments and argues that ‘Piso shared Cato’s old fashioned Roman traditionalism in the face of perceived contemporary moral decline’.<sup>192</sup> The parallels are close enough that Frugi may have been using Cato as a direct model;<sup>193</sup> their shared pessimism is reflected in Sallust’s later conviction that the fall of Carthage and influx of *luxuria* caused a sharp decline in Roman morals.<sup>194</sup>

The bad habits of individual administrators might well impact negatively on the everyday administration of the *res publica* (i.e. the *res populi*), but this was probably not the main concern for people like Cato, Piso and Sallust. A single bad

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<sup>186</sup> Williams 2004: 294.

<sup>187</sup> Feig Vishnia 1996: 131; cf. McDonald 1944: 24-5.

<sup>188</sup> Feig Vishnia 1996: 130 sees contemporary attitudes in the disagreement between ‘those who thought that prominent citizens who had accomplished extraordinary deeds for their country were above the law’ and those who (like Cato) were more concerned about depressing the excessively prominent.

<sup>189</sup> Eckstein 1997: 192-8.

<sup>190</sup> Rawson 1976: 711.

<sup>191</sup> Forsythe 1994: 29-31.

<sup>192</sup> Forsythe 1994: 31; cf. also Rawson 1976: 703.

<sup>193</sup> Forsythe 1994: 31, though note Rawson 1976: 705 on Piso’s ‘distinctly unCatonian’ fondness for names.

<sup>194</sup> Sall. *BJ* 41. So Levene 2000: 175: ‘in all the respects in which Rome had excelled, Sallust now shows its degeneracy, reinforcing the polarized picture of present virtue and past vice. But it is on luxury that he focuses, and which he suggests lies at the heart of the vices of his contemporaries (11.3-13.2) – a clear Catonian theme’. For Sallust’s debt to Cato, cf. Levene 2000 generally and pp.170-73 specifically for Sallust’s reception of Cato’s *moral* themes as well as his linguistic ones, especially his reworking of Cato’s *rei publicae bene facere*, with the implication that ‘whereas Cato was able to prove himself in both speech and deeds, Sallust is being Catonian in the only sphere that the corruption of contemporary society now allowed’ (172-3). On Sallust’s possible debt to Piso Frugi, cf. Forsythe 1994: 81.

magistrate could only administer the *res publica* badly for a year, or however long his command might be prorogued; too many bad politicians within the political arena, however, and its long-term future might be in doubt. The idea that the (good) moral character of those engaged in political activity is important for the overall health of a given polity is a familiar truism of political rhetoric; what matters here is the distinction between (a) general narratives of moral decline, with detail only insofar as the behaviour of specific individuals is singled out for moralising criticism and complaint, and (b) sporadic anticipations of imminent danger, in which the political activity of specific individuals at specific historical moments is singled out as liable to result in immediate and permanent damage to the Roman *res publica*, and which must therefore be stopped by any means available. The first unarguably historical episode of this sort comes courtesy of P. Cornelius Scipio Nasica, previously observed shutting down a *contio* through the exertion of consular *auctoritas* in 138.<sup>195</sup>

In 133, the plebeian tribune Tiberius Gracchus proposed agrarian legislation to reclaim and redistribute public land (*ager publicus*) that had been gathered into private hands.<sup>196</sup> His legislation was not debated by the senate; instead, Tiberius took it directly to the *concilium plebis*,<sup>197</sup> where it was vetoed by a fellow tribune, M. Octavius. Tiberius responded with a revised, tougher version of his original legislation, which Octavius also vetoed.<sup>198</sup> After an attempt to seek reconciliation via the senate failed, Tiberius broke this impasse by having the *concilium plebis* vote on a bill to depose Octavius from his tribunate.<sup>199</sup> Tiberius's legislation was then passed. Together with his father-in-law Appius Claudius and his brother Gaius, then serving with the army in Spain, Tiberius was elected to the commission responsible for putting his legislation into practice; the senate, however, expressed its displeasure by granting the commission a derisory per diem amount to carry out its duties.<sup>200</sup>

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<sup>195</sup> Cf. section 2.4 above; on the probably less historical *exempla* of Sp. Cassius (485), Sp. Maelius (439) and M. Manlius Capitolinus (384), cf. Dunkle 1967: 157, Lintott 1970, Seager 1977, Erskine 1991: 114-5, Flower 2006: 45-51, Smith 2006, Arena 2012: 216.

<sup>196</sup> Cf. Lintott 1992: 44-46 for the details (insofar as they can be identified) of Tiberius's agrarian legislation.

<sup>197</sup> Plut. *TG* 8-9; App. *BC* 1.9; Astin 1967: 193, 196-7.

<sup>198</sup> Plut. *TG* 10.1-3; App. *BC* 1.12.

<sup>199</sup> Plut. *TG* 11 (failure of resort to senate), 12 (deposition); App. *BC* 1.12. According to Plutarch, Tiberius felt that either he or Octavius should be removed from office and urged Octavius to propose a motion to depose Tiberius first; Octavius was not willing to take up the offer. Cf. also Diod. Sic. 34/35.7.

<sup>200</sup> Plut. *TG* 13; App. *BC* 1.13; Vell. Pat. 2.2; compare the senate's similar response to Scipio

Coincidentally, King Attalus of Pergamum had died and Eudemus of Pergamum now brought his will, in which the Roman people were made his heir, to Rome. Tiberius moved to accept the bequest by way of the *concilium plebis* before the senate could express an opinion on the matter and claimed there was no need for the senate to debate on the matter of the Pergamene cities either: he would draw up a relevant bill and put it to the people without the senate's input. His commission was thereby funded at the expense of the senate's increased displeasure.<sup>201</sup> At this point, Tiberius decided to stand for re-election to the tribunate for the following year. His rural supporters failed to turn out for the election in full force, but he managed to get the first voting session postponed until the following day, when, amid a great deal of turbulence, it seemed he was about to get re-elected.<sup>202</sup> Simultaneous stormy scenes took place in the senate, where the consul Scaevola (one of Tiberius's early backers<sup>203</sup>) declined to take action against Tiberius despite rumours that Tiberius aimed to make himself king. Nasica, the *pontifex maximus* and Tiberius's cousin, led a gang of senators and their attendants to the Capitol; according to both Plutarch and Appian, Nasica covered his head with his toga, while Plutarch reports that his followers wrapped their togas around their left arms and Valerius Maximus and Velleius Paterculus report only that Nasica did this.<sup>204</sup> In the ensuing chaos, Tiberius and some three hundred supporters were clubbed to death with pieces of broken benches.<sup>205</sup>

The historiographical reception and messy fallout of Tiberius's death will be discussed below in section 6.1; the relevant point here is Nasica's expressed conviction that an imminent danger to the *res publica* needed to be averted.<sup>206</sup> Just what else he might have said to justify this conviction is murkier. Cicero is uninformative (his claim in the *Tusculan Disputations* that Scipio does not seem to him to have been angry when he left the 'languid consul'<sup>207</sup> must be based on the role of this *exemplum* as an illustration of calm action and Stoic sagacity), Velleius

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Aemilianus's special command against Numantia a year earlier: Scullard 1960: 72.

<sup>201</sup> Plut. *TG* 14 (the bequest of Attalus is unmentioned in Appian).

<sup>202</sup> Plut. *TG* 16; App. *BC* 1.14-15.

<sup>203</sup> On Scaevola see Bernstein 1972.

<sup>204</sup> Plut. *TG* 19; App. *BC* 1.16; Val. Max. 3.2.17; Vell. Pat. 2.3.

<sup>205</sup> Plut. *TG* 18-19; App. *BC* 1.16; Diod. Sic. 34/35.7.

<sup>206</sup> Val. Max. 3.2.17, Cic. *Tusc. Disp.* 4.51, Vell. Pat. 2.3.1.

<sup>207</sup> Cic. *Tusc. Disp.* 4.51.

Paterculus has nothing to say about Nasica's dispute with the consul,<sup>208</sup> and Valerius Maximus provides a suspiciously neat rhetorical exchange:

*Cum Ti. Gracchus in tribunatu profusissimis largitionibus favore populi occupato, rem publicam oppressam teneret, palamque dictitaret interempto senatu omnia per plebem agi debere, in aedem Fidei Publicae convocati patres conscripti a consule Mucio Scaevola quidnam in tali tempestate faciendum esset deliberabant cunctisque censentibus ut consul armis rem publicam tueretur, Scaevola negavit se quicquam vi esse acturum. Tum Scipio Nasica, 'quoniam' inquit 'consul, dum iuris ordinem sequitur, id agit ut cum omnibus legibus Romanum imperium corruat, egomet me privatus voluntati vestrae ducem offero', ac deinde laevam manum <im>a parte togae circumdedit, sublataque dextra proclamavit: 'qui rem publicam salvam esse volunt me sequantur', eaque voce cunctatione bonorum civium discussa, Gracchum cum scelerata factione quas merebatur poenas persolvere coegit.*

Ti. Gracchus in his tribunate had captured popular favour by profuse largesses and held the *res publica* under his thumb. He said often and openly that the senate should be killed and everything handled through the commons. The conscript fathers were called together by the consul Mucius Scaevola in the temple of Fides Publica and were deliberating on what should be done in such a crisis. Everybody thought the consul should protect the commonwealth by armed force, but Scaevola refused to take any violent action. Then Scipio Nasica said, "Since the consul, while following the order of justice, acts so that he topples Roman *imperium* along with the laws, I offer myself, as a private citizen, as the leader for your will." Then he wrapped the hem of his toga around his left hand and raised his right, shouting, "Let those who wish the *res publica* to be unharmed follow me." With that call he dissipated the hesitation of good citizens and made Gracchus and his criminal supporters pay the penalty they deserved. (Val. Max. 3.2.17.)

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<sup>208</sup> Vell. Pat. 2.3.1.

This is polarised and unclear; the accusation that the juristic Scaevola was being unduly strict about following strict legal process and thereby allowing a tribune who *rem publicam oppressam teneret* through his monopoly on popular favour to overthrow the laws as a whole is a comprehensible rhetorical paradox ('more law, less equity'), but the relevance of *imperium Romanum* is less obvious. Plutarch provides a less embroidered version of the scene:

ὁ δὲ Νασικᾶς ἠξίου τὸν ὑπατον τῇ πόλει βοηθεῖν καὶ καταλύειν τὸν τύραννον. ἀποκριναμένου δὲ πράως ἐκείνου, βίας μὲν οὐδεμιᾶς ὑπάρξειν οὐδ' ἀναιρήσειν οὐδένα τῶν πολιτῶν ἄκριτον· εἰ μέντοι ψηφίσαιτό τι τῶν παρανόμων ὁ δῆμος ὑπὸ τοῦ Τιβερίου πεισθεὶς ἢ βιασθεὶς, τοῦτο κύριον μὴ φυλάξειν, ἀναπηδήσας ὁ Νασικᾶς “ἐπεὶ τοίνυν” ἔφη “προδίδωσιν ὁ ἄρχων τὴν πόλιν, οἱ βουλόμενοι τοῖς νόμοις βοηθεῖν ἀκολουθεῖτε.”

Nasica demanded that the consul should come to the rescue of the *polis* and put down the *tyrannos*. The consul replied with mildness that he would resort to no violence and put to death no citizen without a trial; if, however, the *demos*, under persuasion or compulsion from Tiberius, should vote anything that was unlawful, he would not regard this vote as binding. Thereupon Nasica sprang to his feet and said, “Since, then, the *archon* betrays the *polis*, let those who wish to save the laws follow me.” (Plut. *TG* 19.3–5.)

In this account, the rhetoric is briefer and neater. Valerius Maximus’s speech is compressed into a straightforward accusation (that the consul betrays the *polis*, a word that could conceal either *res publica* or *civitas*) and the follow-up involves not the safety of the *polis* (that is, *res publica*, as in the three Latin sources) but the salvation of οἱ νόμοι, the laws. This switch from a betrayed *polis* to a need to save the *nomoi* reads as a direct challenge to Scaevola’s legalistic take on the situation and may indicate Plutarch tidying up the tradition. It also betrays the difficulty Greek authors have in rendering *res publica*. Similarly Appian, who is surprised that the

people (οἱ πολλοί) did not appoint a dictator at this point, is under the impression that:

κρίναντες δ' ὅσα ἔκριναν ἐς τὸ Καπιτώλιον ἀνήεσαν. καὶ πρῶτος αὐτοῖς ὁ μέγιστος ἀρχιερεὺς λεγόμενος ἐξῆρχε τῆς ὁδοῦ, Κορνήλιος Σκιπίων ὁ Νασικᾶς· ἐβόα τε μέγιστον ἔπεσθαί οἱ τοὺς ἐθελοντας σῶζεσθαι τὴν πατρίδα.

After reaching such a decision as they did reach, they marched up to the Capitol, Cornelius Scipio Nasica, the *pontifex maximus*, leading the way and calling out with a loud voice, “Let those who would save our fatherland follow me.” (App. *BC* 1.16.)

This, at least, provides something closer to the Latin tradition, even if Latin has its own perfectly good cognate for ἡ πατρίς that also is not *res publica* (i.e. *patria*).

Secondary scholarship has little to say about these various versions. In general, scholars either select one version of the episode, usually Plutarch,<sup>209</sup> or they blur all the versions into a coherent narrative and gloss over the differences between them.<sup>210</sup> What is apparent from the Latin tradition, if not the Greek one, is that Nasica roared something like ‘Since the consul betrays the *res publica*, let those who wish the *res publica* to be *salva* follow me!’ (using ‘the formula which in earlier times had been used to summon citizens to arms when the enemy was at the gate and it was too late for an ordinary levy’<sup>211</sup>) before dashing off to put down the original turbulent tribune. Several points may be made here. First, Nasica’s opinion on the consul’s role remained consistent with the line he took during his own consulship: the consuls were the magistrates with supreme responsibility and competence to administer the *res publica*; if anything was to be done, it should be the sole consul currently in Rome who did it. Scaevola’s failure to act against activities that Nasica perceived as seriously threatening to the wellbeing of the *res publica* was therefore (in Nasica’s eyes) a betrayal of the *res publica* itself. The exchange shows how the

<sup>209</sup> Boren 1961: 365, Bernstein 1978: 222-3, Spaeth 1990: 191-2.

<sup>210</sup> Earl 1963: 117-8, Astin 1967: 223, Badian 1972: 724, Richardson 1976: 94, Stockton 1979: 76.

<sup>211</sup> Nippel 1995: 61.

relationship between competent magistrates and the *res publica* could be used against said magistrates, either to force them into action or to castigate their failure to take action that someone else considered necessary for the *res publica*. Second, the critical factor was Nasica's conviction that what was happening on the Capitol (the re-election of Tiberius) presented a real, immediate danger to the *res publica*, and one that could and should be prevented, in which case the public sphere would remain *salva*, 'safe, secure, unharmed'. As far as Nasica was concerned, the solution was to remove the threat, preferably through consular action; that done, the status quo would be restored and everyone could resume politics as normal. Third, the incident highlights how divisive this sort of rhetoric (and action) was: the consul disagreed with Nasica's reading of the situation and had *ius*, not to mention consular *potestas* and the *auctoritas* that emanated from that, to back him up. Whether a politically shaky situation actually *did* represent a real and immediate danger to the *res publica* was debatable; the fallout might not confirm the judgement of the politician who cried wolf too soon.

The public debate on these or any other topics during the uneasy period between the tribunes of Tiberius and Gaius Gracchus is poorly attested.<sup>212</sup> What we do possess are fragments: one striking remnant of a funeral *laudatio*, a piece of moralising invective, and various decontextualized relicts from the annalistic historians, in whose histories *res publica* now begins to surface, generally in fraught contexts.<sup>213</sup> The testimony of the annalists supplies (1) a paraphrase of an incident recounted both by L. Cassius Hemina (*flor.* c. 146) and Cn. Gellius (*flor.* 120–100) concerning the military tribunes whose rule was detrimental to the *res publica*.<sup>214</sup> (2)

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<sup>212</sup> Show trials were used against Tiberius's friends (Stockton 1979: 90, Nippel 1995: 62, Flower 2006: 71-2), Nasica's unpopularity resulted in his unseemly departure from Italy (Astin 1967: 229, Stockton 1979: 88, Binot 2001: 195, Flower 2006: 74), portents drove the senate to consult the Sibylline Books and send an embassy to Ceres at Henna in Sicily (Cic. *Ver.* 2.4.108; Spaeth 1990, Flower 2006: 72-3), Scipio Aemilianus was baited into approving of Tiberius's death in a *contio* by the tribune C. Papirius Carbo, thereby lost his former popular favour, and was embroiled in politics with the Italian allies in 129 (Astin 1967: 233-4, 239-40, Raschke 1987: 311, Beness 2005, Flower 2010: 102-3), Gaius's future colleague M. Fulvius Flaccus was distracted from carrying through with reforms as consul in 125 (Stockton 1979: 95-6), and Gaius himself was encouraged to stay in Spain for as long as possible (Stockton 1979: 97).

<sup>213</sup> On the explosion of historiography around this time, cf. Meadows-Williams 2001: 46; on the 'Annalists' generally, cf. Rawson 1976, Frier 1979, Forsythe 1994: 68-9, Beck 2007, Levene 2007: 278.

<sup>214</sup> *FHR* 6.23, Macr. Sat. 1.16.21-24 (F 20 Peter = F 24 Santini) (= *FHR* 10.24, Gellius). *Anno ab urbe condita trecentesimo sexagesimo tertio a tribunis militum Virginio, Manlio, Aemilio, Postumio collegisque eorum in senatu tractatum, quid esset propter quod totiens intra paucos annos male esset afflictia res publica.*

Three fragments from Coelius Antipater (*flor.* 123), who recounted (a) C. Flaminius's death at Trasimene in 217 as the result of neglected *religio* and attended by great damage to the *res publica*;<sup>215</sup> (b) a partial fragment preserved by Nonius involving the *res publica* and a most beautiful town that has been lost and wholly uprooted;<sup>216</sup> (c) a fragment on the topic of emulation or rivalry within the state (*in statu*) of a fortunate *res publica*.<sup>217</sup> (3) Sempronius Asellio (c. 158–91), talking about writing history, balances being sharp to defend the *res publica* with being slow to attend to one's own affairs.<sup>218</sup> This material is difficult to use and will not support detailed arguments, but it may suggest unease about the condition and long-term prospects of the Roman *res publica*. A hint of this appears in the invective of Scipio Aemilianus, who in 129 gave a speech against the *lex iudiciaria* of Tiberius Gracchus in which various aspects of the *tempora moresque* and the habits of contemporary youth move him to grieve (*quod me... miseritum est*) for the *res publica*.<sup>219</sup> Such unease is clearest, however, in the funerary fragment, which comes from a *laudatio* written by C. Laelius Sapiens and delivered by Q. Fabius Maximus for the by now defunct Aemilianus later that year:

*Quiapropter neque tanta diis immortalibus gratia haberi potest, quanta habenda est, quod is cum illo animo atque ingenio hanc civitate potissimum natus est, neque < tam > moleste atque aegre ferri quam ferendum [eum] est, cum eum morbus tum remouit et in eo dem<um> tempore periit, cum et vobis*

<sup>215</sup> FHR 11.20a, Cic. *Nat. Deor.* 2.8 (F 19 Peter = F 20 Hermann), more detail at 11.20b, Cic. *Nat. Deor.* 1.77-78 (F 20 Peter = F 21 Hermann). *C. Flaminius Coelius religione neglecta cecidisse apud Trasimenum scribit cum magno rei publicae vulnere.*

<sup>216</sup> FHR 11.54, Non. p.154 L (F 46 Peter = F54 Herrmann). *Coelius Antipater lib. VII: "Res publica, amisso exfundato pulcherrimo oppido..."*

<sup>217</sup> FHR 11.55, Fest. p. 482 L (F 47 Peter = F 53 Herrmann) ... *sic Coelius lib. VII: "Ita uti sese quisque vobis studeat aemulari in statu fortunae rei publicae, eadem re gesta, toppe nihil minore negotio acto, gratia minor esset"*.

<sup>218</sup> FHR 12.2, Gell. 5.18.9 (F 2 Peter). *Paulo post idem Asellio in eodem libro: "nam neque alacriores," inquit, "ad rem publicam defendendam neque segiores ad rem properam faciendam annales libri commovere quicquam possunt. Scribere autem bellum initum quo consule et quo confectum sit et quis triumphans introierit e<t> eo libro quae in bello gesta sint [interare id fabulas] non praedicare aut interea quid senatus decreverit aut quae lex rogatiove lata sit neque quibus consiliis ea gesta sint: iterare id fabulas pueris est [narrare], non historias scribere."*

<sup>219</sup> ORF 21.9.30 (= Macr. 3.14.7). *Docentur praestigias inhonestas, cum cinaedulis et sambuca psalterioque eunt in ludum histrionum, discunt cantare, quae maiores nostri ingenuis probro ducier voluerunt: eunt, inquam, in ludum saltatorium inter cinaedos virgines ingenui. Haec cum mihi quisquam narrabat, non poteram animum inducere, ea liberos suos homines nobiles docere, sed cum ductus sum in ludum saltatorium, plus medius fidius in eo ludo vidi pueris virginibusque quingentis, in his unum (quod me rei publicae maxime miseritum est) puerum bullatum, petitoris filium non minorem annis duodecim, cum crotalis saltare, quam saltationem impudicus servulus honeste saltare non posset.*

*et omnibus, qui hanc rem publicam <salvam> volunt, maxime vivo opus est, Quirites.*

Wherefore it is not possible to give sufficient thanks to the immortal gods for this above all, that he, endowed with that mind and with those talents, was born in this particular community; nor is it possible to feel sufficient distress and bitterness that illness carried him off and he has finally perished at that time when both you, citizens of Rome, and all who wish this *res publica* well had most need of him alive. (*ORF* 20.5.22/49.1.2 = *Schol. Bob. in Mil.* p.118, 11, tr. Astin 1967: 243–4, slightly amended.<sup>220</sup>)

The fragment is seriously corrupt. That said, note (a) the expression of position with respect to the *civitas*, following the precedent of Q. Caecilius Metellus’s *laudatio* for his father and the Scipionic *elogia*; and (b) assuming <*salvam*> is correct,<sup>221</sup> the echo of Nasica’s cry in *rem publicam salvam volunt*, indicating continued concern over just how *salva* the *res publica* remained after a sacrosanct tribune’s untimely death.<sup>222</sup> Laelius and Fabius were not issuing a call to arms against an immediate danger, but rather voicing a feeling that continued hard work was required to keep the *res publica salva* in this difficult period, a programme for which the great Aemilianus would certainly have been very useful, says the ventriloquist via Fabius Maximus, if only he hadn’t just fallen off the censors’ roll. Even if Tiberius Gracchus is taken to have been a genuine danger to the *res publica* and Nasica to have been acting wisely (or at least reasonably) in averting it through the enthusiastic application of natural justice, the episode was not conducive to civic harmony and general goodwill.

A decade after Tiberius’s death, Nasica’s cry of “Wolf!” was regularised by the *senatus consultum ultimum* (*SCU*) used against Tiberius’s younger brother Gaius

<sup>220</sup> Cf. Astin 1967: 244 n.1 on Astin’s omissions. On the fragment cf. Beness 2005: 41 n.19 48 n.45-6, Stevenson 2005: 145 n.16, Badian 1956: 220. The text is from Stangl 1964, although I follow Badian 1956: 220’s proposal of *hace civitate* for *hac e civitate*, *cum eum morbus tum remouit* for *eo morborum temouit*, and *eo dem<um> tempore* for *eodem tempore*. On Aemilianus’s death and rumours of foul play, cf. Astin 1967: 241 n.4-5, Worthington 1989: 253, Beness 2005: 41 n.19. Stevenson 2005 argues that Cicero’s *Rep.* 6.12 suggestion that Aemilianus might be offered the dictatorship should be accepted as evidence of contemporary rumours of a Scipionic dictatorship (i.e. in 129); see also Beness 2005: 43-8.

<sup>221</sup> Cf. Beness 2005: 46.

<sup>222</sup> Beness 2005: 48.

in 121.<sup>223</sup> The point of this decree seems to have been to avoid repeating the irregularities of 133, which hung uneasily over Gaius and his opponents alike. This is not the place for a discussion of Gaius Gracchus's motivation, legislative programme, allies, enemies, or eventual end.<sup>224</sup> I do, however, want to discuss how the *SCU* untangles the implication of Nasica's *res publica salva*: the idea that the *res publica* is *about* to come to harm and that the consuls and other responsible magistrates should prevent this from happening by whatever means necessary. In the usual formula of the *SCU*, the senate instructs X (where X is primarily the consuls, but may include other magistrates in the vicinity of Rome, as when it was used against Saturninus and Glaucia in 100, when Saturninus and Glaucia themselves, then tribune and praetor respectively, were pointedly excluded<sup>225</sup>) to see that the *res publica* should come to no harm.<sup>226</sup> The decree expresses the senate's opinion that there is an immediate danger to the *res publica* (but not a state of war, which required a *tumultus* decree<sup>227</sup>) and that specific people must do something unspecified about it. It is negative (it focuses on taking no harm rather than keeping something unharmed; the distinction in formula is perhaps between what the senate decrees – 'take no harm' – and what the consuls then proclaim – 'let those who wish'<sup>228</sup>), vague (so any resulting bitterness is directed at the responsible magistrates, who decide what the decree means<sup>229</sup>), and articulates a political consensus that the imminent danger currently anticipated is genuinely a danger to the *res publica*.<sup>230</sup> It increases the pressure on the magistrates to act and gives them a defence after the event against any dissenters who may consider the advertised danger not to have

<sup>223</sup> *Senatus consultum ultimum* is a modern term (Lintott 1999b: 89-90, Arena 2012: 201). See Bleicken 1975: 473-83 and Burckhardt 1988: 86-158, Ansuategui 1990, Nippel 1995: 63, Lintott 1999a: 149-174, 1999b: 89-93, Arena 2012: 200-20 for discussions of this decree. In general I follow Lintott 1999b: 89-93 on the technical aspects.

<sup>224</sup> Cf. especially Stockton 1979: 114-161, Nippel 1995: 63-4, Flower 2006: 69, 76-8, 2010: 86.

<sup>225</sup> Lintott 1999a: 149-174, 1999b: 91; cf. Flower 2010: 88-90. On the deaths of Saturninus and Glaucia generally see Mattingly 1969b.

<sup>226</sup> Lintott 1999a: 152; cf. Cic. *Cat.* 1.4, *Phil.* 5.34, 8.14.4 (where the senatorial injunction becomes that the consul Opimius 'should defend the *res publica*', *uti L. Opimius consul rem publicam defenderet*, possibly because Cicero in the *Philippics* was pushing not for the suppression of individual citizens but for civil war against M. Antonius, a war that he characterised as the defence of the *res publica*; cf. section 6.3-4), Cic. *Fam.* 16.11.2.

<sup>227</sup> Lintott 1999a: 153.

<sup>228</sup> According to Cic. *Rab. Per.* 20, for example, the consuls C. Marius and L. Valerius, having been issued with an *SCU* against Saturninus and Glaucia (an *SCU* which Cicero tendentiously claims instructed the consuls 'to take measures to preserve the *imperium populi Romani maiestasque*'), 'ordered those who desired the *res publica* to be safe to take up arms and follow them' (*qui rem publicam salvam esse vellent, arma capere et se sequi iubent*)

<sup>229</sup> Lintott 1999b: 90.

<sup>230</sup> Stockton 1979: 199.

been a danger at all. This was a defence that seems to have worked for the aggressive consul of 121, L. Opimius, who was prosecuted after leaving office in 120 and acquitted.<sup>231</sup> That he was prosecuted at all, however, indicates the limits of elite consensus on the issue (and indeed the rather good chance that consensus was limited to the elite).

Some interim conclusions may now be drawn. Whereas ordinary magisterial action and *popularis* rhetoric seems to have focused on *res publica* as the object of management (in the latter case specifically the object of management by the *populus*, whose technical ownership of its *res* was never challenged), the *res publica* that P. Nasica, L. Opimius and the senate of 121 held to be endangered by *popularis* political activity is a rather larger beast. They were not spurred to action by the concern that Tiberius and his successors were detrimental to everyday public business, although there may have been a justifiable feeling that the tactics of the *populares* were not conducive to the conduct of public affairs. Rather, the concern seems to be that the *populares* were adversely impacting on the current structure of the political sphere, with negative implications for its long-term future.

This may seem an unduly precise way to talk about an emotionally charged concern; after all, what is often translated as ‘patriotism’ appears in Latin as *studium* or *amor* for the *res publica*.<sup>232</sup> But even if the grievance against the Gracchi was more emotional than rational, it was primarily a concern for those individuals who moved within that structured *res publica*, rather than for the *populus* more generally, which perceived itself as electing managers to manage its business on its behalf<sup>233</sup> and was probably less interested in maintaining the inherited political structure than it was about the *res publica* being administered competently, without undue corruption, in its perceived interests and by its chosen favourites. The *Rhetorica ad Herennium* illustrates *paranomasia* (*adnominatio*) with what must be a *popularis* fragment: ‘Tiberius Gracchus, while administering the *res publica*, was prevented by an unworthy death from abiding any longer therein. There befell Gaius Gracchus a like fate, which tore suddenly from the bosom of the community (*civitas*) a man

<sup>231</sup> Stockton 1979: 198-200.

<sup>232</sup> E.g. *Rhet. Her.* 4.12, 4.31, Sall. *BC* 49.4, 51.16, *BJ* 31.1, Cic. *Fam.* 12.5.2, *Att.* 8.11c.1, *ad Brut.* 20.3, *Ver.* 2.1.15, 2.2.117, *Leg. Man.* 51, *Cat.* 3.5, 4.13, 4.15, *Sull.* 87, *Flacc.* 8, 105, *Red. Sen.* 24, *Dom.* 21, *Sest.* 12.

<sup>233</sup> Or at any rate was regularly prompted to see itself in this light, most noisily by the *populares* but presumably also to some degree by most of those who addressed it in *contiones* or canvassed for election.

most dedicated (*amantissimus*) to the *res publica*'.<sup>234</sup> As far as the *populares* were concerned, it was the Gracchi and their successors (the fragment goes on to mourn the deaths of Saturninus, Livius Drusus and Sulpicius) who had been managing public business and demonstrating their dedication to the public sphere. After the suppression of Gaius and his supporters, Opimius conducted a *lustrum* to wash out the spilt blood and went on to build a temple to Concordia, 'the first temple that could be associated with an armed victory over fellow citizens within the city'.<sup>235</sup> Opimius evidently felt that the *res publica* had been saved from harm, civic harmony had been restored and his actions as consul had increased his personal *dignitas* with positive implications for his future actions as a *privatus* within the *res publica*. For whoever added the famous graffito, 'A work of discord made this temple to concord',<sup>236</sup> the situation was the opposite.

### 3.2 THE LIMITS

The conviction that specific people/actions endanger the *res publica* and must be stopped to prevent harm coming to it has several possible outcomes, of which the most obvious are: (a) the troublemakers are suppressed and any damage is declared averted; (b) the troublemakers are not suppressed, but the cry of wolf was hyperbolic and the political sphere does not collapse; (c) the troublemakers are not satisfactorily suppressed and those who had cried wolf declare the wolf has arrived, i.e. (i) the *res publica* has suffered some serious damage that must be repaired, or (ii) the *res publica* has collapsed altogether and must be entirely refounded. In the cases of Tiberius Gracchus in 133, Gaius Gracchus in 121, and Saturninus and Glaucia in 100, the troublemakers were suppressed and their suppressors declared the damage averted: the would-be tyrants had been removed from the *res publica* and ordinary political activity could be resumed. In 88, just as the Social War was winding down, a new burst of civil discord centred on a turbulent tribune erupted.<sup>237</sup> This particular

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<sup>234</sup> *Rhet. Her.* 4.31, *Tiberium Graccum rem p. administrantem prohibuit indigna nex diutius in eo commorari. Gaio Gracco similis occasio est oblata, quae virum rei p. amantissimum subito de sinu civitatis eripuit.*

<sup>235</sup> Flower 2006: 76.

<sup>236</sup> Plut. *GG* 17.5.

<sup>237</sup> On the events of 88 generally, cf. Katz 1977, Mitchell 1979: 54- 76. On Sulpicius and his activities, cf. Badian 1969: 481-90, Lintott 1971, Mitchell 1975, Keaveney 1979, Powell 1990, Lewis 1998, Lovano 2002: 1-18. Luce 1970 argues that much of the 90s should be seen in the light of Marius's ambitions for another great command and his opponents' attempts to prevent him from

iteration was P. Sulpicius, who proposed various laws to do with Social War issues; when the opposition proved implacable, he gained the elderly C. Marius's support by transferring to him the consul Sulla's command against Mithridates, something that proved unpopular with Sulla himself, who escaped to his army at Nola and together with his colleague, Q. Pompeius Rufus, marched on Rome.<sup>238</sup>

The outcome of this march, Sulla's 'first settlement', fits best into the category (c.i), an attempt to repair the damaged *res publica*, especially since the more striking features reported in our sources may well be a retrojection of the settlement of 82–1.<sup>239</sup> Sulla claimed to be acting with perfect propriety in freeing Rome from its current mob of troublemakers, of whom twelve (including Sulpicius and the six-times-consul Marius) were declared *hostes*. Sulla had Sulpicius's legislation removed on the grounds that it had been passed *per vim* and oversaw elections for 87 in which the successful candidates were accepted whether or not they were his nominees, although they were compelled to swear to uphold his settlement.<sup>240</sup> He then headed eastwards in pursuit of Mithridates and a simpler sort of glory, which suggests he thought the removal of the malefactors and their legislation was enough to repair the damaged *res publica*. That this was not the case became apparent almost immediately, as civil war erupted between the consuls of 87, Cn. Octavius, who was backed by the senate, and L. Cornelius Cinna, who resumed the late Sulpicius's activities regarding the new Italian citizens.<sup>241</sup> By following the lead of previous consuls, including Marius himself in 100, and attempting to avert the traditional sort of tribune-related harm from the *res publica*, the consuls of 88 set in play an unprecedented and highly unstable chain of events.

The first time a Roman army occupied Rome itself, it did so in reaction to a domestic crisis of the sort that had seen various previous tribunes suppressed to senatorial applause. Sulla and Pompeius, however, not only acted without senatorial approval but ignored multiple embassies from the senate and marched a Roman army across the *pomerium* in what Flower calls 'a devastating choice that led to the complete collapse of the traditional republican culture of the *nobiles*'.<sup>242</sup> The march

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getting one.

<sup>238</sup> Keaveney 1982: 60-64, Levick 1982: 508, Lovano 2002: 19-21, Santangelo 2007: 6-7.

<sup>239</sup> Flower 2010: 120.

<sup>240</sup> Keaveney 1982: 66-8, Levick 1982: 508, Lovano 2002: 31.

<sup>241</sup> Lovano 2002: 32-45; on the *Cinnae dominatio* generally cf. Badian 1962b, Bulst 1964, Mitchell 1979: 76-80, Lovano 2002.

<sup>242</sup> Flower 2010: 92; cf. Plut. *Sull.* 9, App. *BC* 1.57, Keaveney 1982: 64-5.

reflects ‘the great problem of Roman political life – how to compel the independent magistrates who have the absolute power of *imperium* to carry out the instructions of the People or the Senate’.<sup>243</sup> In a provocative recent article, Morstein-Marx argues that a genuine contest for political legitimacy can be seen in the actions of first Sulla and then Cinna,<sup>244</sup> both of whom he takes to have staked their claims to legitimacy on their possession of the consulship in their similar responses to political chaos and rebuff. Although Appian’s ‘very sketchy’ account of Sulla’s self-justification to his troops implies that Sulla focused on his sense of personal injury, reading backwards from the speech Appian puts into Cinna’s mouth the following year (*BC* 1.65) enables a more generous interpretation of the issues at stake.<sup>245</sup> Where the tribune Sulpicius’s transfer via the *populus* of the Mithridatic command to the *privatus* Marius in 88 was ‘a direct offense against the traditional prerogative of the consulship and its war-making role’, and perceived as such by Sulla and his army,<sup>246</sup> Cinna protested the abrogation of *his* consulship in 87 as an insult to the voters who had elected him, these voters having been conveniently assembled in the form of an army.<sup>247</sup> Following Meier, Morstein-Marx holds that Sulla’s immediate intention was police action against a turbulent tribune,<sup>248</sup> that Sulla’s complaint about the *hubris* of his opponents towards him was really an invocation of ‘republican civic values, which included the highest respect for the consuls, whom the Roman people had elected’,<sup>249</sup> and that there is no reason to suppose that Sulla’s soldiers were not convinced of Sulla’s claims (rather than simply being disaffected and mercenary).<sup>250</sup> Furthermore, Morstein-Marx proposes that rather than analysing Sulla’s actions through a prism of legality, we should instead use ‘the sociological, Weberian concept of “legitimacy”’, on the grounds that during a civil war ‘citizens, not lawyers, are the ones who really matter, since citizens determine political legitimacy by their active or passive support for a regime (or the reverse), whatever the lawyers have to say on the matters referred to their jurisdiction’.<sup>251</sup> The ‘republican political

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<sup>243</sup> Sherwin-White 1982: 23.

<sup>244</sup> Morstein-Marx 2011: 260.

<sup>245</sup> Morstein-Marx 2011: 264.

<sup>246</sup> Morstein-Marx 2011: 263.

<sup>247</sup> Morstein-Marx 2011: 269-71.

<sup>248</sup> Morstein-Marx 2011: 272, Meier 1966: 224; for a similarly sympathetic perspective cf. Mitchell 1979: 68-76.

<sup>249</sup> Morstein-Marx 2011: 276.

<sup>250</sup> Morstein-Marx 2011: 272-3.

<sup>251</sup> Morstein-Marx 2011: 276; this presumably excuses the consuls’ failure to surrender their

system' cannot be identified with 'the senate' at any given moment and the senate certainly should not be taken to be 'the locus of political legitimacy' (especially not when, for example, it has voted a consul out of office).<sup>252</sup> On Morstein-Marx's reading, the reverence of the citizens (especially soldiers) for their consuls, expressed by voting them into office, means that 'the consulship is a symbol of legitimacy whose potency derives from its nature as the embodiment of a *decision of the people*', and during this crisis of legitimacy both Sulla and Cinna succeeded in convincing the armies that their causes (as wronged consuls) were legitimate<sup>253</sup> – with the implication, presumably, that those causes therefore were.

There are two problems here. The first is Morstein-Marx's reliance on Appian having transmitted something very close to what Cinna said to his army in 87, if not an actual translation,<sup>254</sup> which is justified on the grounds that 'it is doubtful that Appian on his own could have fabricated a speech that is so neatly consistent with distinctive themes of late-republican consular oratory'.<sup>255</sup> This does a disservice to Appian, who was capable of inventing a *Fifth Philippic* for Cicero at BC 3.52–3 even though that speech survives; it is true that Appian's version is not especially 'Ciceronian', but it is perhaps more appropriate (and certainly more statesmanlike) in its historiographical context than the speech Cicero actually gave. It is unclear why Appian, who potentially had access to much more consular oratory than we do today, could not have done the same for Cinna. If so, the observation that "Cinna" addressing his soldiers as citizens (πολιται) recalls Caesar in 47 calling his soldiers to heel by calling them *Quirites* rather than *militēs* (Suet. *Jul.* 70) is telling; for Morstein-Marx, 'by addressing the soldiers before him as "citizens" Cinna appeals to them specifically in their capacity as members of the civic community',<sup>256</sup> but this relies on the assumption that Appian's account can be taken at face value. It might instead be that Appian is playing off that Caesarian anecdote to construct a proto-Caesar who addresses his soldiers as citizens because *he* has been demobbed: if Cinna is no longer consul, he cannot command his army, unless he can persuade them that he is still a consul and that they are still his soldiers.

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*imperium* as soon as they crossed the *pomerium*.

<sup>252</sup> Morstein-Marx 2011: 277.

<sup>253</sup> Morstein-Marx 2011: 277.

<sup>254</sup> Morstein-Marx 2011: 267-71.

<sup>255</sup> Morstein-Marx 2011: 271.

<sup>256</sup> Morstein-Marx 2011: 269.

Secondly, it seems clear that a crisis of legitimacy had erupted, if not before Sulla marched on Rome then certainly afterwards. That said, however, if ‘the sociological, Weberian concept of “legitimacy”’ is to be exchanged for ordinary legality, it is not clear why Sulla’s claims should be given priority. To reduce the issue to the superior right of consuls to wage war is to fall back on the legality that Morstein-Marx rejects: if the consuls’ special claims rested on their election by the *populus*, what was there to prevent the *populus* from deciding to bestow its favours elsewhere? If Sulpicius could persuade the *populus* in its voting assemblies that someone other than the responsible consul should be selected for the command against Mithridates, surely that legitimised Sulpicius’s proposal? Absent legal protocol, what remains is what resulted: a conflict between the judgement of that section of the *populus* that voted (legally) for Sulpicius within the city and the judgement of that section of the *populus* that marched (illegally) on Rome with Sulla. It is not obvious how to decide which judgement should be taken to confer greater political legitimacy, except perhaps on the basis that those left standing when the dust settled must have cared more about the issue at stake and were therefore entitled to pass the final judgement. (And after all, those who do not survive, as Sulpicius did not, cannot express their consent for or withhold their consent from a regime.) This seems unsatisfactory. Furthermore, while legality and legitimacy are indeed problematic concepts in civil war situations, it seems similarly unsatisfactory to suspend judgement on actions that *precipitate* civil war. Street violence, controversial legislation and depriving a consul of his command made for dangerous politics but not necessarily civil war; if the situation had been perceived as such, the senate (which, while not ‘*the locus of political legitimacy*’, at least had a reasonable claim to express the opinion of the political class as a whole) might have passed the *SCU* or invited the consuls to march on Rome, rather than trying to discourage them from doing so. If the consuls’ intention was police action, it was not welcomed by those who might be expected to have been most eager to be policed.

The problem here is one endemic to any system where ‘popular consent’ stands as the defining political principle: the voice of the *populus* may override all others, but how and where can the *populus* itself (rather than specific subsections of the *populus*, often already armed and regimented) be heard to speak? Over the years, the Romans had developed a complicated and sometimes redundant system of *comitia* for the express purpose of providing specific physical spaces and times

where those assembled to vote on a proposed measure or elect individuals to office could do so *as* the *populus Romanus*. The *popularis* tribunes could claim to be the instruments of the *populus* not just because of the office they held but also because the *populus* voted for their measures. Despite the questions raised by Mouritsen's 2001 study over just how substantial a percentage of the population could ever have voted in these *comitia*, at no point in the turbulence of the late Republic did anyone raise low participation as a problem or challenge the conceit that the outcome of a properly conducted vote was the will of "the *populus*".<sup>257</sup> It might be argued that Sulpicius's legislation was improperly conducted, and very probably Sulla did argue this, but what did *not* count as the *populus Romanus* was an army assembled and harangued in the field by an injured consul.

Of particular relevance to this point is an episode narrated by Livy at 17.16, where the consul Cn. Manlius Capitolinus is said to have successfully proposed a law to tax manumissions while with his troops at Sutrium, where he 'may have made citizens under his command vote there after ordering them to organize by tribes (*tributim*) for the ballot, as in normal *comitia*'.<sup>258</sup> The actual law seems not to have been challenged, but the plebeian tribunes responded with a bill severely penalising anyone who summoned an assembly of the people outside Rome, since they were concerned that 'the soldiers, linked to a commander through their oath of obedience, might approve measures that would be detrimental to the Roman people as a whole'.<sup>259</sup> This is a peculiar episode, so much so that some scholars fall back on the 'too peculiar not to be true' explanation;<sup>260</sup> whether true or not, it indicates that allowing generals to pass laws or claim legitimacy for their actions on the basis that their army agreed with them was not an acceptable tactic and became a viable political gambit only through the removal of anyone with a divergent viewpoint (and their diverging armies). It was clear to contemporaries which way allowing consuls to decide that their armies counted as the *populus Romanus* for the purpose of furthering their own political aims could go. The temptation to do so when this action could be depicted as in the interests of the *res publica*, however, proved irresistible to Sulla and Q. Pompeius, and the speed with which their gambit was repeated after Sulla and his army left Italy foreshadowed how hard it would be in

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<sup>257</sup> Mouritsen 2001: 33.

<sup>258</sup> Pina Polo 2011: 110.

<sup>259</sup> Pina Polo 2011: 110.

<sup>260</sup> Pina Polo 2011: 111.

future to rein in a magistrate with *imperium*, an army, and no desire to play nicely with his political peers.

If Sulla's first march on Rome was justified on the basis of arresting and repairing damaging political activity, his victorious return from the east, dictatorship and 'second settlement' can be classed as the first example of (c.ii) the collapse and refoundation of the *res publica*. Santangelo traces the shift in Sulla's self-portrayal from 'the legitimate representative of Rome and the only true defender of the *res publica*' in 88 to emphasising instead 'the cause of the Republic' on his return in 83, by which time Sulla was concerned to be seen as 'a victorious refounder of Rome'.<sup>261</sup> Why did Rome need refounding? Because (and thanks in a large part to Sulla's own earlier choices) the *res publica* was far past the anticipation of imminent danger: given the preceding decade and the fallout from Sulla's return, it was plausible to argue that it had collapsed altogether. This claim is implicit in Sulla's chosen title, 'dictator for drawing up the laws and setting in order the *res publica*' (*dictator legibus scribundis et rei publicae constituendae*).<sup>262</sup> The majority of former dictators had or may be presumed to have been appointed *dictator rei gerundae causa* ('dictator for managing the affair');<sup>263</sup> one was possibly *magister equitum* rather than *dictator*;<sup>264</sup> fourteen were appointed *dictator comitiorum habendorum causa* ('for holding the *comitia*');<sup>265</sup> another may have been appointed to this title;<sup>266</sup>

<sup>261</sup> Santangelo 2007: 220; on Sulla's return, cf. also Frier 1971, Strisino 2002.

<sup>262</sup> Hantos 1988: 14, 69 (n.1), Hurler 1993: 55. Keaveney 1982: 161 has *dictator legibus faciendis*. On the legality of Sulla's dictatorship see Hurley 1993: 30-35, Keaveney 1982: 161-2.

<sup>263</sup> I follow Broughton 1951 here. Were: T. Lartius Flavius (501), M. Furius Camillus (368, 4<sup>th</sup>), M. Furius Camillus (367, 5<sup>th</sup>), T. Quinctius Poenus Capitolinus Crispinus (361), Q. Servilius Ahala (360), L. Papirius Cursor (325, 1<sup>st</sup> time), L. Aemilius Mamercinus Privernas (316), C. Maenius (314, 2<sup>nd</sup>), Q. Fabius Maximus Rullianus (313, 2<sup>nd</sup>). Are presumed to have been: ?M'. Valerius Volesi (501), A. Postumius Albus Regillensis (499), M'. Valerius Maximus (494), L. Quinctius Cincinnatus (458, 1<sup>st</sup>), Mam. Aemilius Mamercinus (437, 1<sup>st</sup>), Q. Servilius Priscus Fidenas (435, 1<sup>st</sup>), Mam. Aemilius Mamercinus (434, 2<sup>nd</sup>), A. Postumius Tubertus (431), Mam. Aemilius Mamercinus (426, 3<sup>rd</sup>), Q. Servilius Priscus Fidenas (418, 2<sup>nd</sup>), P. Cornelius Rutilus Cossus (408), M. Furius Camillus (396, 1<sup>st</sup>), M. Furius Camillus (390, 2<sup>nd</sup>), M. Furius Camillus (389, 3<sup>rd</sup>), A. Cornelius Cossus (385), Ap. Claudius Crassus Inregillensis (362), C. Sulpicius Peticus (358), C. Marcus Rutilus (356), T. Manlius Imperiosus Torquatus (353, 1<sup>st</sup> time), L. Furius Camillus (345, 2<sup>nd</sup> time), L. Papirius Crassus (340), P. Cornelius Rufinus (333), M. Papirius Crassus (332), L. Papirius Cursor (324, 2<sup>nd</sup> time), L. Cornelius Lentulus (320), C. Sulpicius Longus (312), L. Papirius Cursor (310, 3<sup>rd</sup>), L. Papirius Cursor (309, 4<sup>th</sup>), C. Junius Bubulcus Brutus (302, 2<sup>nd</sup>?), M. Valerius Corvus (302, 2<sup>nd</sup>), M. Valerius Corvus (301, 3<sup>rd</sup>), M. Aemilius Barbula (291-285), Ap. Claudius Caecus (291-285), P. Cornelius Rufinus (291-285), A. Atilius Caiatinus (249), M. Claudius Glicia (249), Q. Fabius Maximus Verrucosus Cunctator (221, 1<sup>st</sup>), Q. Fabius Maximus Verrucosus Cunctator (217, 2<sup>nd</sup>), M. Minucius Rufus (217), M. Junius Pera (216).

<sup>264</sup> C. Junius Bubulcus Brutus, 312.

<sup>265</sup> M. Fabius Ambustus (351), L. Furius Camillus (350, 1<sup>st</sup>), T. Manlius Imperiosus Torquatus (349, 2<sup>nd</sup>), L. Aemilius Mamercinus Privernas (335), P. Cornelius Scipio Barbatus (306), Cn. Domitius Calvinus Maximus (280), Ti. Coruncanus (246), C. Duilius (231), L. Caecilius Metellus (224), C.

one more was either this or *dictator rei gerundae causa*.<sup>267</sup> Three were appointed *dictator clavi figendi causa* ('for driving the nail', a religious ritual);<sup>268</sup> a fourth may also have had this title, or he might have been *interrex*.<sup>269</sup> Oddities include:

L. Quinctius Cincinnatus (439, 2<sup>nd</sup>), M. Valerius Corvus (342, 1<sup>st</sup>), Q. Hortensius (287): either *seditionis sedandae* ('for restraining the sedition') or *rei gerundae causa*

T. Quinctius Cincinnatus Capitolinus (380), P. Manlius Capitolinus (368): *seditionis sedandae et rei gerundae causa*

C. Julius Iullus (352): *Rei gerundae et comitiorum habendorum causa*

P. Valerius Publicola (344): *Feriarum constituendarum causa* ('for setting up the religious festivals')

Q. Publilius Philo (339): ? (responsibility for some legal reforms)

A. Cornelius Cossus Arvina (322): *Rei gerundae et ludorum faciendorum causa* ('for managing the affair and putting on the games')

C. Maenius (320, 1<sup>st</sup>): *Quaestionibus exercendis* ('for administering the *quaestiones*')

C. Poetelius Libo Visolus (313): *Rei gerundae et clavi figendi causa*

Q. Ogulnius Gallus (257): *Ludorum faciendorum causa*

M. Fabius Buteo (216): *Legendo senatui* ('for selecting the senate')

T. Manlius Torquatus (208): *Comitiorum habendorum et ludorum faciendorum causa*

Historically, dictators had been appointed to domestic tasks (holding *comitia* or games, driving nails, selecting senators, sorting out seditions, managing *quaestiones*) or to deal with external threats (*rei gerundae causa*, 'managing the affair'). The domestic tasks were pointedly more specific than the latter; there was no *rei publicae constituendae* for C. Maenius (320), for example, or for M. Fabius Buteo (216). In contrast, Sulla, when he picked up his unprecedented title, acquired legitimacy for a

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Claudius Cenchus (213), Q. Fulvius Flaccus (210), M. Livius Salinator (207), Q. Caecilius Metellus (205), C. Servilius Geminus (202).

<sup>266</sup> Titus Manlius Imperiosus Torquatus (320, 3<sup>rd</sup>).

<sup>267</sup> P. Sulpicius Galba Maximus (203).

<sup>268</sup> L. Manlius Capitolinus Imperiosus (363), Cn. Quinctius Capitolinus (331), Cn. Fulvius Maximus Centumalus (263).

<sup>269</sup> C. Aemilius Mamercus (463).

complete constitutional settlement, not just for setting up the odd *quaestio* or religious festival or adding men to the senate.<sup>270</sup> Although Sulla's dictatorship was not limited to the standard six months,<sup>271</sup> there was an implicit end-date built into the title: when the task had been completed; that is, when the *res publica* had been suitably settled.

Sulla's resurrection of the dictatorship served to legitimise an irregular, illegal position based solely on overwhelming force, as was made clear after the battle of Porta Collina; as Mackay points out, addressing the senate in the temple of Bellona to the accompaniment of slaughtered captives was a gratuitous move intended to give the message that Sulla was in charge and anyone who opposed him could expect to regret it.<sup>272</sup> All the same, it is interesting that the title distinguished between drafting laws and whatever Sulla was expected to be doing to the *res publica* as a whole.<sup>273</sup> Sulla used his unique position to curb the plebeian tribunate (which lost its veto and right to summon the senate and became a dead end on the *cursus honorum*),<sup>274</sup> remove the grain subsidy, confirm the senate's right to appoint pro-magistrates,<sup>275</sup> pass a *lex Cornelia de maiestate* (it was now a prosecutable offence not to vacate one's province within thirty days of a successor's arrival, to take an army outside one's province or invade an allied kingdom without explicit senatorial permission),<sup>276</sup> increase the numbers of praetors from six to eight,<sup>277</sup> tighten up the *cursus honorum* with a *lex Cornelia annalis*,<sup>278</sup> increase the senate from the traditional level of three hundred to perhaps as many as six hundred,<sup>279</sup> transfer control of the courts from *equites* to senators, set up seven permanent *quaestiones*,<sup>280</sup> institute various religious reforms,<sup>281</sup> and impose sumptuary

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<sup>270</sup> Hantos 1988: 14, 69.

<sup>271</sup> Hurllet 1993: 70-80 argues (perhaps more innovatively than persuasively) that the six-month limit on the classic dictatorship is an anachronistic invention: all sources apart from Cicero are late and can be ignored, while Cicero's testimony can be put down to contemporary circumstances. Hurllet suggests the historical dictators were forced to abdicate by peer pressure after completing their tasks in a period that regularly happened to be less than six months.

<sup>272</sup> Mackay 2000: 196.

<sup>273</sup> Hurllet 1993: 95.

<sup>274</sup> Keaveney 1982: 169-70, Hantos 1988: 74-9, 130-47.

<sup>275</sup> Keaveney 1982: 170.

<sup>276</sup> Keaveney 1982: 171, Hantos 1988: 89-120.

<sup>277</sup> Keaveney 1982: 172.

<sup>278</sup> Keaveney 1982: 173-4, Hantos 1988: 33-45.

<sup>279</sup> Keaveney 1982: 174-5, Hantos 1988: 45-61. Santangelo 2007: 100 suggests a senate of 450 immediately after Sulla's settlement, expanding quickly to c. 500 as Sulla's reforms of the quaestorship and praetorship took effect.

<sup>280</sup> Keaveney 1982: 176-7, Hantos 1988: 154-61.

<sup>281</sup> Keaveney 1982: 177-8, Hantos 1988: 120-29.

legislation.<sup>282</sup> In short, he followed the logic of his title and completely restructured the political sphere. This marks a break from former saviours of the *res publica*, who had held it (not very convincingly) to be kept *salva* by the suppression of individuals: for Sulla, simply removing his opponents was not enough. Flower makes the case for Sulla's innovation most starkly. 'Although he used the traditional names for the branches of government and office, Sulla's system was fundamentally different from what had come before';<sup>283</sup> he produced 'a political constitution based on laws and their regular enforcement by a system of courts' which 'did not correspond to the Roman experience of a traditional republic, namely a republic that had been based on deliberation in the senate, debate in front of the people, and on elaborate rituals of compromise and consensus building in both settings' – '*lex* was to replace *mos maiorum*'.<sup>284</sup> Sulla's abdication of his dictatorship and retirement into private life demonstrated his belief that the *res publica* had been duly settled, thereby rendering his extraordinary position redundant. That his settlement constituted innovation rather than restoration, however, 'can be gauged by the fact that it proved to be essentially unworkable, despite the logic and care that had gone into its complex design'.<sup>285</sup>

### 3.3 THE WITNESSES

In the opening to the *De Republica*, Cicero argues in his own *persona* that 'the citizen who compels all men through *imperium* and the penalties imposed by law to do that which philosophers can scarcely persuade a few to do through speaking, must be considered superior even to the teachers who enunciate these principles. For what speech of theirs is excellent enough to be preferred to a *civitas* well provided (*bene constituta*) with law and custom?'<sup>286</sup> This is a claim that invites identification with Sulla, although the historical account given in book 2 is explicitly Catonian in its subordination of individual contributions to the grander narrative: according to "Scipio", the elder Cato used to say that Rome was great not because of a single

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<sup>282</sup> Keaveney 1982: 178-9.

<sup>283</sup> Flower 2010: 29; cf. further 121-34 *ibid*.

<sup>284</sup> Flower 2010: 129; cf. also Hantos 1988: 14.

<sup>285</sup> Flower 2010: 130.

<sup>286</sup> Cic. *Rep.* 1.3, *ergo ille civis, qui id cogit omnes imperio legumque poena quod vix paucis persuadere oratione philosophi possunt, etiam eis qui illa disputant ipsis est praeferendus doctoribus. Quae est enim istorum oratio tam exquisita, quae sit anteponenda bene constitutae civitati publico iure et moribus?*

great law-giver but because of the cumulative genius of many great men,<sup>287</sup> and the account “Scipio” gives of the historical development of the Roman *res publica* accordingly comprises a sequence of individuals and innovations.<sup>288</sup> Prior to 82–1, the internal organisation of the *res publica* had been attributable to the *maiores*;<sup>289</sup> after Sulla’s settlement, however, the *res publica* was *constituta*, settled, and it had been settled by Sulla.<sup>290</sup> It was now possible to identify a specific point in time when the *res publica* had been given its current structure (*status*) by a specific individual; said point in time (and said individual) provided a reference point for future politicians. Sulla’s *res publica constituta* was no more stable than the former *res publica* had been, however, thanks both to key figures like Sulla’s protégé Pompey, blatantly excused from Sulla’s rules,<sup>291</sup> and to the disruptive activities of those who wanted to dismantle various of Sulla’s reforms. For the next ten years, political life developed into a dance around how much of Sulla’s *res publica constituta* to maintain or discard. The civil wars remained a locus for conflict and Sulla himself was a polarising and deeply controversial figure. This is illustrated by two Ciceronian ‘data points’: the *Pro Sexto Roscio Amerino* of 80,<sup>292</sup> which demonstrates a junior orator positioning himself in relation to Sulla’s newly minted *res publica constituta*, and the *Verrines* of 70, in which Cicero angles his case around one of the issues of the day, the question of whether to undo Sulla’s transference of the courts to the senate.

The *Pro Sexto Roscio* was Cicero’s first *causa publica* and is the first of his speeches mentioned in Plutarch’s *Life*.<sup>293</sup> It was delivered in defence of Sextus Roscius, who had been accused of parricide before Sulla’s new *quaestio intersicarios* and during Sulla’s second consulship.<sup>294</sup> Cicero casts his defence as a semi-

<sup>287</sup> Cic. *Rep.* 2.1-2; cf. Wallace-Hadrill 2008: 227.

<sup>288</sup> Cic. *Rep.* 2.4-63; cf. Turcan 2011: 627-9 on *rem publicam constituere* in *Rep.* generally.

<sup>289</sup> On Roman relations with and rhetorical use of their *maiores* see Flower 1996 and Wallace-Hadrill 2008: 218-58.

<sup>290</sup> Flower 2010: 133-4 argues that Sulla ‘saw himself as fulfilling the role of the law-giver, a figure unprecedented in Rome but well-known in Greece and the Near East... Meanwhile, the Romans did not accept Sulla, partly because the figure of the law-giver simply was not a part of their political tradition’.

<sup>291</sup> Flower 2006: 98.

<sup>292</sup> On the dating see Kinsey 1967.

<sup>293</sup> Plut. *Cic.* 3.

<sup>294</sup> For overviews of the trial and the speech see Butler 2002: 14-23, Vasaly 2002: 76-82, Dyck 2010: 1-20. On Cicero’s *partitio* of the speech cf. Kinsey 1985; on gladiatorial metaphors in the speech cf. Imholtz 1972; on the characterisations in this speech generally, cf. May 1988: 21-31, Vasaly 1985; on issues surrounding the publication of the speech and an argument for revisions after Sulla’s death (albeit based on the standard account of the case, i.e. the one Cicero provides, for which see also

heroic act of defiance on the part of a nervous young orator who could speak out because of his obscurity: none of the various illustrious persons allegedly lurking supportively at the trial dared to take on Roscius's defence (*S. Rosc.* 1), since it was impossible to defend Roscius without saying anything *de re publica* and they were bound to be misinterpreted (*S. Rosc.* 2). Cicero, however, had not yet entered the public sphere (*ad rem publicam*) and was therefore free to attribute anything he said now to youth and silliness; he claims to be largely free to speak, even if both pardon and legal inquiry had been removed from the *civitas* (*S. Rosc.* 3).<sup>295</sup> According to Cicero, Roscius's biggest problem was that his father's property had been bought by Sulla's influential freedman, Chrysogonus, who now wanted to get rid of Roscius himself (*S. Rosc.* 6). Cicero deploys Roscius as a stand-in for everyone present and Chrysogonus as the villain of the tale, thereby distancing Sulla from any wrongdoing (*S. Rosc.* 7); he asks the Sulla-proxy Chrysogonus to be happy with everyone's money and fortune, rather than demanding their lives too, and he directs the usual request to the judges to resist audacious bad men (that is, Chrysogonus and his henchmen) and look out for unlucky innocents (that is, Roscius, and by extension themselves) (*S. Rosc.* 7, 12). Sulla himself is compared to Jupiter, who can cause great harm but who also grants mortals various good things:

*Etenim si Iuppiter Optimus Maximus cuius nutu et arbitrio caelum terra mariaque reguntur saepe ventis vehementioribus aut immoderatis tempestatibus aut nimio calore aut intolerabili frigore hominibus nocuit, urbis delevit, fruges perdidit, quorum nihil pernicii causa divino consilio sed vi ipsa et magnitudine rerum factum putamus, at contra commoda quibus utimur lucemque qua fruimur spiritumque quem ducimus ab eo nobis dari atque impertiri videmus, quid miramur, iudices, L. Sullam, cum solus rem publicam regeret orbemque terrarum gubernaret imperique maiestatem quam armis receperat iam legibus confirmaret, aliqua animadvertere non potuisse?*

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Mitchell 1979: 91-2), cf. Berry 2004; on the chances of Roscius actually having been guilty (decent) cf. Dyck 2003: 243, *contra* standard reading of the issues by e.g. Sedgwick 1934, Kinsey 1966, 1968.

<sup>295</sup> Cf. Dyck 2003: 236 on how seriously to take this (not very); he argues that Cicero resorts to the political situation to distract attention from just how few local and familial supporters were present for the accused man (cf. also 241-2; on Cicero's careful construction of his own persona, 243-4). Also Thein 2006: 247.

In fact, if Jupiter, greatest and best, whose nod and will governs heaven, earth, and seas, has often done grievous harm to men by furious winds, violent storms, excessive heat or unbearable cold, destroyed their cities and ruined their crops, we do not attribute any of these disasters to the divine will and a desire for causing destruction, but to the mere force and the mighty agency of nature. But, on the other hand, the advantages of which we avail ourselves, the light which we enjoy, the air we breathe, these are favours given to us and bestowed upon us by Jupiter. Why then, gentlemen, should we be surprised if Sulla, when he alone ruled the *res publica* and guided the world and was strengthening by laws the majesty of the command which he had recovered by arms, should unavoidably have allowed anything to pass unnoticed? (Cic. *S. Rosc.* 131.)

As Gildenhard observes, this comparison ‘acquires its proper point and profile if read as a response to the dreadful dilemma that those inevitably face who live in a world in which the rulers do not necessarily guarantee justice. One way of maintaining a semblance of beneficial order and of a world governed by divine craftsmanship and intelligence is to clear those in power from responsibility for evil’.<sup>296</sup> Sulla, as dictator, had been a god among men: destructive,<sup>297</sup> politically all-powerful, and the conveyor of basic blessings such as the ability to continue living, but too loftily positioned to notice the minor misdeeds of minor men,<sup>298</sup> hence the currently unhappy state of the political sphere.<sup>299</sup> The civil wars are largely glossed over: it had been a messy period in which, while that person with supreme power (Sulla) was occupied with the overarching political narrative, others were sneaking around bayoneting their wounded *inimici*: ‘these people, as if eternal night had enveloped the *res publica*, rushed about in the darkness and threw everything into confusion’.<sup>300</sup> The impression given is of a regime revolving around a single person: Sulla, ‘who alone ruled (*regeret*) the *res publica*’ and who stands forth as its sole

<sup>296</sup> Gildenhard 2011: 354-5; cf. also Dyck 2010: 186-7.

<sup>297</sup> Compare the ageing Cato’s remark that he preferred to buy properties such as hot springs or fullers’ districts that were both profitable and could not ‘be ruined by Jupiter’ (Plut. *Cat. Maior* 21).

<sup>298</sup> Cf. also Cic. *S. Rosc.* 22, 130.

<sup>299</sup> Cic. *S. Rosc.* 1, 14, 143, 148, 150, 154; cf. Dyck 2003: 245, Gildenhard 2011: 355-8.

<sup>300</sup> Cic. *S. Rosc.* 91, *qui, tamquam si offusa rei publicae sempiterna nox esset, ita ruebant in tenebris omniaque miscebant*. Compare Cic. *Quinct.* 70, where the war is recalled as ‘a thing that ought to be entirely forgotten and blotted out’, and the vague reference at Cic. *Rosc. Com.* 33 to the *rei publicae calamitates* which had then made the possession of property insecure.

representative, while his various eminent supporters blur into ‘the *nobilitas*’,<sup>301</sup> which ‘recovered the *res publica* by arms and the sword’.<sup>302</sup> All this political commentary, however, is attributed to Cicero’s personal outrage at the state of the *res publica* and his *dolor* at the injury done to Roscius (*S. Rosc.* 143); his client, meanwhile, is cast as a naïve countryman who believes Chrysogonus’s claim that everything was Sulla’s work and legally done. The only thing *he* wants (says Cicero) is to be acquitted of parricide.

*Res publica* here must mean both everyday public business and the structured political sphere; in forcefully recovering (*reciperare*) the former, the *nobiles* of the *Pro Roscio Amerino* gained control also of the latter, both by occupying the magistracies and Sulla’s new senate and by proscribing anyone left alive to oppose them. The individual *nobiles* who fought for Sulla in the civil war may lack names or faces (and their opponents are totally absent from the picture<sup>303</sup>), but Cicero supplies a model for them in the person of Roscius’s illustrious young patron, Messala, described as too young and modest to plead on Roscius’s behalf (*S. Rosc.* 149). His efforts on Roscius’s behalf become the very pattern of traditional elite virtues:

*ipse adsiduitate, consilio, auctoritate, diligentia perfecit ut Sex. Rosci vita erepta de manibus sectorum sententiis iudicum permetteretur. Nimirum, iudices, pro hac nobilitate pars maxima civitatis in armis fuit; haec acta res est ut ei nobiles restituerentur in civitatem qui hoc facerent quod facere Messalam videtis, qui caput innocentis defenderent, qui iniuriae resisterent, qui quantum possent in salute alterius quam in exitio mallent ostendere; quod si omnes qui eodem loco nati sunt facerent, et res publica ex illis et ipsi ex invidia minus laborarent.*

He himself, by his constant presence in court, his advice, influence, and unwearied attention, he succeeded in rescuing the life of Sextus Roscius from the hands of the brokers and getting it left to the verdict of his judges. There can be no doubt, gentlemen, that the greater part of the *civitas* took up arms

<sup>301</sup> Cic. *S. Rosc.* 16, 126, 135.

<sup>302</sup> Cic. *S. Rosc.* 141, *armis atque ferro rem publicam reciperavit*; on this idiom in relation to Sulla’s victory see Mitchell 1979: 86-7.

<sup>303</sup> Compare Cic. *Quinct.* 68-70, where Cicero hedges around the point that his client’s agent had fought on the losing side of the civil wars.

for such nobles as Messala; their object was that these nobles should be restored to the *civitas* who were ready to do what you see Messala doing – defend the civil existence of an innocent man, resist injustice, and show the extent of their power rather than ruining their fellow-men. If all those who have been born in the same rank were to do this, the *res publica* would have less to suffer from them, and they themselves would suffer less from the jealousy with which they are regarded. (Cic. *S. Rosc.* 149.)

The young Messala defines what a *nobilis* should be and the blameless people on whose behalf the *pars maxima civitatis* allegedly took up arms: if only, says Cicero, all *nobiles* actually *were* like this! His moralising remains guarded (no names named, no details detailed) but the critique has become sharper: the *res publica* *does* suffer from them and they themselves *do* attract *invidia*. This gains point because by the time the speech was given Sulla had abdicated his dictatorship and therefore was no longer the sole source of power in the *res publica*. Technically the *res publica* had been *constituta* (albeit Sulla's new and improved version of the *res publica*) and things were juddering back to normal (albeit, again, Sulla's new and improved version of 'normal'). The victors, Sulla's supporters, the *Pro Sexto Roscio's pars nobilis*, were now in charge, if in some uneasy limbo where they could be portrayed as still checking nervously over their shoulders for the Sulla-proxy Chrysogonus (more likely Sulla himself, currently consul). Their failure to take up their traditional duties was therefore damaging to the *res publica* and to their own reputations. Finally, both Sextus Roscius and the *res publica* are thrown upon the mercy of the judges: if Chrysogonus would not be content with money but insisted on robbing 'us' of 'our' lives (again Roscius serves as the audience stand-in), then the only hope was for the judges to acquit him and thereby save the *res publica* by banishing this all too common cruelty from it (*S. Rosc.* 150, 154). Cicero casts himself as defending 'not only the interests of the defendant but the very survival of Roman civilization' in a 'thematic configuration' that recurs time and again throughout his oratory.<sup>304</sup> The *res publica* might currently be in a bad condition,<sup>305</sup> but if this progression was left unchecked, things would only get worse (*S. Rosc.* 153). Wise men in possession

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<sup>304</sup> Goldenhard 2011: 212.

<sup>305</sup> Cf. similarly Cic. *Quinct.* 93.

of the *auctoritas* and *potestas* possessed by the judges should certainly apply the right remedy to the *res publica* (*S. Rosc.* 154): that is, acquittal.

The *Pro Sexto Roscio* was delivered while Sulla was alive and in the early days of his *res publica constituta*. At the end of 80, Sulla vacated the consulship; in early 78, he died a natural death.<sup>306</sup> The first major challenge came from that year's consul, M. Aemilius Lepidus, who passed laws to distribute grain and recall those still in exile due to the proscriptions; he originally resisted calls to restore tribunician power, but later changed his mind.<sup>307</sup> As proconsul the following year, he led a revolt that was sharply repressed.<sup>308</sup> Agitation over the tribunate led to its replacement on the *cursus honorum* in 75 and the eventual restoration of its full powers in Pompey's consulship in 70;<sup>309</sup> in the same year, another of Sulla's reforms was undone: juries would in future be chosen equally from senators, *equites* and *tribune aerarii*.<sup>310</sup> The law was sponsored by 'a *nobilissimus*, L. Aurelius Cotta, a praetor in 70 and brother of the consuls of 75 and 74, and, by all indication, a man similarly committed to the cause of the conservatives and held in similar high regard by the conservative *principes* of the senate', whose future political career 'shows continuing *gratia* in high places and consistent conservatism'.<sup>311</sup> Furthermore, although Pompey was involved in the restoration of the tribunes this year, his paw-prints are missing from the judicial legislation. Mitchell argues that since the judiciary law was 'conceived and sponsored by a loyal adherent of the views and ideals of the traditionalists' and 'enacted with no recorded opposition from conservative leaders', it indicates the (Sullan) elite 'implementing a widely desired reform, continuing a sustained policy of compromise and conciliation receptive even to major change under threat of its imposition, with more drastic consequences, by public pressure or demagogic dissidents'.<sup>312</sup>

Mitchell discusses the issue in such detail because the record is clouded by Cicero's attempts to link the trial of Verres in 70 to judicial reform by 'presenting it as a vital test of senatorial integrity and a golden opportunity for the jury of senators to vindicate their order and stave off the impending threat to the senate's monopoly

<sup>306</sup> App. *BC* 1.104-5, Plut. *Sull.* 37; Mitchell 1979: 81, Keaveney 1982: 201-13.

<sup>307</sup> Weigel 1992: 17.

<sup>308</sup> Weigel 1992: 12-19.

<sup>309</sup> Stockton 1973: 209-12, Keaveney 1982: 54-61, Vasaly 2009: 101-2.

<sup>310</sup> Mitchell 1979: 131, cf. Mitchell 1979: 130-36 generally.

<sup>311</sup> Mitchell 1979: 131.

<sup>312</sup> Mitchell 1979: 132.

of the courts'.<sup>313</sup> How the prosecution and the judiciary issue actually intersected, if at all, is hard to tell. Mitchell argues that the trial was probably a non-event as far as the political narrative of the late seventies is concerned,<sup>314</sup> and is followed by Butler, who suggests that 'this is precisely what leads Cicero to claim credit, *ex post facto*, for a "reform" that was not really a source of great friction between the orders'.<sup>315</sup> The tactic had additional attractions. Prosecutions were generally left to young men, whereas Cicero was now thirty-six and an aedile-elect,<sup>316</sup> connecting the prosecution of Verres with the judiciary issue defused potential accusations that Cicero was misusing his *dignitas*, 'for it likewise allowed Cicero as prosecutor to submerge the image of potential destroyer of the life of a fellow citizen beneath the more sympathetic persona of defender of the interests of the Roman people'.<sup>317</sup> Consequently the focus of the *Verrines* is not the condition of the *res publica*, although this is certainly not perfect<sup>318</sup> and Cicero justifies his decision to prosecute someone with whom he had no personal *inimicitia* by reference to the *rei publicae causa*.<sup>319</sup> Rather, the *populus Romanus* is said to miss nothing in the *res publica* so

<sup>313</sup> Mitchell 1979: 134; he points out that the issue at stake in the trial ('the senate's capacity to convict a notoriously guilty but wealthy and influential associate') was 'peripheral to the central issue underlying the campaign for jury reform', which 'was part of a long-standing conflict surrounding the criminal courts in late republican politics, a conflict whose principal and persistent concern was not unjust acquittals such as Verres might procure through political camaraderie or plain purchase, but unjust convictions and threats to the lives and liberties of citizens through judicial oppression' (135). For overviews of the trial see Mitchell 1986: 1-13, Frazel 2004: 129-33; for an overview of the *Verrines* see Vasaly 2002: 87-103. For aspects of the trial and Cicero's *Verrines* generally, cf. Marshall 1967, Alexander 1976, Mitchell 1979: 107-9, 133-49, Steel 2001: 22-47 (on the characterisation of Verres), 2004 (reconsidering Verres's activities at Lampsacus), Butler 2002: 26-70 (on Cicero's use of written evidence in the trial), 71-84 (on the publication of the speeches), Frazel 2004: 129-33; Frazel 2004 (the composition and publication of the speeches); Vasaly 2009: 116-8 (how the political elements of the speech further Cicero's persuasive case), Gildenhart 2011: 69-73, 90-91 (characterisation in the speeches), 114-6 (*furor*).

<sup>314</sup> Mitchell 1979: 133; *contra* for example Ward 1970: 61 ('Pompey found it necessary to weaken the Metellan *factio* and the *dominatio* of the *pauci*. Because they supported Verres, his trial was an important battle in Pompey's struggle with his enemies'), Griffin 1973: 204-5 (Cicero was channelling Pompey's preferred take on judicial reform), Stockton 1973: 216-8 ('Cicero names no names – he had no need to. But nothing in what he or anybody else tells us can support the conclusion that Pompey was not in 70 keeping the public promise he had made the previous year and putting his own weight behind the moves for judicial reform', 217), Vasaly 2009 (Cicero's 'connection in the trial of the issues of extortion abroad and judicial corruption at home would have provided fuel for popular conational orators in the run-up that summer to promulgation of the jury reform bill', 114).

<sup>315</sup> Butler 2002: 78. Vasaly 2009, however, puts the trial in context in a year of spectacular triumphs, ovations and public banquets (108-110) and argues that while the prosecution of Verres could not compete with these, it would have been another 'extraordinary spectacle' (110).

<sup>316</sup> Steel 2001: 23.

<sup>317</sup> Vasaly 2009: 118.

<sup>318</sup> Cic. *Div. Caec.* 70, *Ver.* 1.1.27.

<sup>319</sup> Cic. *Div. Caec.* 6, 7, 64, 71, *Ver.* 2.2.1, 2.2.117, 2.3.1, 2.5.188, 2.5.189. In contrast, Verres' behaviour in Sicily was very much against the interests of the *res publica* (*Ver.* 2.2.137, 2.3.21, 2.3.38, 2.3.43, 2.3.120, 2.3.161, 2.3.163, 2.4.20, 2.5.50, 2.5.58, 2.5.77, 2.5.179) and would have been

much as the *vis gravitasque* formerly exhibited by their *iudicia*<sup>320</sup> and the only solution is for men of integrity to take up the cause of *res publica legesque*,<sup>321</sup> as Cicero claims to do by prosecuting Verres,<sup>322</sup> whose acquittal (if acquitted) will bring disgrace on the senatorial jurors and ruin to the *res publica*.<sup>323</sup> Cicero's handling of the case is superlative:

*Ita reieci iudices ut hoc constet, post hunc statum rei publicae quo nunc utimur simili splendore et dignitate consilium nullum fuisse.*

I challenged the judges such that it is agreed there was never such a court of illustrious and acknowledged merit assembled in this state of the *res publica* which we now enjoy. (Cic. *Ver.* 2.1.18.)

Thanks to Sulla, this claim was not an especially impressive one. Although Cicero's vagueness gives the impression of referring to some dim and misty past, *hic status* indicates Sulla's *res publica constituta* of 82–1.<sup>324</sup> Consequently the *splendor* and *dignitas* of Cicero's carefully selected *consilium* could compete only with the senatorial jurors of the previous decade.

In 70, Sulla's restructuring of the public sphere therefore still stood as a fixed reference point and those contemporaries who outlived him were arguing over which elements of his *res publica constituta* to retain. That Sulla himself, the *civis* who compelled his fellow citizens to accept his *ius* and *mores* through *imperium* and *poena* rather than reasoned argument, remained a difficult figure is evident from Cicero's discomfort on the subject of the civil wars.<sup>325</sup> In 83, when Sulla had been fighting in Asia, Verres had become quaestor in Rome and was allotted to the Cinnan proconsul Cn. Papirius Carbo. Instead of either doing his duty as Carbo's quaestor or standing aside, Verres had first taken up his post and the allotted public funds, and then defected to Sulla, allegedly taking the money with him.<sup>326</sup> This did

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looked upon with great horror in its old days (*Ver.* 2.5.45-6).

<sup>320</sup> Cic. *Div. Caec.* 8.

<sup>321</sup> Cic. *Div. Caec.* 9, *Ver.* 1.1.1, 1.1.3, 2.1.20, 2.3.162, 2.5.173.

<sup>322</sup> Cic. *Ver.* 1.1.34, 1.1.36, 2.1.4, 2.1.5, 2.1.15, 2.1.21.

<sup>323</sup> Cic. *Ver.* 2.1.20, 2.3.207; cf. Vasaly 2009: 116.

<sup>324</sup> Mitchell 1986: 169.

<sup>325</sup> Cic. *Ver.* 2.1.34-43.

<sup>326</sup> Cic. *Ver.* 2.1.34.

not indicate a desire to defend the *nobilitas* or any particular zeal for their party (*studio partium*); rather, according to Cicero, it was self-motivated: Verres robbed consul, army and province and scarpered to Sulla to avoid the consequences,<sup>327</sup> a move that reflected only badly upon him. The money, as Cicero recaps in a different Verrine, ‘disappeared in the fog and darkness that at that time overspread the whole *res publica*’.<sup>328</sup> Cicero’s problem is clear: when the music stopped, Verres ended up on the right (that is, victorious) side of the civil war. He cannot say Verres should have fought against Sulla, but he can insist on constancy in political sentiment and the duties owed to a commanding officer, a matter of principle that must be upheld lest everything turn to chaos.<sup>329</sup> Sulla himself allegedly kept Verres at arm’s length; his generous treatment of Verres during the proscriptions was ‘the fee due to a traitor, not the trust due to a friend’.<sup>330</sup> This principle should outweigh any goodwill Verres might have gained by deserting the dead Cn. Carbo from those who still hate the latter.<sup>331</sup> Cicero’s focus on principle submerges the war and its participants as much as possible:

*Erat tum dissensio civium, de qua nihil sum dicturus quid sentire debueris: unum hoc dico, in eius modi tempore ac sorte statuere te debuisse utrum malles sentire atque defendere.*

There was then conflict among citizens; I shall say nothing about what you should have felt about it; I say only that at such a time, and the lot having fallen as it did, you ought to have made up your mind which side to take and support. (Cic. *Ver.* 2.1.34.)

Sulla’s cause is still that of the *nobilitas*, but this is not stressed; other people might say that Carbo was a ‘bad citizen, wicked consul and a seditious person’,<sup>332</sup> but Cicero himself has nothing to say about the man or his cause. There are two sides to the civil wars now and Cicero makes no explicit value judgements between them.

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<sup>327</sup> Cic. *Ver.* 2.1.35.

<sup>328</sup> Cic. *Ver.* 2.3.177, *illa omnis pecunia latuit in illa caligine ac tenebris quae totam rem publicam tum occupant*; compare *S. Rosc.* 91 *supra*.

<sup>329</sup> Cic. *Ver.* 2.1. 38, 40.

<sup>330</sup> Cic. *Ver.* 2.1.38, *honorem ut proditori, non ut amico fidem*.

<sup>331</sup> Cic. *Ver.* 2.1.35.

<sup>332</sup> Cic. *Ver.* 2.1.37, *malus civis, improbus consul, seditiosus homo*.

Nor is he willing to talk about the Sullan proscriptions. The whole period was a mess; everyone will be happier if they have to think about it as little as possible; and Verres must not be allowed to use the communal calamity to support his case.<sup>333</sup>

Cicero *does* return to Sulla and the proscriptions in a later *Verrine*:

*Unus adhuc fuit post Romam conditam, – di immortales faxint, ne sit alter! – cui res publica totam se traderet temporibus et malis coacta domesticis, L. Sulla. Hic tantum potuit ut nemo illo invito nec bona nec patriam nec vitam retinere posset; tantum animi habuit ad audaciam ut dicere in contione non dubitaret, bona civium Romanorum cum venderet, se praedam suam vendere. Eius omnis res gestas non solum obtinemus, verum etiam propter maiorum incommodorum et calamitatum metum publica auctoritate defendimus: unum hoc aliquot senatus consultis reprehensum, decretumque est ut, quibus ille de capite dempsisset, ii pecunias in aerarium referrent. Statuit senatus hoc ne illi quidem esse licitum cui concesserat omnia, a populo factarum quaesitarumque rerum summas imminuere.*

There has been one man only since the foundation of Rome – immortal gods grant that there may not be another! – into whose hands the *res publica*, compelled by the times and domestic evils, surrendered itself without reserve, Lucius Sulla. So great was his power that no one, if he willed otherwise, could retain property, fatherland or life. So unshrinking was his audacity that in a *contio* he did not hesitate to say that in selling the goods of Roman citizens he was selling the plunder that belonged to him. All acts of his are not only in force today, but we even defend them by public authority for fear of worse troubles and evils: but this one detail of it has been condemned in several decrees of the senate, which has ordered that the amount of the deductions made by Sulla must be paid by the purchasers into the state treasury. It was the senate's ruling that it was unlawful, even for him to whom nothing had been forbidden, to diminish the total profits thus gained and acquired by the people. (Cic. *Ver.* 2.3.81.)

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<sup>333</sup> Cic. *Ver.* 2.1.43.

Jupiter-Sulla manifests once more, now lacking Jupiter's distracting glamour. The *res publica* had been compelled by unspecified difficulties to hand itself over to Sulla, who had the power to expropriate property, drive people into exile and put people to death, and who explicitly treated the property of Roman citizens as private plunder. The degree of initiative attributed to the *res publica* is telling: rather than assigning responsibility (and blame) to the individuals who marched armies against their political opponents and took control of the political sphere by force, Cicero locates responsibility for Sulla's takeover of Roman politics within the Roman political sphere itself. By casting the *res publica* as an entity in its own right that could 'wholly surrender itself' (*totam se traderet*) to Sulla, albeit acting under the compulsion of 'the times and domestic evils' (*temporibus et malis coacta domesticis*), the issue of what those evils were and who was to blame for them could be carefully ignored. It is hard to interpret this autonomous *res publica* as anything other than a colourful rhetorical fiction, since 'the public business' is too limited to fit the context and 'the structured political sphere' (functioning as the metonymical form of those individuals who moved within it) had resisted Sulla's return. The point was not to deceive Cicero's listeners, who knew what those evils had been and must have had their own opinions on the appropriate assignment of guilt, but rather to avoid kicking that particular political wasps' nest in a way that would help neither the case at hand nor Cicero's future career. Cicero had to account for Sulla's unique settlement, which he claims is retained and defended out of fear that worse things might result from changing anything, except in one relevant respect, that of short-changing the treasury by selling proscribed property cheaply to Sulla's friends. The relevance to Verres is the accusation that he likewise short-changed the treasury:

*Illum viris fortissimis iudicarunt patres conscripti remittere de summa non potuisse: te mulieri deterrimae recte remisisse senatores iudicabunt? Ille, de quo legem populus Romanus iusserat ut ipsius voluntas ei posset esse pro lege, tamen in hoc uno genere veterum religione legum reprehenditur: tu, qui omnibus legibus implicatus tenebare, libidinem tuam tibi pro lege esse voluisti? In illo reprehenditur, quod ex ea pecunia remiserit quam ipse quaesierat: tibi concedetur, qui de capite vectigalium populi Romani remisisti?*

The conscript fathers, Verres, held that Sulla was not entitled to make such deductions in favour of Roman gentlemen; and will these senators hold that you were entitled to make them in favour of a worthless woman? Sulla, for whose benefit the Roman people passed a law that gave his own will and pleasure the force of law, is nevertheless condemned, in this single matter, by the solemn sanction of the laws of old; and yet have you, a man liable to punishment for breaking every law in the world, deliberately chosen to give the force of law to your own wanton will and pleasure? Sulla is condemned for allowing deductions from a revenue that he himself gained for us: shall you be acquitted for allowing deductions from the yield of the taxes imposed by the Roman people? (Cic. *Ver.* 2.3.82.)

Sulla's sinister power is stressed to magnify this sole exception to his omnipotence, and correspondingly the magnitude of Verres's misbehaviour. If even *Sulla* was not permitted to get away with this, how could Verres hope to be acquitted? The unsavoury details of said revenue source are delicately omitted, despite that comment about *bona civium/praeda sua*, much as the civil war is only alluded to: Sulla did not claim the *res publica* (or reclaim *imperium*) by force of arms, but rather, euphemistically, it was driven to surrender itself to him.

Now that Sulla was dead and burned, there was no need to flatter him by comparisons to Jupiter or to hide unease with the unprecedented power he achieved and the settlement he bequeathed. Nonetheless, Cicero remained uncomfortable about the wars that had resulted in Sulla's dictatorial power. His attitude in the *Verrines* suggests a selective communal memory, or perhaps the attempt to create one: people should forget the messy past, call the civil wars a shared nightmare, throw a veil of shadow over the worst details, defend the current (Sullan) *status rei publicae* for fear of what might happen if it dissolved, and invoke traditional principles in order to shut down partisan politics. To some extent, this reflects the awkward truth that Verres had been an active participant in the Sullan takeover of the *res publica*. The prosecution of a former Marian might have resulted in a rather different rhetorical colouring, and Hortensius's defence of Verres, had he replied to this speech, could well have played on the partisan, anti-Carbo theme that Cicero so carefully rejects. But such a prosecution would require there to be some former Marians in public life, and given that the proscriptions had removed the major ones

and the sons of the proscribed were excluded from public life until Caesar removed the bar on their participation in 49,<sup>334</sup> for the next few decades the splits were generally *Sullani* against *Sullani*. Even Caesar, for all his vaunted Marianism, married Pompeia after Cornelia's death – a granddaughter of Sulla.<sup>335</sup> The *res publica constituta* was Sullan both in structure (even if bits of its structure were dismantled) and because those structures were inhabited by adherents of Sulla's victorious party or by those who could accommodate themselves to Sulla's victory. Reacting to Sulla's *res publica constituta*, Cicero therefore supplies the final perspective on *res publica* for this study: *res publica* as rhetorical fiction, used here to disguise the disagreeable fact that *hic status rei publicae* existed not because of the accreted action of amassed *maiores* but rather thanks to the controversial behaviour of one specific person, Sulla, aided and abetted by the senior figures currently moving within the structured political sphere.

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<sup>334</sup> Plut. *Caes.* 37, Dio 41.18.

<sup>335</sup> Suet. *Jul.* 6.

## 4. RES PUBLICA IPSA

So far, I have used Cicero's testimony to illuminate specific aspects of the discourse concerning *res publica*. This chapter takes a more systematic approach to his *corpus* from his consulship in 63 to the middle of the next decade, where his manoeuvring on the field of available positions on *res publica* shows how these various perspectives could work together and warp into interesting shapes. First, I discuss *De Lege Agraria* 1–3 and *Pro Rabirio Perduellionis*, in which Cicero engages with the challenges presented by proposed agrarian legislation and the trial of Rullus by staking out his position as a *popularis* consul, defining *res publica* in terms of political structures for a contional audience, and casting the *SCU* as a key pillar of the *res publica* (4.1). Next, I examine how Cicero used the *Catilinarians* to construct the rhetorical fiction of a united *res publica* that expels Catiline from its midst (4.2). Cicero's dangerous triumphalism on the topic of his consulship (4.3) gave way to defensiveness after his brief exile in 58–7, which manifests in increasingly strained rhetoric in the mid-50s, where Cicero constructs a personal relationship between himself and the personified *res publica* (4.4–5).

### 4.1 WARS AGAINST DISORDER

At the start of his consulship in 63, Cicero faced two difficult incidents: an agrarian law proposed by the tribune P. Servilius Rullus,<sup>336</sup> and the trial of C. Rabirius for the obsolete charge of *perduellio* by another tribune, T. Labienus (with L. Caesar and C. Julius Caesar as duumvirs), on the grounds of Rabirius's involvement in the death of Saturninus thirty-seven years earlier.<sup>337</sup> The agrarian law seems to have addressed a practical issue, the needs of Pompey's impending army of veterans, and involved a *popularis* staple, land redistribution, while the trial of Rabirius is commonly read as

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<sup>336</sup> Cf. Sumner 1966: 581-2, Stockton 1971: 86-7, Mitchell 1979: 184-205, Lintott 1992: 56-7, 2010: 141, Mouritsen 2001: 54-5 (who downplays the practical political effect of Cicero's rhetoric), Seager 2002: 68-9; for land redistribution as a *popularis* staple, cf. Seager 1972b: 332 and 2002: 68-9, Lintott 1992: 44-58; on the formulation of the law itself and what Cicero's treatment of it shows about public discussions on proposed laws in the late Republic, cf. Williamson 1990; on the arrangement of *Agr. 2*, cf. Vasaly 1988.

<sup>337</sup> Cf. Tyrrell 1978's commentary on the speech, especially 37-47; also Tyrell 1973, Stockton 1971: 92, Mitchell 1979: 205-19, Cape 2002: 130-1, Seager 2002: 69-70, Lintott 2008: 120-5.

a warning shot across the bows and a symptom of uneasy times. It has been taken as a direct attack on the use of the *senatus consultum ultimum* as a political weapon.<sup>338</sup> Unusually, all ten tribunes of that year are said to have been identified as *populares*.<sup>339</sup>

In all his speeches from the first half of 63, especially the contional second and third speeches on the agrarian law, Cicero makes a well-known claim to be the ‘true’ *popularis* in comparison to his supposedly *popularis* opponents. As Seager observes, ‘One of Cicero’s favourite ways of attacking a *popularis* opponent is to play on the derivation of *popularis* from *populus*. In its simplest form this argument runs: “X cannot be *popularis*, because he neglects or opposes the interests of the people.”’<sup>340</sup> Cicero’s strategy may be usefully compared to P. Scipio Nasica’s consular response to the difficult tribune of 138, discussed above in section 2.4, since the situation was broadly similar: it was shaping up to be a difficult year, the tribunes were on manoeuvres, and the consul was in the awkward position of denying the *populus* something it wanted. It is impossible to recover whatever arguments Nasica may have made before he was backed into the corner that his consular *auctoritas* got him out of, but it seems reasonable to assume that he was less conciliatory than Cicero. In both cases, however, the underlying reasoning is the same: although the issue at stake might seem congenial to the *populus*, it was not in the broader interests of the *res publica*. Because Cicero was the consul, as Nasica had been, it was his job to explain this to the potentially resistant *populus*.

Cicero is emphatic that both Rullus’s agrarian legislation and the prosecution of Rabirius are politically important and potentially detrimental moves, a claim that entitles Cicero, as consul, to exploit to the full his consular duty to administer the *res publica* when he comments on Rullus’s proposed legislation and when he defends Rabirius. Especially in the senate, Cicero accuses Rullus of undermining the *res publica*: ‘You have given hope to the wicked and inspired the good with fear, you have banished credit from the forum and dignity from the *res publica*’.<sup>341</sup> The *res*

<sup>338</sup> Tyrrell 1973: 285, 1978: 35, Stockton 1971: 95, Mitchell 1971: 52, 1979: 207.

<sup>339</sup> Stockton 1971: 96-7, Mitchell 1979: 183.

<sup>340</sup> Seager 1972b: 333; cf. Béranger 1972: 737, Tyrrell 1973: 295-7 (on Cicero’s appeal to *popularis* tropes in the *Pro Rabirio*), Cape 2002: 121-129, Hopwood 2007: 77-8, Tan 2008: 165, van der Blom 2010: 104, Lintott 2008: 137-42, Robb 2010: 46, 73-4, Gildenhard 2011: 160, Duplá 2011: 291, Arena 2012: 231.

<sup>341</sup> Cic. *Agr.* 1.23, *spem improbis ostendistis, timorem bonis iniecastis, fidem de foro, dignitatem de re publica sustulistis*; cf. also 1.2, 1.22, 2.13.

*publica*, he says, will be carved up by Rullus's agrarian legislation;<sup>342</sup> Rullus aims to appropriate revenues belonging to the *res publica*<sup>343</sup> and if he gets his own way, the senate will lose out:

*Quid enim existimatis integrum vobis in re publica fore aut in vestra libertate ac dignitate retinenda, cum Rullus atque ei quos multo magis quam Rullum timetis cum omni egentium atque improborum manu, cum omnibus copiis, cum omni argento et auro Capuam et urbis circa Capuam occuparint?*

For what do you think will be left to you unimpaired in the *res publica* or in the maintenance of your freedom and dignity, after Rullus and those whom you fear much more than Rullus, with all his band of beggars and scoundrels, with all his forces, with all his silver and gold, have occupied Capua and the surrounding cities? (Cic. *Agr.* 1.22.)

In the senate, Cicero argues against Rullus as an elite insider debating with other elite insiders about the best way to manage Rome's public property and business. The reasoning that underpins his position can be left implicit, because he can take it for granted that his audience is attuned to his perspective, even if they disagree with his account of Rullus's bill. Although Cicero stands in the position of manager to the *res publica*, and although it is this meaning of *res publica* as the object of (Cicero's) management that is foregrounded in his protests about agrarian redistribution and appropriated revenues, his claim that the proposed decemvirs would leave the senate nothing 'for you in the *res publica*' invokes *res publica* as political space, an arena within which the senate has specific areas of responsibility on which Rullus's decemvirs will encroach. This turns defeating Rullus's legislation into a matter of public policy, all the more important because the problem is not just Rullus but the dangerous condition of the *res publica* as a whole; dark hints are dropped about its hidden wounds.<sup>344</sup> And who better to defeat such dangerous legislation than the consul, to whom responsibility for the *res publica* has just been handed? As Cicero promises the senate,

<sup>342</sup> Cic. *Agr.* 1.6, 1.18, 2.81; cf. Vasaly 1988: 410-11.

<sup>343</sup> Cic. *Agr.* 1.21, 2.15, 2.48, 2.70, 2.99, 3.5.

<sup>344</sup> Cic. *Agr.* 1.26, 2.8, 2.90, 3.4.

*Sic me in hoc magistratu geram, patres conscripti, ut possim tribunum plebis rei publicae iratum coercere, mihi iratum contemnere.*

I will so conduct myself in this magistracy, conscript fathers, that I shall be able to control an angry tribune of the plebs for the *res publica*, and for myself, scorn his anger. (Cic. *Agr.* 1.26.<sup>345</sup>)

Cicero claims to subordinate his personal interests to his public office. On the one hand, he expresses his willingness as consul to use his powers of *coercitio* on behalf of the *res publica*; on the other hand, as Marcus Tullius Cicero, esteemed orator and public-spirited gentleman with a bright *consularis* future ahead, he scorns any attacks the tribunes might make on him personally.

There is a marked shift of emphasis between *De Lege Agraria* 1, where Cicero assures the senate that he will stand up for them, and the conitional *De Lege Agraria* 2, where he stresses instead how, as a *homo novus* consul, his interests lie with the *populus*. Cicero can scare the senators by claiming that Rullus (as a good radical tribune) wants to take their position in the *res publica* away from them, and he can soothe them by insisting that Rullus's claims to be *popularis* are false, since the *populus* is not interested in what Rullus has to offer. Thus:

*Errastis, Rulle, vehementer et tu et non nulli conlegae tui qui sperastis vos contra consulem veritate, non ostentatione popularem posse in evertenda re publica populares existimari.*

You erred, Rullus, you and some of your colleagues, in hoping that by opposing a consul who was popular in reality and not in pretence, you could be considered popular in overthrowing the *res publica*. (Cic. *Agr.* 1.23.)

It is easy enough to tell the senate this; *in contione*, Cicero has to take a slightly more elaborate tack. His election to the consulship *suo anno* and as *homo novus*

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<sup>345</sup> Cf. also Cic. *Agr.* 1.22.

becomes a sign of special favour from the *populus*,<sup>346</sup> which both flatters him and places him under a special burden of responsibility for upholding the dignity of the consulship: any mistakes on Cicero's part may cause the *populus* to be blamed for electing him.<sup>347</sup> Rather than bluntly informing the *populus* of his true *popularis* status, Cicero promises that he will be a *popularis* consul;<sup>348</sup> after all, what do people like better than *pax*, *libertas* and *otium*? So how could his dedication to maintaining the status quo not be *popularis*?<sup>349</sup> Cicero stresses his *popularis* intentions to the *populus* precisely because this is not a quality often associated with consuls:

*Non sum autem ego is consul qui, ut plerique, nefas esse arbitrer Gracchos laudare, quorum consiliis, sapientia, legibus multas esse video rei publicae partis constitutas.*

I am not one of those consuls who, like the majority, think it a crime to praise the Gracchi, by whose advice, wisdom, and laws I see that many departments of the *res publica* were set in order. (Cic. *Agr.* 2.10.)

Valerius Maximus's account of Nasicus's *contio* in 138 suggests that the consuls were perceived as particularly non-*popularis* not just because of spectacular incidents, such as the action taken by L. Opimius against Gaius Gracchus or by Marius against Saturninus, but also because, as the most senior magistrates, they were more likely to be responsible for rejecting *popularis* proposals and levying troops for unpopular wars. Cicero's distinction here between himself and the majority of sternly non-*popularis* consuls (even though he too is a consul arguing against a *popularis* tribune's proposal) looks like a case of having his cake and eating it. His position rests entirely on his magistracy; he speaks as a public figure entrusted with serious responsibilities at a moment of unease and concern:

*Ego qualem Kalendis Ianuariis acceperim rem publicam, Quirites, intellego, plenam sollicitudinis, plenam timoris.*

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<sup>346</sup> Cic. *Agr.* 2.1-4.

<sup>347</sup> Cic. *Agr.* 2.5-6.

<sup>348</sup> Cic. *Agr.* 2.6-7.

<sup>349</sup> Cic. *Agr.* 2.9.

I am aware, Romans, what the condition of the *res publica* was when I received it on the Kalends of January: it was full of anxiety, full of fear. (Cic. *Agr.* 2.8.<sup>350</sup>)

In this speech, however, Cicero credits the *populus* with having entrusted him with the *res publica*; that is, he casts the *res publica* as something that belongs to the *populus* and for which the *populus* selects administrators.<sup>351</sup> (A comparison with the more radical Gaius Gracchus, who dispensed with the administrators altogether, indicates the spectrum of positions at play.<sup>352</sup>) The consul's responsibility for safeguarding the *res publica* is stressed, along with the point that a *homo novus* consul should be particularly painstaking in this respect, having been made consul 'not in cradles but on the Campus'.<sup>353</sup> As a responsible consul, Cicero makes every effort to come to some consensual arrangement with Rullus, 'for I thought that, since we should have to fulfil magisterial functions in the same year, there ought to be some bond of union between us, for administering the *res publica* well'.<sup>354</sup> Unfortunately, since Rullus is not a responsible tribune, he fails.<sup>355</sup> He is therefore at liberty to deny Rullus's claim to be a *popularis* tribune: the law will destroy *libertas*,<sup>356</sup> raise up kings,<sup>357</sup> deprive people of their vote,<sup>358</sup> attack Pompey, that guardian of popular liberty,<sup>359</sup> remove the tribunician veto<sup>360</sup> and benefit the Sullan *possessores*<sup>361</sup> – besides all of which, Rullus was rude about the urban plebs in the senate.<sup>362</sup> In short, Rullus is a danger to the *populus* (because he endangers their *res publica*) and a bad man, despite being a tribune who self-identifies as *popularis*.

<sup>350</sup> Cf. also Cic. *Agr.* 2.100.

<sup>351</sup> Cic. *Agr.* 2.1-7; compare also Cic. *Planc.* 62, 'This is how the Roman people selects its magistrates, for they are, as it were, stewards of the *res publica*' (*sic populus Romanus deligit magistratus quasi rei publicae vilicos*).

<sup>352</sup> Cf. section 2.4 above.

<sup>353</sup> Cic. *Agr.* 2.100, *non in cunabulis, sed in campo*; cf. also 2.77.

<sup>354</sup> Cic. *Agr.* 2.11, *quoniam eodem anno gerendi nobis essent magistratus, esse aliquam oportere inter nos rei publicae bene administrandae societatem*.

<sup>355</sup> Cic. *Agr.* 2.12-13.

<sup>356</sup> Cic. *Agr.* 2.15-17, 24, 25, 29, 75; cf. Vasaly 1988: 425-6.

<sup>357</sup> Cic. *Agr.* 2.15-16, 20, 24, 29, 32, 33, 35.

<sup>358</sup> Cic. *Agr.* 2.17-18.

<sup>359</sup> Cic. *Agr.* 2.23-5, 49-50, 52-4, 60-62, 3.60.

<sup>360</sup> Cic. *Agr.* 2.30.

<sup>361</sup> Cic. *Agr.* 2.68-8, 3.8-14.

<sup>362</sup> Cic. *Agr.* 2.70. Cicero claims that Rullus wanted to drain off the urban plebs 'as if sewage (*sentina*)', a slur later reused for the urban plebs (*sentina urbis*) by Cicero himself in a famous, or at least notorious, letter, *ad Att.* 1.19.4, cf. Mouritsen 2001: 14, n.47.

Cicero is therefore obliged to take action against the proposed law, both as consul and as the true *popularis* of the two of them.

Cicero supports his tendentious claim to be a *popularis* consul by going into unusually explicit detail in *De Lege Agraria* 1–2 on just what constitutes the Roman *res publica*. This is not a neutral or comprehensive definition of “what *res publica* means” (or even “what the Roman *res publica* was at this historical moment”): rather, Cicero stakes out a rhetorically convenient position from the spectrum of available meanings in order to explain just what Rullus’s proposals will ruin. In the first place, this *res publica* has a clear geographical location. This is more interesting than it might seem, since, as Suerbaum points out, ‘Da die *res publica Romana* in der Interessenvertretung des Staatsvolkes besteht und dieses Staatsvolk nicht auf ein bestimmtes Gebiet beschränkt ist, schließt der *res-publica*-Begriff eine territoriale Beschränkung von vornherein aus. Die *res publica Romana* existiert überall da, wo Inhaber der *civitas Romana* leben’.<sup>363</sup> Nonetheless, through the characterisation of Capua as a shadow-Rome and both a historic and a potential rival, Cicero locates Rome’s *res publica* firmly within the city of Rome and its established political institutions. In her study of Cicero’s use of geography in these speeches, Vasaly shows how Cicero names locations in order to create the impression that Rome was surrounded by enemies, for which a focal point of antagonism was required, a role allotted to Capua.<sup>364</sup> Capua is where Cicero claims Rullus wants to plant a colony, to which his response is hyperbolic:

*Iam omnis omnium tolletur error, iam aperte ostendent sibi nomen huius rei publicae, sedem urbis atque imperi, denique hoc templum Iovis Optimi Maximi atque hanc arcem omnium gentium displicere.*

Now every chance of mistake on every side shall be removed; now they shall openly show that the name of this *res publica*, the seat of our city and empire, lastly that this temple of Jupiter best and greatest and this citadel of all nations meets with their disapproval. (Cic. *Agr.* 1.18.)

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<sup>363</sup> Suerbaum 1977: 14-15.

<sup>364</sup> Vasaly 1988: 418, 1993: 222 (on Cicero’s use of geography in *Agr.* 2 especially).

By colonising Capua, the decemvirs will demonstrate their contempt for Rome, since,

*Maiores nostri Capua magistratus, senatum, consilium commune, omnia denique insignia rei publicae sustulerunt, neque aliud quicquam in urbe nisi inane nomen Capuae reliquerunt, non crudelitate – quid enim illis fuit clementius qui etiam externis hostibus victis sua saepissime reddiderunt? – sed consilio, quod videbant, si quod rei publicae vestigium illis moenibus contineretur, urbem ipsam imperio domicilium praebere posse; vos haec, nisi evertere rem publicam cuperetis ac vobis novam dominationem comparare, credo, quam pernicioosa essent non videretis.*

In Capua our ancestors abolished the magistrates, the senate, the popular assembly and all the marks of *res publica*, leaving nothing else in the city except the empty name of Capua, not out of cruelty (for who were ever more lenient than those who frequently returned their property even to enemies outside Italy who had been conquered by them?), but from prudence; for they saw that if any trace of a *res publica* should still be contained within those walls, the very city itself might provide a dwelling-place for empire; you, unless you desired to overthrow the *res publica* and furnish a new tyranny for yourselves, would not, I imagine, see how that was wholly disastrous. (Cic. *Agr.* 1.19.)

Capua is currently a *populus* without a *res publica*. Because the *maiores* saw Capua as a potential rival to Rome, they rendered it incapable of *imperium* by removing the institutions through which the citizens of Capua governed themselves; it has no magistrates, senate or popular council, and consequently can claim no *res publica* either. Capua had wavered during the Samnite Wars and its autonomy was consequently infringed upon after 318,<sup>365</sup> it later defected to Hannibal and was retaken in the Second Battle of Capua in 211,<sup>366</sup> following which most of Capua's territory was subsumed into Roman *ager publicus*, its inhabitants lost their civic

<sup>365</sup> Salmon 1982: 165-8, Fronda 2007: 94; cf. Salmon 1967: 84-91 (on the Samnian *meddices*), 195-279 (on the Samnite Wars).

<sup>366</sup> Frederiksen 1959: 82, Fronda 2007.

rights and its civic institutions were abolished. From 123 the prefects were four elected Roman magistrates; to some extent, the lack of indigenous organisation was made up by grouping the inhabitants around important shrines, especially one to Diana.<sup>367</sup> Capua survived as a city and the surviving Capuans continued to live there, but they no longer posed a threat to the *populus Romanus*, having lost both their autonomy and their capacity to take political initiative.<sup>368</sup> (In comparison, Cicero's home municipality of Arpinum was certainly not independent of Rome but retained its own *res publica*, as a letter to Brutus about appointing local magistrates to manage that *res publica* shows.<sup>369</sup>) Cicero's reasoning seems to be that a Roman colony in Capua would be equipped with the full set of political institutions that were standard for such a colony,<sup>370</sup> that is, it would be not just a group of people cohabiting in the same city, but a full-fledged *civitas* joined by *consensus iuris et utilitatis communio* and managing its own *res publica*. By creating such institutions in Capua, or at least in the vicinity of Capua, Rullus would reintroduce the capacity for independent political decision-making in the region and thereby set up the colonised Capua as a potential rival for Rome once again.

The *insignia* of *res publica* here are political institutions: this is *res publica* as political space defined by political structures, and it is the possession of such a *res publica* that confers the capacity for communal political activity on a *civitas*. It is not surprising to find Cicero expressing such an idea in the senate, which is prominent among the political structures said to mark a *res publica*, but it is striking that the same reasoning is reprised at somewhat greater length at *Agr.* 2.76–98, where Cicero is obliged to discourage the *populus* from thinking that colonising Capua will benefit them.<sup>371</sup> His explanation is that a colony in Capua will be a garrison of ne'er-dowells rather than a settlement of good, honest people like his audience (2.77), and that Rullus positively intends to transfer 'your' *res publica* to this Capuan garrison, contrary to the wishes of the *maiores* (2.87), who had removed territory, magistrates, senate and *publicum consilium* from the city, leaving not even a death-mask (*imago*) of a *res publica* (2.88). Indeed,

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<sup>367</sup> Frederiksen 1959: 86-94.

<sup>368</sup> Frederiksen 1959: 82, Fronda 2007: 90-1.

<sup>369</sup> Cic. *Fam.* 13.11.3.

<sup>370</sup> Salmon 1969: 14, 85-6, 1982: 52.

<sup>371</sup> On the characterisation of Capua in this speech cf. Vasaly 1988: 419-24.

*si maiores nostri existimassent quemquam in tam inlustri imperio et tam praeclara populi Romani disciplina <M.> Bruti aut P. Rulli similem futurum – hos enim nos duos adhuc vidimus qui hanc rem publicam Capuam totam transferre vellent – profecto nomen illius urbis non reliquissent.*

if our ancestors had thought that, in so glorious an empire and in a people so admirably organized as the Romans, there would be found anyone like Marcus Brutus<sup>372</sup> or Publius Rullus (for those are the only two men we have seen as yet who desired to transfer this *res publica* entirely to Capua), they certainly would not have allowed the name of the city to remain. (Cic. *Agr.* 2.89.)

It would be brave to label this “innovation” given the unkind effects of time and source survival on our record of the Roman rhetorical tradition. However, Cicero does seem to be engaging in some interesting positioning when he defines *res publica* before the *populus* in a way that goes beyond “your business that you (elect magistrates to) manage”. Instead he explains the insider’s perspective – that *res publica* is about more than public property (temples, *ager publicus*) and everyday business (law-courts, festivals, wars) – to an audience of presumed political outsiders in order to argue that Rullus’s apparently *popularis* proposals will take their political autonomy away from them and transplant it to the rejuvenated Capuan *civitas*. His argument against Rullus relies on locating this carefully defined *res publica* of the *populus Romanus* (which was by now a much broader category than simply ‘the people living in or very near the city of Rome’) within the political and social institutions and the physical spaces of Rome itself. From this perspective, Rome’s *res publica* is conceived of not as the property and revenues belonging to the *populus Romanus*, or even as the overarching umbrella of Roman *imperium* in Italy and beyond, but rather as a sort of political spider-plant rooted in the city of Rome that sends out shoots that may spring up into newer and greater spider-plants elsewhere. Colonising Capua, and so reintroducing a degree of political autonomy in the region, will therefore set up a challenge to the original *res publica* rather than simply expanding its collection of docile satellite communities. Notably, Cicero puts

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<sup>372</sup> The father of the future assassin; as tribune in 83, he carried a law to set up a Capuan colony (cf. Broughton 1952: 63, 90-1).

little effort into arguing his case as far as the geographical aspect goes; it seems he can take it for granted that the Roman political imagination was fixated on Rome.

The issue of “what constitutes *res publica*” takes a new turn in the *Pro Rabirio Perduellionis*, where *res publica* is bound up with senatorial *auctoritas*, magisterial *imperium* and the *SCU*. Once again, Cicero’s office is the foundation for his case, now the defence of the hapless Rabirius, on the grounds that Rabirius’s case is being used as a political vehicle to undermine all of the aforementioned.<sup>373</sup> (Lintott, for one, considers this a misinterpretation of the case, innocent or otherwise, and that the prosecutor Labienus aimed not so much to attack senatorial authority as ‘to establish what the senate had in fact authorized. Even if the decree [the *SCU*] was a blank cheque, it was still worth making clear that it could only be cashed by those to whom it was made out. Moreover it could be argued that the amount to be drawn was not left completely blank, but limited by a “not more than...” clause’.<sup>374</sup>) According to Cicero, Rabirius admitted to his involvement in the deaths of Saturninus and his followers, if not to their actual murders.<sup>375</sup> Like all good citizens, however, Rabirius had been impelled to action by the *auctoritas* of the senate (expressed in the *SCU*) and the *imperium* of the consuls (morally supported by the *SCU*), and therefore had no real option other than to do what he did.<sup>376</sup> To attack Rabirius is to attack the consuls who gave the order<sup>377</sup> and the other eminent gentlemen who followed them;<sup>378</sup> more than that, it attacks the principle that the senate’s *auctoritas* should be obeyed, especially in times of crisis.<sup>379</sup> In short,

*Agitur enim nihil aliud in hac causa, Quirites, <nisi> ut nullum sit posthac in re publica publicum consilium, nulla bonorum consensus contra improborum furorem et audaciam, nullum extremis rei publicae temporibus perfugium et praesidium salutis.*

<sup>373</sup> Cic. *Rab. Per.* 2; Arena 2012: 205 characterises the case as ‘in the eyes of everyone, an attack on the *auctoritas* of the senate rather than on the person of Rabirius himself’.

<sup>374</sup> Lintott 1999a: 169.

<sup>375</sup> Cic. *Rab. Per.* 18-19.

<sup>376</sup> Cic. *Rab. Per.* 20-24.

<sup>377</sup> Cic. *Rab. Per.* 27-8.

<sup>378</sup> Cic. *Rab. Per.* 21, 26; cf. Tyrrell 1978: 113-121 for concise prosopography on the many listed enemies of Saturninus.

<sup>379</sup> Cic. *Rab. Per.* 3.

For this case, gentlemen, is nothing less than an attempt to secure that there be henceforward no *publicum consilium* in the *res publica*, no concerted action of good citizens against the frenzy and audacity of wicked men, no refuge for the *res publica* in emergencies, no security for its welfare. (Cic. *Rab. Per.* 4.)

That is, the consul's call to arms in the event of a crisis, as defined by the senate through the *SCU*, was a key prop for the *res publica*. Any attack on this principle cried out for consular intervention, which Cicero was happy to provide:

*si est boni consulis, cum cuncta auxilia rei publicae labefactari convellique videat, ferre opem patriae, succurrere saluti fortunisque communibus, implorare civium fidem, suam salutem posteriorem salute communi ducere.*

if it is the duty of a good consul, when he sees everything on which the *res publica* depends being shaken and uprooted, to come to the rescue of the country, to aid it in securing the welfare and the fortunes of the public, to plead for the loyal support of the citizens, and to set the public welfare before his own. (Cic. *Rab. Per.* 3.)

Furthermore, his audience is exhorted to follow their consul into the breach, as Rabirius followed his.<sup>380</sup> Where the *De Lege Agraria* speeches posited magistrates, senate and *commune/publicum consilium* as the constituent parts of a generic *res publica*, the *Pro Rabirio Perduellionis* posits magisterial and popular obedience to senatorial *auctoritas* as a necessary (if not sufficient) pillar of the specifically Roman *res publica*. This is a stronger and more controversial move, even in conjunction with Cicero's renewed claim to be more-*popularis*-than-thou on the grounds that Rabirius has been saved from the non-*popularis* threat of the cross.<sup>381</sup> In general, though, the political claims that Cicero makes in the *Pro Rabirio Perduellionis* are slightly more plausible than those of the *De Lege Agraria*, in the sense that modern scholars generally accept that the prosecution *was* trying to make some sort of point

<sup>380</sup> Cic. *Rab. Per.* 3.

<sup>381</sup> Crucifixion is implied, although according to Tyrrell 1978: 80, 'the *crux*, substituted for the *arbor infelix* of the formula, was intended for scourging, which the audience surely knew'; cf. Cic. *Rab. Per.* 11-17.

about senatorial power and the *SCU*, as opposed to Cicero's claims about Pompey in *De Lege Agraria*, for example,<sup>382</sup> or the accusation that the decemvirs will be kings, or indeed any geographic determinism involving Capua. It is hard to see what other reason Labienus and Caesar might have had for resurrecting an obsolete charge for a forty-year-old, highly politicised murder case. It is also telling that the case was resolved not by Rabirius's acquittal or condemnation, but rather by the praetor, Metellus Celer, lowering the red flag on the Janiculum to summon the *populus* to the Campus Martius, a move as obsolete as the charge of *perduellio*.<sup>383</sup> Just which way popular judgement would fall was left to hang.

## 4.2 THE BRAVE, THE BOLD, THE BATTERED

Cicero had used the agrarian law and the trial to portray himself as the dutiful *homo novus* consul, entrusted with the care of the *res publica* by the *populus Romanus*; to locate said *res publica* firmly within Rome's civic and political spaces by positing Capua as Rome's shadow-self and antithesis, currently lacking a *res publica* in the absence of senate and magistrates; and to uphold the senate's moral authority to recognise a crisis through the *SCU* as a key prop for the *res publica*. The trial of Rabirius especially foreshadowed the defining moment of Cicero's consulship: his epoch-making salvation of Rome's *res publica* from the danger posed by that devil incarnate, Lucius Sergius Catilina.

Substantial scholarly attention has been lavished on the 'Catilinarian Conspiracy' over the years. The most important question remains whether to accept Cicero's claim that a huge, overarching, premeditated conspiracy was in play,<sup>384</sup> or whether the various manifestations of political discontent (Manlius's Etrurian rising, slave rebellions at Capua and Apulia, Catiline's provocative politics, Lentulus and the other conspirators) should be taken as just that: disparate expressions of troubled times tied together only by Cicero's misleading rhetoric.<sup>385</sup> It is not necessary to accept the extreme scepticism of Waters and Seager (tempting though this may be) to want to recover a more nuanced Catiline with political ambitions beyond general

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<sup>382</sup> Sumner 1966: 578.

<sup>383</sup> Tyrell 1973: 297-9.

<sup>384</sup> E.g. Salmon 1935, Phillips 1976, Smith 1966: 105-131, Stockton 1971: 110-142, Mitchell 1979: 232-42.

<sup>385</sup> Waters 1970, Seager 1973.

destruction, as Allen does,<sup>386</sup> or to feel with Yavetz that ‘it is possible that the importance of Catiline’s conspiracy is over-estimated by some modern scholars’<sup>387</sup> (a suggestion characterised by Waters as ‘a magnificent understatement’<sup>388</sup>), or to think that ‘the threat of Catiline was both exacerbated and even partly created by Cicero, in rhetoric and in actual fact, first in order to win election to the consulate as a new man who faced fiercesome odds, and then to appear during that very same consulate as the savior of Rome in an hour of extreme crisis’, and that ‘the illegal execution of the Catilinarians in December 63 was the not altogether unexpected climax of several years of Cicero’s emotional and dramatic pronouncements about internal enemies of the Roman state’.<sup>389</sup> Indeed, it could be argued both that there was no great overarching conspiracy *and* that Cicero sincerely believed one existed; it is easy to be wrong in good faith, especially in politics, and Cicero would not be the first politician to get carried away by his own rhetoric. In any case, whether or not there was a Conspiracy deserving of the capital letter, it is important for any reading of the *First Catilinarian* that when this speech was delivered on 7 November 63, no one other than Cicero really seems to have thought so.<sup>390</sup> Catiline’s rhetoric could be inflammatory without being revolutionary (likewise involvement in public violence at the elections);<sup>391</sup> the elections were postponed, but the senate took no action against Catiline, who was not debarred from standing in them;<sup>392</sup> and the *SCU*, which Cicero implies was passed against Catiline,<sup>393</sup> was actually passed in reaction to news of Manlius’s uprising and Crassus’s bundle of anonymous threatening letters.<sup>394</sup> In other words, there was certainly a crisis on hand, but it was not yet universally (if even widely) perceived as Catilinarian – except, of course, by Cicero. To say this undermines the melodrama of *Cat. 1* is to commit Waters’ magnificent understatement: even the triumphalism of *Cat. 2* is misleading, since the senate was more cautious than the consul and did not decree Catiline a *hostis* until

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<sup>386</sup> Allen 1938.

<sup>387</sup> Yavetz 1963: 496.

<sup>388</sup> Waters 1970: 195.

<sup>389</sup> Flower 2006: 101.

<sup>390</sup> Mitchell 1979: 235, Batstone 1994: 211-15, 217, 259-60.

<sup>391</sup> Genovese 1974: 175.

<sup>392</sup> Stockton 1971: 106, ‘Reading between the lines of the *pro Murena* discloses that Cicero received a rebuff from the Senate, which was not impressed by what he had to say, and took no action’.

<sup>393</sup> Cic. *Cat.* 1.3, *habemus senatus consultum in te, Catilina*.

<sup>394</sup> Sall. *BC* 28.4-29.2; Hardy 1916: 58.

there was confirmation that he had actually joined Manlius.<sup>395</sup> The first issue is therefore Cicero's disingenuous construction of a united *res publica* against the monstrous Catiline in *Cat.* 1, a speech that Batstone diagnoses as constructing and presenting 'Cicero's version of his consular ethos'.<sup>396</sup>

From the start, Cicero casts the current crisis as one for which Catiline's responsibility is universally acknowledged. All the unease and military preparations within the city are directed at Catiline, whose plans are known to everyone (1.1); Catiline, despite still being in Rome, is the not-so-secret leader of Manlius's camp at Faesulae and is plotting against Rome from within (1.5); Cicero's various predictions about Catiline's plots have been proven by events (1.7; we may think with Stockton that these predictions are a little too specific not to have been sharpened up by Cicero in revision);<sup>397</sup> every decent person in the city fears and hates Catiline (1.13); no one in the senate will talk to him, or even sit next to him (1.16); the *patria* herself has a very low opinion of him (1.18); and when Catiline needed a suitable host to 'avoid suspicion' (in fact because of a threatened prosecution *de vi* that seems not to have been brought in the end), no one would take him in (1.19).<sup>398</sup> The passing of the *SCU* (a decree Cicero characterises as one by which various well-known historic trouble-makers had been despatched almost instantaneously by various eminent consuls, 1.3–4) becomes proof of the senate's conviction that Catiline is the villain of the story:

*Habemus senatus consultum in te, Catilina, vehemens et grave, non deest rei publicae consilium neque auctoritas huius ordinis: nos, nos, dico aperte, consules desumus.*

We have a decree of the senate against you, Catiline, a decree of power and authority. Neither the counsel nor the authority of this order is missing from the *res publica*: it is we – I say it openly – we consuls who are lacking. (Cic. *Cat.* 1.3.)

<sup>395</sup> Stockton 1971: 120-1, Genovese 1974: 176, Phillips 1976: 444.

<sup>396</sup> Batstone 1994: 216.

<sup>397</sup> Stockton 1971: 115.

<sup>398</sup> Cf. Gwatkin 1934 for the argument that Catiline's eventual host was Q. Caecilius Metellus Nepos, the tribune who opposed Cicero at the end of the year.

If everyone in Rome, especially the senate, is aware of Catiline's conspiratorial activity and hates him for it, only the hesitance of the consuls can explain why no action has so far been taken against him. The consuls have been entrusted with responsibility for administering and safeguarding the *res publica*, after all, and yet, 'We however, brave men that we are, think we are doing our duty to the *res publica* if we only avoid his frenzy and weapons'.<sup>399</sup> What the *res publica* needs is not the ordinary administration of ordinary consuls, but the extraordinary actions necessary to suppress an extraordinary danger provoked by an extraordinary villain. Cicero takes the blame on himself and his colleague for failing to live up to his rhetoric, presumably with the implication (since Cicero has been harping on Catiline's villainy for months) that Antonius is the real reason for the hold-up. The result is Lintott's paradox: a speech devoted to arguing that something should be done (specifically, that Catiline should be killed) while simultaneously apologising for not having done it.<sup>400</sup> Having begun by asking why the *SCU* had not yet been used, Cicero eventually finds himself having to justify his own continued failure to use it in an imagined exchange with what becomes the *res publica* itself;<sup>401</sup> his not very convincing reasoning is that killing Catiline will only hamper this *pestis rei publicae*, whereas forcing Catiline out of Rome along with his associates will remove the problem altogether.<sup>402</sup> Despite his claim that Catiline, the Enemy Within, deserves to die, Cicero therefore urges him to leave Rome and become what everyone knows he is already: the public face of the Enemy Without.<sup>403</sup>

This is all very dramatic and must have been entertaining to watch. But just as telling Catiline to leave Rome is an exercise in exciting rhetoric rather than an expulsion of Catiline through the consular power of *relegatio*,<sup>404</sup> Cicero's embarrassment about the unused *SCU* suggests a political weakness also apparent in

<sup>399</sup> Cic. *Cat.* 1.2, *nos autem fortes viri satis facere rei publicae videmur, si istius furorem ac tela vitamus.*

<sup>400</sup> Lintott 2008: 143; cf. also Batstone 1994: 230.

<sup>401</sup> Cicero introduces the prosopopoeia at *Cat.* 1.27 with, 'Even if my fatherland, which is much dearer to me than my life, if all Italy, if the whole *res publica* should speak with me...' (*etenim si mecum patria, quae mihi vita mea multo est carior, si cuncta Italia, si omnis res publica loquatur*). After the entity has had its say, Cicero remarks at *Cat.* 1.29, 'To these most solemn words of the *res publica* and of those who feel the same way I shall give a brief reply' (*his ego sanctissimis rei publicae vocibus et eorum hominum qui hoc idem sentient mentibus pauca respondebo*).

<sup>402</sup> Cic. *Cat.* 1.27-30; on this section cf. Batstone 1994: 255-7.

<sup>403</sup> Cic. *Cat.* 1.10, 12, 20, 23-4, 32-3; cf. Habinek 1998: 82-3 on how Cicero characterises Catiline as 'a bandit: a representative of a counterstate, a threat to the property rights of free citizens, an organizer of a military assault, and, perhaps most important, a participant in a perverted and parasitic religious system'.

<sup>404</sup> Cic. *Cat.* 1.13; Lintott 2008: 144.

his reluctance to take up Catiline's suggestion at *Cat.* 1.20 and put Catiline's exile to a senatorial vote. The depiction of a silent majority mentally willing Catiline into exile would be more convincing if Cicero had felt confident enough to put its support to the test. Even Cicero is obliged to concede that not everyone in Rome may be convinced Catiline is plotting *contra rem publicam* (1.6); we are entitled to suspect him of underreporting contemporary levels of scepticism. The claim to have a decree 'against you, Catiline' might more accurately be rendered as 'we have an outstanding *SCU* that we could use against anyone who looks like being a problem', and for Cicero actually to have done so at this point would have made him even more vulnerable than executing the conspirators eventually did, not to mention validating all the issues that concerned the prosecutors in the *Pro Rabirio* case. Cicero was willing to condemn Catiline in words, but – *fortis vir* that he was – not quite committed enough to Catiline's guilt to (mis)use the existing *SCU* while lacking both compelling evidence and genuinely comprehensive political support. The united *res publica* of this speech, as its somewhat tentative personification at *Cat.* 1.27–30 suggests, is a rhetorical fiction redolent of the autonomous *res publica* of the *Verrines* that supposedly surrendered itself to Sulla; and, like that *res publica*, its purpose is to conceal disagreeable facts. Cicero supplements his 'consular ethos'<sup>405</sup> with the fiction of a united *res publica* that actively expels from its midst a *hostis* who should rightfully be put to death. The point is to force Catiline, currently a *hostis* only in Cicero's rhetoric, out into the open (or perhaps rather to provoke Catiline into playing the role assigned to him). What looks like an attempt to put pressure on his fellow consul Antonius by extolling the *auctoritas* of a unanimous senate might equally well be viewed as an attempt to convince the senate that it *does* unanimously support action against Catiline, and not a particularly successful attempt either.

Cicero's rhetoric relies on the here unarticulated presumption that the *res publica* is firmly rooted in Rome itself: it is Catiline's physical departure from the city (and from political life within it) that will remove him and his compatriots from the *res publica*, even though they are only envisaged as going as far as Etruria – not even outside Italy, let alone beyond the bounds of Roman *imperium*.<sup>406</sup> It is also rhetoric that is much more concerned with events within Rome than with dealing

<sup>405</sup> Batstone 1994: 233.

<sup>406</sup> Compare Sallust *BC* 9.1, where Piso is sent *a re publica* to Spain.

with the real uprising and other manifestations of unrest outside Rome's walls.<sup>407</sup> This feature carries over to the *Second Catilinarian*, where Catiline's departure becomes proof of all Cicero's claims thus far, despite continued uncertainty over whether Catiline had left to join Manlius or gone into exile in Massilia.<sup>408</sup> Now that Catiline has removed himself, everyone can see there was a *coniuratio* against the *res publica* (2.6), which is *fortunata* and *beata* on account of his departure (2.7, 10), while Cicero, the all-seeing consul, is bearing up bravely under the heavy responsibility of keeping everything and everyone safe: 'The preservation of the *res publica* no less than governing it – what a thankless task this is!'<sup>409</sup> Such a restricted conception of the geographic bounds of the *res publica* feeds an exaggerated notion (or at least exaggerated rhetoric) of the danger posed by the enemy within the city and shows what is principally conceived to be at stake, rhetorical fictions aside: the structured political space within which elite politicians moved. Furthermore, if Catiline had now proven his bad intentions, Cicero might be criticised for not having had the courage of his convictions and doing something about him while he was in the city. Certainly Lintott detects 'signs of uncertainty' in 'Cicero's self-justification for allowing Catiline to escape'.<sup>410</sup>

If Cicero had limited his consular heroics to provoking Catiline into open rebellion, he would have been legally and politically in the clear. What got him into real trouble was the execution without trial of the five 'Catilinarian Conspirators', including the praetor P. Cornelius Lentulus Sura, who were condemned only by an extra-legal vote in the senate.<sup>411</sup> They were Roman citizens; Lentulus held an office with *imperium*; and, most importantly, they had not been found guilty in any court of law. Their execution violated the *lex Sempronia* of Gaius Gracchus, the need for which had been demonstrated by his brother's violent death<sup>412</sup> and the passing of which had failed to prevent him from meeting the same fate.<sup>413</sup> The issue now became the *SCU*, which Cicero proposed to use in earnest, after all his contortions in *Cat. 1*. Lintott highlights two major grounds of conflict liable to come up after the

<sup>407</sup> Cf. Vasaly 1993: 40-87 on Cicero's use of the physical spaces of Rome in *Cat. 1* and 3.

<sup>408</sup> Stockton 1971: 120.

<sup>409</sup> Cic. *Cat.* 2.14, *o condicionem miseram non modo administrandae verum etiam conservandae rei publicae!* Cf. also *Cat.* 2.11, 19.

<sup>410</sup> Lintott 2008: 146.

<sup>411</sup> Stockton 1971: 126-140.

<sup>412</sup> Stockton 1979: 90-91, Lintott 1999a: 163.

<sup>413</sup> Stockton 1979: 195-8.

passing of an *SCU*: (a) is it an appropriate response to the situation? (b) is the responsible magistrate's action proportionate?<sup>414</sup> Cicero had little to worry about as far as (a) was concerned, since by now there seems to have been general agreement that the situation was a mess, but his *Fourth Catilinarian* ('at best a cento of Cicero's introduction to the debate on 5 December and of a subsequent intervention, but it may be largely a fiction'<sup>415</sup>) certainly needed to justify (b), all the more so if it should be read mostly as an invention of 60, by which time Cicero's precarious post-consular position had become clear. An uneasy awareness of trouble ahead hangs over the speech from the opening line:

*Video, patres conscripti, in me omnium vestrum ora atque oculos esse conversos, video vos non solum de vestro ac rei publicae verum etiam, si id depulsum sit, de meo periculo esse sollicitos.*

I see, conscript fathers, that the faces and eyes of you all are turned upon me; I see you are concerned not only with your own danger and that of the *res publica* but also, if that is averted, my own. (Cic. *Cat.* 4.1.)

Such anxiety, says their heroically self-sacrificing consul, should be laid aside; the senators should think about themselves, their families, their fortunes and the name and *salus* of the Roman people (4.2–3). Cicero himself, having achieved a happy tricolon of *fortis*, *consularis* and *sapiens*, will die calmly if it comes to it, despite his natural concern for his family, his home, his terrified daughter and 'my little boy, whom the *res publica* seems to be clasping as a hostage for my consulship',<sup>416</sup> which plays on the personal relationship between consul and *res publica* and is perhaps a colourful way to say that if Cicero slips up now, either there won't be a *res publica* for Marcus Junior to take part in or the memory of Marcus Senior's failure will blight his son's political career.<sup>417</sup> Such personal concerns are relevant only because

<sup>414</sup> Lintott 1999a: 172.

<sup>415</sup> Lintott 2008: 147, though Cape 1995: 258-9 argues for a publication date soon after the speeches were actually delivered and that the *Fourth Catilinarian* should be taken seriously as an account of Cicero's intervention into the debate on what to do with the conspirators.

<sup>416</sup> Cic. *Cat.* 4.3, *parvulus filius, quem mihi videtur amplecti res publica tamquam obsidem consulatus mei.*

<sup>417</sup> Compare Cicero's desire for office being a 'hostage' for those choosing a prosecutor for Verres at *Div. Caec.* 72.

Cicero is moved to commend his family to the senate, should something happen to him to make this necessary, and to wish that no *una pestis rei publicae* will destroy everyone at once. The senators should focus on the *salus rei publicae* and taking precautions against the storms that threaten them (4.4), since, as it now turns out, the departure of Catiline from the city was not enough to avert the danger.<sup>418</sup> Like Catiline, these are no mere revolutionaries; rather, ‘their plan is that in the universal slaughter there should not survive a single individual even to mourn the name of the Roman people or to lament the destruction of so mighty an empire’.<sup>419</sup> Surely no response to a situation in which the *res publica* and even the name of the Roman people are in danger could be considered disproportionate?

Two responses have in fact been put forward: one by the consul-designate D. Silanus, who thinks these people should be executed, and the other by C. Caesar, the praetor-designate last seen dipping his fingers into the *Pro Rabirio Perduellionis* affair, who proposes life imprisonment in the Italian towns. The respectful attitude Cicero adopts towards the latter does not conceal his preference for Silanus’s proposal,<sup>420</sup> which was eventually decreed by the senate and carried out by Cicero himself. Silanus’s proposal is intended to punish ‘men who have tried to deprive of life all of us and the people of Rome, who have tried to destroy the empire and erase the name of the Roman people’ (*qui nos omnis, qui populum Romanum vita privare conati sunt, qui delere imperium, qui populi Romani nomen extinguere*), and Silanus remembers that ‘this kind of punishment has often been invoked in our *res publica* against traitorous citizens’ (*hoc genus poenae saepe in improbos civis in hac res publica esse usurpatum*, 4.7). In contrast, the philosophical Caesar considers death no punishment (just like the philosophically fortified Cicero, in fact) and suggests confiscating the prisoners’ property and distributing them among the Italian towns, a course that would be unjust to said towns, although Cicero is *fairly* sure he can find enough people who can be pressured into taking these prisoners, if the senate votes for Caesar’s motion (*Cat.* 4.7–8, 10). Still, says Cicero, it would be in his own interests to go along with Caesar, since Caesar has taken the *via popularis* and so Cicero may not have to worry so much about popular attacks. Once again, however, an anticipation of trouble for Cicero personally enables him to demonstrate his

<sup>418</sup> Seager 1973: 242 notes the shift in emphasis between *Cat.* 1 and *Cat.* 4.

<sup>419</sup> Cic. *Cat.* 4.4, *id est initum consilium ut interfectis omnibus nemo ne ad deplorandum quidem populi Romani nomen atque ad lamentandum tanti imperi calamitatem relinquatur.*

<sup>420</sup> Cape 1995: 264.

consular commitment to the public good: the *utilitas rei publicae* should be placed above any thoughts of danger to Cicero himself (4.9). The implication that it would be in the interests of the *res publica* for the conspirators to be executed is clear, and will become clearer as the speech goes on.

Cicero has only praise for Caesar, who has demonstrated his goodwill towards the *res publica* with his *sententia*, showing himself to be no flighty *contionator* but a true *popularis* thinking only of the *salus populi* (4.10). The tip of the hat back to the experimental etymology of the speeches *De Lege Agraria* and *Pro Rabirio Perduellionis* may or may not have pleased Caesar, but it is unlikely that he agreed with what follows from it:

*At vero C. Caesar intellegit legem Semproniam esse de civibus Romanis constitutam; qui autem rei publicae sit hostis eum civem esse nullo modo posse: denique ipsum latorem Semproniae legis iussu populi poenas rei publicae dependisse.*

But Gaius Caesar recognises by his presence that the *lex Sempronia* was passed in the interests of Roman citizens; that an enemy of the *res publica* cannot in any respect be regarded as a citizen: and he knows too that the author of the Sempronian law himself paid the supreme penalty to the *res publica* with the authority of the people. (Cic. *Cat.* 4.10.)

This grossly distorts the relevant *lex Sempronia*, which prescribed a capital punishment for anyone who put a Roman citizen to death without the authorisation of the *populus*,<sup>421</sup> as the consul-designate Silanus now proposed that Cicero should do. Cicero himself had reminded the *populus* earlier that year that ‘Gaius Gracchus carried a law forbidding sentence to be passed on the life of a Roman citizen without your consent’.<sup>422</sup> Cicero’s reasoning at *Cat.* 4.10 is that acting against the *res publica* automatically renders the actor a non-citizen who may be punished without scruples. This is legally nonsense; it skips the important intermediate step of trial and

<sup>421</sup> Cf. Stockton 1979: 117-121.

<sup>422</sup> Cic. *Rab. Per.* 12, *C. Gracchus legem tulit ne de capite civium Romanorum iniussu vestro iudicaretur.*

condemnation by a duly appointed court of law, which the senate was not.<sup>423</sup> Furthermore, the claim that Gaius Gracchus died *iussu populi* is a tendentious play on the phrasing of the *lex Sempronia*, since Gaius was certainly not condemned by the *populus*; at most, it may refer to an approving Opimian *contio* before the event or to Opimius's acquittal after it.<sup>424</sup> Cicero makes Caesar complicit with his own deliberate misreading of the law just by attending the senate; and since the law was part of the nexus of standard *popularis* issues involving the *SCU* and the abuse of senatorial *auctoritas*/magisterial *potestas* that Caesar had helped stir up with the prosecution of Rabirius, this looks like mischief on Cicero's part, if not quite open provocation.<sup>425</sup> Caesar's proposal also violated the *lex Sempronia*, but on a lesser scale; it was 'a mitigated capital sentence about which some equivocation would be possible in the event of a subsequent accusation of the consul' and shows that while Caesar recognised the danger of the situation, 'he was not prepared to violate the constitution more than necessary in an emergency'.<sup>426</sup> In the speech Sallust gives him, he characterises Silanus's proposal as seeming 'not cruel (for what could be cruel in the case of such men?) but foreign to our *res publica*'.<sup>427</sup>

Presented with a relatively restrained alternative, Cicero responds by characterising Caesar's proposed perpetual house arrest as crueller than a straightforward death penalty (4.10–11). He is moved, he says, not by cruelty, but by *humanitas* and *miseriordia* brought on by terrible visions of what the conspirators want to do; they intended to commit atrocities against women, children and Vestal Virgins, and have attempted to destroy the dwelling-place (*domicilium*) of the whole *res publica*, that is, Rome. The explicit geographical location of the *res publica* within the city of Rome gives substance to the attack on the conspirators: to act *contra rem publicam* is not an abstract wickedness against political structures and metaphorical space, but would have manifested (and still may) in the physical destruction of the city and its inhabitants. Any desire to be merciful will result only in a reputation for cruelty if *patria* and *cives* are ultimately destroyed (4.11–12). This is the stick; the carrot follows in the form of a promise that Cicero is prepared for all possible eventualities, and that all orders, classes and ages of people are completely

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<sup>423</sup> Habicht 1990: 37.

<sup>424</sup> Lintott 1999a: 170.

<sup>425</sup> Lintott 1999a: 170.

<sup>426</sup> Lintott 1999a: 170–1.

<sup>427</sup> Sall. *BC* 51.17, *mihī non crudelis – quid enim in talis homines crudele fieri potest? – sed aliena a re publica nostra videtur.*

united for the first time in history, conspirators aside (4.14). Cicero waxes lyrical on that famous unanimity:

*Quam si coniunctionem in consulatu confirmatam meo perpetuam in re publica tenuerimus, confirmo vobis nullum posthac malum civile ac domesticum ad ullam rei publicae partem esse venturum.*

If we maintain forever in the *res publica* this union that we have cemented in my consulship, I assure you that hereafter no civil and domestic strife will touch any part of the state. (Cic. *Cat.* 4.15.)

Even the poor, the freedmen and the slaves are out in force to show their communal feeling with the *res publica* (4.16), a claim that illuminates the currently unarticulated conception of *res publica* at play here. It may not be unreasonable that those who have little part in public life should be viewed as allies or opponents of ‘the *res publica*’ (that is, the structured political sphere) by a political insider like Cicero speaking to an audience of fellow insiders in the senate, but it expresses a very different model from the community of citizens equally responsible for the management of their shared *res publica* that surfaces in speeches addressed directly to the *populus*. Cicero’s perspective presupposes that the consent of certain classes of citizens (and non-citizen urban dwellers) to the decisions emanating from within the political sphere cannot always be relied upon, although he insists that the current consensus is universal: the rumour that Lentulus had an agent buying support among the poor should be dismissed, as this agent certainly tried, but no one was selling (4.17). Since everyone is united to preserve the *res publica*, since citizens, citadel, Capitol, altars, temples and lives depend on the senate’s decision, and since its consular leader, Cicero, thinks only of the senate and not of himself, the senate must take action to make sure no citizen will ever again even think about doing such things, let alone get as far as they did (4.18–19).

Finally, Cicero returns to the more personal note of the opening sections. Here the ultimate goal of using his consular achievements as the foundation for his own future *dignitas* becomes transparent: he realises he has made a great many enemies, but even if they overcome the *dignitas* of the senate and *res publica* in future, Cicero will never regret his own actions (4.20). Death is inevitable; the

unique praise given to Cicero by the senate will see him shuffle happily from this mortal coil:

*Ceteris enim semper bene gesta, mihi uni conservata re publica gratulationem decrevistis.*

Others have received public thanksgivings from you for serving the *res publica* well, none but I for preserving it. (Cic. *Cat.* 4.20.)

Cicero may therefore take his place among a list of famous generals who have earned themselves glory through foreign military exploits, culminating in the current golden boy, Pompey (4.21),<sup>428</sup> even though the lot of a civil war suppressor is less happy than that of a conquering hero: he faces ‘an unending war against evil citizens’ (*cum perditis civibus aeternum bellum*), but is confident that the support of the senate and all good citizens will see off any attacks, and that the union of senate, equestrians and *boni* will weather any storm (4.22). All he asks in return for saving the *res publica* is that this moment and his whole consulship should be remembered (4.23). In conclusion,

*Quapropter de summa salute vestra populi que Romani, de vestris coniugibus ac liberis, de aris ac focus, de fanis atque templis, de totius urbis tectis ac sedibus, de imperio ac libertate, de salute Italiae, de universa re publica decernite diligenter, ut instituistis, ac fortiter. Habetis eum consulem qui et parere vestris decretis non dubitet et ea quae statueritis, quoad vivet, defendere et per se ipsum praestare possit.*

With the care, therefore, and the courage that you have displayed from the beginning, take your decision upon the salvation of yourselves and of the Roman people, upon your wives and children, your altars and hearths, your shrines and temples, the buildings and homes of the entire city, your command and your freedom, the safety of Italy and upon the whole *res publica*. You have a consul who will not shrink from obeying your decrees

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<sup>428</sup> Cf. Steel 2001: 168-9.

and, while he lives, from defending your decisions and answering for them in person. (Cic. *Cat.* 4.24.)

Having stressed the current danger to the *res publica*, foreseen future danger to himself, implied his own preferred course and expressed his willingness to do whatever may be necessary, Cicero sums up by laying the burden of decision-making on the senate and portraying himself as an obedient servant of senatorial will, not just in the immediate crisis but for the rest of his life. The ‘spirit of the heroic *aristeia*’<sup>429</sup> is replaced by dutiful devotion; not triumphalism or self-glorification, but rather the assignment of responsibility for any future illegalities to the senate.<sup>430</sup> If he, the responsible consul, has saved the *res publica* so far (and he has), it is up to the senate to make the hard decision that will safeguard it for the future.

### 4.3 THE FUTURE

In all the consular speeches, Cicero hops nimbly around the spectrum of meanings attached to *res publica*: not just from speech to speech but also within specific speeches, where he exploits the elasticity of this exceedingly elastic term. In general, this may just reflect the fact that *res publica* was capable of bearing multiple meanings and it could be in a speaker’s interests not to be too precise about what he actually meant. It seems reasonable to assume that Cicero’s terminological athleticism was typical of how *res publica* was generally used in the ordinary discourse of ordinary politicians (‘dog-whistle politics’ before dog whistles, perhaps), which makes it all the more striking when Cicero discards this advantage, as in two of the speeches on Rullus’s agrarian law, and takes the trouble to explain to his audience just what he *does* mean. It is revealing, if perhaps not surprising, that Cicero’s preferred perspective on *res publica* turns out to be that of political space. For all that Cicero relied upon and made much of his consulship, which placed him in the position of manager to the managed *res publica*, the predominant perspective in all these speeches is that of an elite insider who moves within and is concerned about the structured political sphere. This is understandable: political activity was

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<sup>429</sup> Lintott 2008: 148.

<sup>430</sup> Stockton 1971: 135.

not limited to those in office at any given moment and most ordinary magistrates would want to keep one eye on their long-term prospects within the *res publica* as well as on their immediate responsibilities in the administration of the *res publica*. Holding office was an occasional and temporary opportunity, whereas interaction with one's political peers *in re publica* was a perpetual, ongoing activity, even for consuls. This was particularly true of Sulla's *res publica constituta*, since whether Sulla had mandated it or not the consuls now spent most of their year in office *in re publica* in Rome rather than managing the *res publica* in the field.<sup>431</sup>

Like other consuls, Cicero meant to use his year in office to stake out the foundations of his future political career. Unlike most consuls, however, he relied on his rhetoric to leverage a domestic crisis into a war for the *res publica*. Cicero therefore casts himself as the *dux togatus* consul who, despite not commanding an army, describes his action against Catiline and friends in military language, who afterwards is voted a thanksgiving for having saved the *res publica* (unlike other consuls, who get thanksgivings for sterling work administering the *res publica*, mostly in foreign wars)<sup>432</sup> and who is insistent on the need to transfer the *res publica* to a responsible, militarily-capable consul when his own term is up.<sup>433</sup> The cornerstone of all this is Cicero's occupation of the consulship and the responsibility laid upon him by his office to safeguard the *res publica*, which Catiline and friends were allegedly plotting not just to seize but to destroy.<sup>434</sup> This conspiracy against Rome's physical and political structures justified the illegal execution of the 'Catilinarian Conspirators'. Cicero pursues the line he gave himself in the *Pro Rabirio Perduellionis* to its conclusion and stands forth as a consul obedient to the senate's *auctoritas*: he is willing to follow whatever the senators recommend and consequently executes their illegal policy. He tries, in other words, to shunt responsibility for executing the conspirators onto the senate while retaining the *gloria* of having saved the *res publica*. This was more successful in rhetoric than in fact, since the senate was free to decree whatever it pleased; the responsibility for any actions taken as a result remained with the responsible magistrate. The reappearance of the fictional *res publica* in Cicero's rhetoric against Catiline was therefore a dangerous sign of things to come.

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<sup>431</sup> See n. 71 above.

<sup>432</sup> Cic. *Cat.* 3.16, 3.23, 4.20-21.

<sup>433</sup> Cic. *Mur.* 4, 79, 80, 82-3, 90.

<sup>434</sup> Cic. *Cat.* 3.25; Yavetz 1963: 493, Batstone 1994.

Cicero's vulnerability became obvious as soon as the new tribunes took office and a couple of them passed critical comment on his activities; one of these, Q. Metellus Nepos, did his best to spoil Cicero's triumphant final day of office by cutting his eloquence short in a *contio*. Cicero responded by improving on the usual oath: 'I swore without flinching that this *res publica* and this city had been saved by my sole efforts'.<sup>435</sup> The event encapsulates one of the characteristics of Cicero's post-consulship speeches, where 'his self-praise is in part a reaction to the attacks on his actions':<sup>436</sup> attacked by the tribune over his consular heroics, Cicero defended himself with the claim that those heroics had saved the *res publica*. It also demonstrates Cicero's concern to keep the conspiracy from being forgotten in the excitement of defeating Catiline in the field and the conflict between the senate and Pompey's friends, Nepos and Caesar.<sup>437</sup> Lintott takes the brief exchange of letters between Cicero and Nepos's brother, Metellus Celer, one of the commanders against Catiline, to show that 'in early 62 men like Celer regarded the threat in the city as insignificant compared with the conflict with Catiline, Manlius, and the other insurgents in the field', and that Caesar was not alone in thinking the executions an inappropriate response to the situation.<sup>438</sup>

These issues surface in the *Pro Sulla*, a speech given between May and October 62.<sup>439</sup> As Berry argues, the apologetic content of the *Pro Sulla* is consistent with Cicero's political position at the trial (and probably would not have helped Cicero at a later date), suggesting that the speech may have been published substantially unrevised shortly after the trial, which ended with an acquittal.<sup>440</sup> The prosecutor, L. Torquatus, had been one of Cicero's supporters during his consulship,<sup>441</sup> but was inclined to take Cicero's defence of his *inimicus* Sulla personally,<sup>442</sup> although his attack on Cicero may have been strategic: 'since Cicero's position is crucial, Torquatus could not avoid attempting to undermine it'.<sup>443</sup> This makes his criticisms particularly interesting, since there is no reason to write him off

<sup>435</sup> Cic. *Pis.* 6, *sine ulla dubitatione iuravi rem publicam atque hanc urbem mea unius opera esse salvam*; cf. Cic. *Fam.* 5.2.7, Stockton 1971: 148, Berry 1996: 27, Lintott 2008: 149, Arena 2012: 202 (on Nepos's changeable political opinions).

<sup>436</sup> Lintott 2008: 148.

<sup>437</sup> Lintott 2008: 148.

<sup>438</sup> Lintott 2008: 150; cf. Cic. *Fam.* 5.1-2.

<sup>439</sup> Berry 1996: 14.

<sup>440</sup> Berry 1996: 56-8.

<sup>441</sup> Cic. *Sull.* 34; Berry 1996: 18.

<sup>442</sup> Cic. *Sull.* 2; cf. Berry 1996: 4-8 on the troubled relationship between Sulla and the Torquati.

<sup>443</sup> Paterson 2004: 92; on Cicero's appeal to authority in the *Pro Sulla* see Goodwin 2001.

as a *popularis* like Caesar or an aggrieved Pompeian like Metellus Nepos; rather, such critique was available for anyone who happened to oppose Cicero politically or in the law-courts. The first criticism to which Cicero chose to respond was that since he had exposed Catiline's "second" conspiracy, he had no business defending anyone accused of being part of it, especially since he had provided evidence against various other accused conspirators.<sup>444</sup> This was followed by the related accusation that since all those whom Cicero accused were condemned, and since Sulla only dared to stand trial in Rome because Cicero had agreed to defend him, Cicero and his political *amici* were exerting undue influence over the courts; in other words, Cicero was misusing his considerable *auctoritas* in the cause of personal *regnum*.<sup>445</sup>

Cicero has two responses to the first accusation: the obvious response, that unlike the other defendants Sulla was innocent and that as the exposé of the conspiracy he, Cicero, was the best-placed person to know this,<sup>446</sup> and the complaint that he was being unfairly singled out by Torquatus, since his fellow defender Hortensius and many other unnamed supporters of Sulla had known just as much as Cicero about the conspiracy thanks to Cicero's efforts.<sup>447</sup> This argument is distinctly suspect; if Cicero was, as he complained, being singled out, that was mostly because he (unlike Hortensius) had singled himself out as the saviour of the *res publica*. It was disingenuous of Cicero to want to blend into the mob of distinguished elder statesmen in order to defend Sulla, however true it might be that others had followed his lead.<sup>448</sup> For good or for bad, and no matter how often he described himself as the obedient servant of senate and *boni*,<sup>449</sup> Cicero took pains to ensure he would be held solely responsible for the actions taken against conspiracy and conspirators. Torquatus's second accusation was the more dangerous, since it suggests not just popular ill-will but also how those not necessarily ill-disposed towards Cicero or inclined to disapprove of the executions may have felt about Cicero's strident claim to a pre-eminent role in saving the *res publica* during the crisis. It was not just the obvious political opponents who might resent Cicero drawing unduly on any

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<sup>444</sup> Cic. *Sull.* 3-4, 10, 48.

<sup>445</sup> Cic. *Sull.* 21-2. 'Every defendant against whom he gave evidence was automatically convicted, and Nepos is said to have remarked that more men had been executed on Cicero's evidence than saved by his eloquence' (Berry 1996: 27; cf. Plut. *Cic.* 26.6).

<sup>446</sup> Cic. *Sull.* 14-20.

<sup>447</sup> Cic. *Sull.* 3-9.

<sup>448</sup> Cic. *Sull.* 9.

<sup>449</sup> Cic. *Sull.* 21.

political capital gained during his consulship: Torquatus, presumably no *popularis*, called Cicero a *rex* not because of the executions Cicero oversaw as consul but because of how Cicero used his *auctoritas* once out of office. The accusation seems to mean that Cicero and his friends had stitched up the courts; it is not that Cicero is really a ‘king’ on the lines of Tarquin Superbus, or even the sort Cicero had accused Rullus of planning to install with his agrarian law, but rather that the *res publica* is being illegitimately controlled by the alarming *auctoritas* of Cicero and friends. Cicero replies at length (*Sull.* 21–9), but his response is strongest on the subject of whether his municipal origins make him a foreign *rex* (*Sull.* 22–25); the retort that Torquatus must be the real *rex* if the ‘innocent’ Sulla fears to face him is not a very convincing argument against Sulla’s reasons for remaining in Rome (*Sull.* 22). It might be suggested that one reason why Cicero spends so much time on what seems to have been a passing gibe at his ‘foreign’ origins is precisely because this was a passing gibe that could be easily dismissed, whereas it might have been more difficult to engage with Torquatus’s criticisms of how Cicero was using his *auctoritas*. (His reasons for defending Sulla perhaps were not the purest; Sulla was not a very nice man, but he *had* lent Cicero money to buy a splendid new house.<sup>450</sup>)

The accusation that Cicero was running a *regnum* seems to have been a popular one to make. Berry’s view of Cicero’s response is that defending Sulla, ‘a man against whom he had made no allegations’, enabled Cicero to respond to a litany of other criticisms, giving him a chance ‘to display his *lenitas* and shake off the image of a *rex peregrinus*, substituting the more congenial picture of himself as the merciful saviour of the Roman state’ (not to mention ingratiating himself with Sulla’s senatorial friends).<sup>451</sup> Certainly Torquatus’s criticism of Cicero for the execution of the conspirators<sup>452</sup> provoked Cicero into an account of his *annus mirabilis* that contrasts with future versions: Torquatus should not think, he says, that the plebs disapprove of Cicero’s actions; no one blames Torquatus’s notoriously severe ancestor for his exemplary severity towards his son, so should Torquatus blame the *res publica* for destroying the enemies within its midst?<sup>453</sup> This striking personification is not intended to shift responsibility for the executions from Cicero

<sup>450</sup> Berry 1996: 30-32.

<sup>451</sup> Berry 1996: 28; cf. also Gildenhard 2011: 65-6 on Cicero’s distinction between *natura* and *persona* as a way to put his consular actions down to necessity and his defence of Sulla down to natural mildness.

<sup>452</sup> Cic. *Sull.* 30-31.

<sup>453</sup> Cic. *Sull.* 32.

himself, however much it may contribute to a greatly simplified picture of the *res publica* defending itself against *domestici hostes*.<sup>454</sup> Rather than renounce responsibility for his actions, Cicero will happily, repeatedly and very loudly tell everyone just what he did the previous year:

*Ego consul, cum exercitus perditorum civium clandestino scelere conflatus crudelissimum et luctuosissimum exitium patriae comparasset, cum ad occasum interitumque rei publicae Catilina in castris, in his autem templis atque tectis dux Lentulus esset constitutus, meis consiliis, meis laboribus, mei capitis periculis, sine tumultu, sine dilectu, sine armis, sine exercitu, quinque hominibus comprehensis atque confessis incensione urbem, internicione civis, vastitate Italiam, interitu rem publicam liberavi; ego vitam omnium civium, statum orbis terrae, urbem hanc denique, sedem omnium nostrum, arcem regum ac nationum exterarum, lumen gentium, domicilium imperi, quinque hominum amentium ac perditorum poena redemi.*

An army of abandoned citizens had been scraped together in a secret plot and had prepared for their fatherland the most cruel and grievous destruction, Catiline had been placed in command of the camp to destroy and annihilate the *res publica* and Lentulus in command among our temples and homes; but I, as consul, by my decisions, by my efforts and at the risk of my life, but without any state of emergency, without a levy, without use of arms, without an army, by the arrest and confession of five men, I rescued the city from burning, the citizens from slaughter, Italy from devastation and the *res publica* from destruction. By the punishment of five demented desperadoes I saved the lives of all the citizens, the peace of the world and finally this city, which is the home of each one of us, the citadel of foreign kings and nations, the light of all peoples and the dwelling-place of *imperium*. (Cic. *Sull.* 33.)

By executing the ‘Catilinarian Conspirators’, Cicero saved the city, the citizens, Italy and the *res publica* without levies or army, a ‘strikingly hyperbolic’ claim<sup>455</sup> that

<sup>454</sup> Berry 1996: 202: ‘The conspirators arrested at Rome were not *hostes* (15.7n) in any conventional sense, but Cicero describes them as such so as to hide the illegality of their execution (21.3n)’.

<sup>455</sup> Berry 1996: 204, who also notes the technical inaccuracy of *sine tumultu*, since a *tumultus* had

ignores the efforts of those who had recently commanded armies against Catiline and Manlius (who might well have seemed a more obvious threat to Italy at large than any urban conspirators) and commits Cicero to a version of events that foregrounds the illegal executions. This is furthered by Cicero's narrow geographical perspective: as in the consular speeches, the city of Rome is the *sedes* and *domicilium* of just about everything that matters. Cicero had saved *Rome*, and thereby could be held (or at least held himself) to have saved everything else along with it. The hyperbole might be taken to indicate Cicero's confident occupation of the political high ground in 62, and to some extent it probably does, but the fact that one of his own former supporters seems to have accused him of a disproportionate reaction to an admitted crisis so soon after the event must have given Cicero reason to be nervous.

#### 4.4 THE WIDOWHOOD OF EVERY GOVERNMENT

Cicero's exile and restoration have been thoroughly studied by modern scholars.<sup>456</sup> Robinson shows how careful Cicero was 'to avoid the E-word' after his return to Rome,<sup>457</sup> while Rundell points out that the letters show Cicero was most bitter about the defection of the *boni*, which he attributes to their fear and *invidia*, even though he strategically casts himself as a martyr to civic violence in his *Post Reditum* speeches and makes scapegoats out of the consuls, Piso and Gabinius.<sup>458</sup> In support of Cicero's bitterness, Welch makes an attractive, if perhaps unkind, argument for the culpability of Cicero's friend Atticus.<sup>459</sup> The *Post Reditum* speeches are triumphant about Cicero's recall: the senate's activities on his behalf have given him a sort of immortality,<sup>460</sup> its unanimity had restored his *dignitas* before it managed to do the same for his corporeal self,<sup>461</sup> and the goodwill expressed by the *populus* actually seems to have increased Cicero's *dignitas*.<sup>462</sup> This triumphalism is hollow, however; in reality, Cicero was politically indebted to a great many people with inconveniently

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been declared when the *SCU* had been passed (Dio 37.31.1, Sall. *BC* 59.5).

<sup>456</sup> E.g. Stockton 1971: 176-193, Rundell 1979: 313-18, Nicholson 1992: 20-23, Tatum 1999: 151-66, Dyck 2004: 299-301, Lintott 2008: 175-85.

<sup>457</sup> Robinson 1994: 480.

<sup>458</sup> Rundell 1979: 317-8; cf. also Nicholson 1992: 30-1 and Dyck 2004: 303-4 on the topic of Cicero's patriotic martyrdom, Tan 2008: 182-3 on Cicero's characterisation of Gabinius as a crazed *popularis*.

<sup>459</sup> Welch 1996: 458-63.

<sup>460</sup> Cic. *Red. Sen.* 3.

<sup>461</sup> Cic. *Red. Sen.* 5.

<sup>462</sup> Cic. *Red. Pop.* 6.

diverging interests,<sup>463</sup> had dented his *dignitas* and lost much of his *auctoritas* through being forced into exile,<sup>464</sup> and retained a dangerous *inimicus* in P. Clodius Pulcher.<sup>465</sup> He needed to establish a new political persona.<sup>466</sup> His immediate rhetorical problem was twofold: it would be difficult to restore his *dignitas* by trumpeting his good works as administrator of the *res publica*, since his most famous good works were what had got him into difficulties in the first place, and he needed to justify going into exile despite (so he insists) having done nothing wrong.<sup>467</sup> As Nicholson observes, one of Cicero's solutions was 'to identify himself and his personal well-being with the state as a whole and the health of the entire Republic'.<sup>468</sup> Cicero does this by abstracting various public statements that commend him for saving the *res publica* and using this public commendation as a peg on which to hang his self-identification with the *res publica* in the absence of any public office, glossing over what he did to earn it so that the commendation became unproblematic. This is spread over several speeches, so piecing together the logic becomes something of a puzzle, but it runs as follows: (1) Cicero saved the *res publica*; (2) consequently he can identify himself with the *res publica* even as a private citizen in exile; (3) Clodius, attacking Cicero, therefore attacks the *res publica*; (4) those working on Cicero's behalf are champions of the *res publica*; (5) when Cicero is driven out of Rome, the *res publica* is driven out with him; (6) when he returns, the *res publica* returns with him; (7) this is all confirmed by his triumphant return and the various measures various people took to get him back. As points (5–6) suggest, the *res publica* is both implicitly and explicitly personified in these speeches: as in the past, but now at much greater length, Cicero resorted to the rhetorical fiction of the *res publica* to make up for his political weakness.

Following his exile, Cicero developed a certain reticence on the topic of the executions so proudly recalled in the *Pro Sulla*. It is certainly the case (and will be the foundation of Cicero's apologia from now on) that Cicero returns repeatedly to his consulship as the moment when the *res publica* was saved. *Post reditum*, however, the emphasis has changed: Cicero's public career now has two cruxes, the consulship and the exile, and the former recedes as the need to justify the latter takes

<sup>463</sup> Cic. *Red. Sen.* 18–25; cf. Nicholson 1992: 47–88.

<sup>464</sup> Nicholson 1992: 24, Lintott 2008: 184–5.

<sup>465</sup> Mitchell 1969: 314–5, Steel 2007: 106.

<sup>466</sup> Dyck 2004.

<sup>467</sup> Riggsby 2002: 168–9, Dyck 2004: 303.

<sup>468</sup> Nicholson 1992: 35.

precedence. Catiline is invoked only in passing,<sup>469</sup> and while Cicero is happy to allude to his consulship as a moment of great crisis in which he played a pivotal role, the details are elided. So, for example, Cicero characterises himself as having defended the *communis salus* bloodlessly as consul,<sup>470</sup> his consulship as a year in which the *res publica* was ‘all but lost’,<sup>471</sup> and accuses one group of enemies of being inimical to him because they hate the *res publica*, which he had preserved against their wishes.<sup>472</sup> Lost in all of this is just what got him into so much trouble: not his campaign against Catiline, but the execution of the conspirators, which receives only delicate references. Clodius’s law prohibited Cicero’s return to Rome until ‘those who had so nearly destroyed it should have returned to life’<sup>473</sup> and Gabinius ‘swore that he would wreak vengeance upon the Roman equestrians for the events of the fifth of December in the year of my consulship, and for that punishment that was exacted upon the slopes of the Capitol’.<sup>474</sup> This is circumlocutory, not to mention exculpatory. Cicero’s exile had made him much warier about trumpeting the more controversial aspects of his heroic consulship.

Rather than detail, Cicero foregrounds the claim that his exile had endangered, struck down, bereaved or even driven out the *res publica*, which sprang back to life, returned with Cicero or called *in propria persona* for his return.<sup>475</sup> This is odd: Cicero, a private citizen without any formal claim to represent or administer or safeguard public affairs except by providing *consilium* as a senator (meaning, as he had actually said in the *Pro Sulla*, that he shared his duty to the *res publica* with the rest of the senate<sup>476</sup>), seems to be establishing a personal relationship for himself with the *res publica* that almost foreshadows Augustus and the emperors. As always, the lack of comparable material makes it impossible to be certain that Cicero was committing a novelty, but his strategy was tailored to a specific set of circumstances and anyone with more options would probably have settled for something less convoluted (and more convincing). The foundation of this relationship is not the simple assertion that Cicero had saved the *res publica* during his consulship, but

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<sup>469</sup> Cic. *Red. Sen.* 12.

<sup>470</sup> Cic. *Red. Sen.* 34.

<sup>471</sup> Cic. *Red. Pop.* 5.

<sup>472</sup> Cic. *Red. Pop.* 21; in general cf. also *Red. Pop.* 1, 16.

<sup>473</sup> Cic. *Red. Sen.* 4.

<sup>474</sup> Cic. *Red. Sen.* 12, *se Nonarum Decembrium, quae me consule fuissent, clivique Capitolini poenas ab equitibus Romanis esse repetiturum.*

<sup>475</sup> Cic. *Red. Pop.* 11, 14, 18, *Red. Sen.* 4, 17-18, 23, 24-5, 27, 34, 36, 39.

<sup>476</sup> Cic. *Sull.* 9.

rather the more sophisticated point that various other eminent people, including the senate as a whole, had said as much. Cicero was not going to pass up the opportunity to remind the senate of its decrees in his favour:

*Quid enim magnificentius, quid praeclarius mihi accidere potuit quam quod illo referente vos decrevistis, ut cuncti ex omni Italia, qui rem publicam salvam vellent, ad me unum, hominem fractum et prope dissipatum, restituendum et defendendum venirent?*

For what could have brought me greater pride or honour than the decree which you enacted at his request, that all men to the length and breadth of Italy who wished the *res publica* to be well should concentrate their whole resources upon the restitution and defence of a broken and all but shattered man like myself? (Cic. *Red. Sen.* 24.)

As if this were not plain enough, Cicero reinforces it almost immediately:

*Quid ego gloriosius meis posteris potui relinquere quam hoc, senatum iudicasse, qui civis me non defendisset, eum rem publicam salvam noluisse?*

What prouder boast could I have handed on to posterity than that the senate had pronounced that the citizen who had not helped me had shown he did not want the *res publica* to be well? (Cic. *Red. Sen.* 25.)

The phrasing is familiar from Scipio Nasica and the *SCU*, where the overriding principle had also been the *res publica salva*. The measures taken to procure Cicero's recall from exile here become a triumphant inversion of the usual tragic story: rather than an individual appealing to the *res publica salva* in order to crush seditious individuals on the urban stage using irregularly raised forces, the senate broadcasts a national call for peaceful political support to save a single, supremely important individual for the *res publica* (a call answered by *Italia* herself, almost<sup>477</sup>). The justification for this extraordinary action on Cicero's behalf had been given

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<sup>477</sup> Cic. *Red. Sen.* 25.

publicly both in the senate and in a follow-up *contio*, which meant Cicero was able to remind everyone about it:

*Atque illo die cum rem publicam meis consiliis conservatam gravissimis verbis et plurimis iudicassetis, idem consul curavit ut eadem a principibus civitatis in contione postero die dicerentur.*

On that day too, when in weighty and lengthy terms you had declared that the *res publica* had been preserved by my measures, the same consul saw to it that an announcement to the same effect should be made at a mass meeting on the following day by the leading men of the state. (Cic. *Red. Sen.* 26.)

Cicero's salvation of the *res publica* during his consulship had earned him this (belated) support in his hour of need. More detail on this *contio* is provided at *Red. Pop.* 16–17, where Cicero singles out Pompey for particular gratitude and specifies P. Servilius as having opined that Cicero's efforts had preserved the *res publica*, while L. Gellius had given not only his opinion but also evidence to the same effect. Even the phrasing of Clodius's law implicitly acknowledged that the *res publica* would be in danger if the hypothetical resurrection of its enemies, the conspirators, were not matched by Cicero's recall.<sup>478</sup> Further senatorial decrees supplemented the consul Lentulus's efforts and aimed to ensure Cicero's restoration:

*decrevistis, ne quis ulla ratione rem impediret: qui impedisset, graviter molesteque laturos – illum contra rem publicam salutemque bonorum concordiamque civium facturum, et ut ad vos de eo statim referretur; meque etiam, si diutius calumniarentur, redire iussistis.*

you decreed that no contrivance should be employed by anyone to impede your end; that any who should impede it should be visited with your deep resentment; that such impediment would constitute an act of hostility to the *res publica*, the safety of patriots, and the unity of citizens, and that the man responsible for it would be made the subject of an immediate motion to your

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<sup>478</sup> Cic. *Red. Sen.* 4.

body; furthermore, you ordered me to return forthwith, even though their misrepresentations should continue. (Cic. *Red. Sen.* 27.)

All of this confirmed Cicero's political importance (even his misfortunes testified that he had conferred 'divine *beneficia*' on the *res publica*<sup>479</sup>), which was important given how damaging his exile had been. It also gave him a legitimate basis for blurring the rhetorical boundary between himself and the *res publica*. He is indignant that the consul Piso had prevented senators from changing their clothes to show their support of Cicero prior to him going into exile:

*Te consule, tuis edictis et imperiis senatui populi Romani non est licitum non modo sentiis atque auctoritate sua, sed ne luctu quidem ac vestitu rei publicae subvenire?*

It was in your consulship, by your edicts, and in virtue of the powers which reposed in you, that the senate of the Roman people was forbidden to aid the *res publica* even by the garb of mourning, let alone by their moral influence and the expression of their opinion. (Cic. *Red. Sen.* 16.)

To help Cicero is to help the *res publica* – or would have been, if the consuls of that year (whose duty it was to manage the *res publica*!) had allowed the senate to do so. Likewise when Cicero was struck down the *res publica* was struck down with him;<sup>480</sup> C. Septimius, Q. Valerius, P. Crassus, Sex. Quintilius and C. Cornutus had contributed their *officia* 'to me and the *res publica*';<sup>481</sup> and it was not only love for Cicero but *studium in rem publicam* that motivated Lentulus to restore Cicero from exile.<sup>482</sup> The relationship becomes personal towards the end of the speech to the senate, when Cicero explains that he left Rome because he was unwilling to defend himself against force using force and preferred exile to suicide because,

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<sup>479</sup> Cic. *Red. Sen.* 36.

<sup>480</sup> Cic. *Red. Sen.* 17-18.

<sup>481</sup> Cic. *Red. Sen.* 23.

<sup>482</sup> Cic. *Red. Sen.* 24.

*cum viderem me non diutius quam ipsam rem publicam ex hac urbe afuturum, neque ego illa exterminata mihi remanendum putavi, et illa, simul atque revocata est, me secum pariter reportavit.*

when I saw that my absence from this city would not outlast the absence from it of the *res publica* itself, I did not think it my duty to remain there after its extinction, and, what is more, no sooner was it recalled than it brought me back in its company. (Cic. *Red. Sen.* 34.)

After all the rhetorical energy Cicero had devoted to rooting the (distinctly impersonal) *res publica* physically in Rome in his consular speeches, it now seems to be capable of getting up and leaving Rome together with Cicero. Laws, *quaestiones*, magisterial jurisdiction, senatorial *auctoritas*, liberty, a plentiful corn supply, reverence and *religio* in human and divine matters – all were absent ‘with me’, says Cicero, who goes on to explain that he had considered it his duty to return with them (*cum illis*) should they be recalled.<sup>483</sup> The result is awkward: Cicero is ‘restored to the *res publica* along with the *res publica*’,<sup>484</sup> presumably, that is, he returns to its physical *domicilium*, Rome, in company with all the legal and political institutions that had supposedly been brought to a standstill by Clodius during Cicero’s exile.<sup>485</sup> The reasoning is clearer when the same argument appears at *Red. Pop.* 14. Thanks to the brutal measures taken by Cicero’s opponents to maintain his exile,

*dum ego absum, eam rem publicam habuistis ut aequae me atque illam restituendam putaretis. Ego autem in qua civitate nihil valeret senatus, omnis esset impunitas, nulla iudicia, vis et ferrum in foro versaretur, cum privati parietum se praesidio non legum tuerentur, tribuni plebis vobis inspectantibus vulnerarentur, ad magistratuum domos cum ferro et facibus iretur, consulis fasces frangerentur, deorum immortalium templa incenderentur, rem publicam esse nullam putavi. Itaque neque re publica*

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<sup>483</sup> Cic. *Red. Sen.* 34.

<sup>484</sup> Cic. *Red. Sen.* 36.

<sup>485</sup> Cf. Rundell 1979 for a more sober view of Clodius’s activities.

*exterminata mihi locum in hac urbe esse duxi, nec, si illa restitueretur, dubitavi quin me secum ipsa reduceret.*

such was the condition of the *res publica* during my absence that you thought yourselves called upon to restore me, and, by doing so, the *res publica* as well. But in a civic community where the senate was ineffective, crime everywhere unpunished, justice at a standstill, and armed violence at large in the forum, at a time when private persons found protection not in the laws but in the walls of their houses, when tribunes of the plebs were wounded in full view of you all, when swords and torches were carried to the houses of the magistrates, when the rods of the consul were broken and the temples of the immortal gods set on fire, I could not but hold the *res publica* to be nonexistent. I thought, therefore, that with the *res publica* expelled there could be no place for me in this city, and yet I did not doubt that, if she were restored, she herself would bring me back with her. (Cic. *Red. Pop.* 14.)

The terrible condition of the *res publica* (that is, civic life and public business generally) during and as a direct result of Cicero's absence shows that the *res publica* was then *nulla*, non-existent. Read against the *De Lege Agraria* speeches, Cicero is once again providing an account of various elements of the Roman *res publica* (a strong senate, personal safety, a functioning legal system, civil order, respect for magistrates and the gods) in order to show what had been threatened. His version here encompasses both political structures and ordinary civic life, since his point now is not the transference of political power from Rome to a rival city but rather that *everything* had been missing from Rome during his absence; everything, that is, that could conceivably be embraced by the term *res publica*. *Nulla* slips into *exterminata*: the *res publica* has been 'expelled' from the city, and so Cicero too departs, confident in the knowledge that a restored *res publica* will restore him also. His consequent restoration is the proof of his rhetoric: since Cicero has been restored to the city, the *res publica* must have been restored as well in order to intervene on his behalf. At the end of the speech in the senate, the *res publica* is therefore cast as a suppliant on Cicero's behalf along with the senate's *auctoritas*, the *populus*

*Romanus* and the whole of *Italia*,<sup>486</sup> while in the speech to the people Cicero is inspired to promise that ‘since I have been restored to the *civitas* by the *res publica* herself, the *res publica* shall on no occasion find me to fail in my duty to her’.<sup>487</sup> Rhetorical alchemy transmutes the lengthy list of elements proper to functioning civil society into a personified unity capable of manifesting itself in the shape of Cicero, who becomes a kind of passive avatar of the *res publica*: he is not so much an actor in all this drama, except insofar as he sacrifices his own wellbeing by withdrawing from the city,<sup>488</sup> as the token of supreme civic good for which the senate and (responsible) magistrates struggle against the necessary wickedness of those who dare to attack him. The familiar concomitant conclusion is that Cicero’s opponents cannot just be *inimici* but must be *hostes* actively working against the *res publica*, and this is certainly how they are portrayed in the speeches.<sup>489</sup>

It is not generally necessary to pass judgement on how satisfactory Cicero’s rhetorical logic may be at any given point, but it seems fair to say that this particular rhetorical rendering of reality is complicated, tortuous and ultimately unconvincing. Nicholson summarises a statistical study of Ciceronian oratory as suggesting that ‘Cicero seems to have less to say in the fifties, yet he says it more ornately’;<sup>490</sup> here Cicero is bombastic from a position of weakness, which his oratory aims to conceal. That Cicero is making the absolute most of his restoration can be gathered from his cross-examination of Vatinius during the trial of Sestius in 56, where Vatinius had evidently used Cicero’s exile as a gibe (‘For what you have thrown in my face about my departure...’)<sup>491</sup> and put down his recall to political manoeuvring (‘Oh, but you said it was not for my sake that men laboured over my return, but for the sake of the *res publica* (*rei publicae causa*)’).<sup>492</sup> Cicero turns this into a commendation: no one who had entered *in re publica* for good reasons could be sorry to be loved by his fellow citizens for the sake of the *res publica* (*rei publicae causa*) – and even laying aside all the familiar evidence of universal adoration, such as the sorrowful forum (*forum maestum*) and silenced senate (*muta curia*), ‘what is more desirable for an

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<sup>486</sup> Cic. *Red. Sen.* 39.

<sup>487</sup> Cic. *Red. Pop.* 18, *quoniam me in civitatem res publica ipsa reduxit, nullo me loco rei publicae defuturum.*

<sup>488</sup> Cic. *Red. Sen.* 6.

<sup>489</sup> Cic. *Red. Sen.* 11, 32, *Red. Pop.* 13.

<sup>490</sup> Nicholson 1992: 123.

<sup>491</sup> Cic. *Vat.* 6, *nam quod mihi discessum obiecasti meum...*

<sup>492</sup> Cic. *Vat.* 7, *at enim dixisti non mea sed rei publicae causa homines de meo reditu laborasse.*

immortality of glory and everlasting perpetuation of my name, than that every citizen should judge that the welfare of the *civitas* was bound up with the welfare of my single self?<sup>493</sup> Although the extraordinary relationship to the *res publica* Cicero develops here foreshadows the rhetoric of the principate, the emperors developed their rhetoric in order to make their power palatable to others, whereas Cicero might be safely mocked for his:

*‘Tunc es ille,’ inquit, ‘quo senatus carere non potuit, quem boni luxerunt, quem res publica desideravit, quo restituto senatus auctoritatem restitutam putabamus quam primum adveniens prodidisti?’*

“Are you the man,” he says, “indispensable to the senate, mourned by good men, yearned for by the *res publica*, whose restoration we thought would mean the restoration of senatorial authority, and yet whose first act on your return was to betray it?” (Cic. *Dom.* 4.)

The speaker is Clodius; the reference may be to Cicero’s proposal that Pompey should oversee the grain supply.<sup>494</sup> What certainly is suggestive, as far as real (rather than rhetorical) comparisons with the principate go, is Cicero’s treatment of Pompey in the *Post Reditum* speeches, especially the one delivered to the *populus*. Pompey first appears in the speech to the senate as the *princeps civitatis* whose retreat into the safety not of the laws but of his house is the first significant feature of the year after Cicero’s exile, a year in which the *res publica* was without consuls (since Cicero is not prepared to admit Piso and Gabinius deserve the title), permanent parents or guardians, and when the senate could not express its *sententia*.<sup>495</sup> It is one of the signs that the light at the end of the tunnel has come on when ‘Gnaeus Pompeius, whose courage, fame and achievements are chief (*princeps*) in the records of any nation or age, thought that he could safely venture into the senate’.<sup>496</sup> This is all modest enough (and probably implies criticism of Pompey’s unvirtuous retreat to

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<sup>493</sup> Cic. *Vat.* 8, *quid optabilius ad immortalitatem gloriae atque in memoriam mei nominis sempiternam, quam omnis hoc civis meos iudicare, civitatis salutem cum unius mea salute esse coniunctam.*

<sup>494</sup> Stockton 1971: 194-6, Lintott 2008: 184.

<sup>495</sup> Cic. *Red. Sen.* 4.

<sup>496</sup> Cic. *Red. Sen.* 5.

his house;<sup>497</sup> at the very least, Pompey was unlikely to appreciate the reminder<sup>498</sup>), as is the exhaustive rendition of how Pompey had assisted Cicero at *Red. Sen.* 29, where Pompey figures as an important figure of outstanding *dignitas* but remains essentially a fellow senator, however significant. In comparison, however, any implied criticism of Pompey in the speech to the people is buried in a long list of what went wrong that year,<sup>499</sup> while Cicero tells the people:

*Quorum princeps ad cohortandos vos et ad rogandos fuit Cn. Pompeius, vir omnium qui sunt, fuerunt, erunt, virtute sapientia gloria princeps: qui mihi unus uni privato amico eadem omnia dedit quae universae rei publicae, salutem, otium, dignitatem.*

Chief of your appellants and suppliants was Gnaeus Pompeius, a man who has had, has, and will have, no rival in courage, wisdom and renown; he gave to me all that he has ever given to the whole *res publica*, what no other has ever given to a private friend – wellbeing, tranquillity, dignity. (Cic. *Red. Pop.* 16.)

The point of comparison with the principate is not the repeated description of Pompey as *princeps*;<sup>500</sup> rather, it is the praise of Pompey as someone who has essentially acted as *patronus* to the *res publica*, as well as to Cicero personally. (Within the context of these two speeches, admittedly, there is no clear distinction between the two.) The account of Lentulus's *contio* at *Red. Pop.* 16–17 focuses on Pompey's character testimony, which is given in condensed form; the debt Cicero owes him is 'scarcely lawful (*fas*) for a human to owe a human' and it was Pompey's *consilia* together with Lentulus's *sententia* and the senate's *auctoritas* that convinced the people to approve Cicero's restoration.<sup>501</sup> Again, the *privatus* Pompey is listed at *Red. Pop.* 18 in company with the *auctoritas* of the senate, the *consensio* of Italy, all the *boni*, Lentulus, the other magistrates, all mankind and the immortal gods, a list that singles out only two individuals, the other of whom was one of the consuls for

<sup>497</sup> Steel 2007: 111.

<sup>498</sup> Nicholson 1992: 53.

<sup>499</sup> Cic. *Red. Pop.* 14.

<sup>500</sup> On Republican *principes* cf. Hellegouarc'h 1963: 327-61.

<sup>501</sup> Cic. *Red. Pop.* 17.

that year. Pompey is not just another senator. To a striking degree, he stands apart from the *res publica* as a kind of supra-political entity, rather than moving within the usual structures of the political sphere. Unlike other magistrates and former magistrates, Pompey's *dignitas* does not stem from his achievements in the administration of the *res publica*; instead, the *res publica* owes its *salus*, *otium* and *dignitas* to him. If the *res publica* can be personified, it can be a person with a *patronus*; it can look to a single real individual (not necessarily one who holds an official position) for guidance and self-preservation.

This is foregrounded in the *De Domo Sua*, which recycles the rhetorical logic of the two *Post Reditum* speeches. Clodius is the *labes ac flamma rei publicae*<sup>502</sup> from whose evils the *res publica ipsa* called upon the senate and consuls for aid;<sup>503</sup> indeed, the *res publica ipsa* had raised up Cicero, thrown down by the onrush of Clodius's *impetus furoris*, with her own hands.<sup>504</sup> Clodius had no right to pass not even a law but a *privilegium* against a citizen whom all gods and men had judged the *conservator rei publicae*.<sup>505</sup> Eminent persons had agreed that Clodius's measures marked the death of the *res publica*, even if they were obliged to concede it was legally done to death.<sup>506</sup> Even after the *res publica* 'was expelled with' Cicero (*erat exterminata mecum*), it nonetheless still 'fluttered before the eyes of its extinguisher' (*obversabatur ante oculos extinctoris sui*) demanding back itself and Cicero (*se meque*) from his madness.<sup>507</sup> Cicero's exile had been a voluntary martyrdom on behalf of the *res publica*,<sup>508</sup> which had departed Rome with him;<sup>509</sup> his recall was based on his services to the *res publica*, confirmed by senatorial decree:

*Summum est populi Romani populorumque et gentium omnium ac regum consilium senatus: decrevit ut omnes qui rem publicam salvam esse vellent ad me unum defendendum venirent, ostenditque nec stare potuisse rem publicam si ego non fuisset, nec futuram esse ullam si non redisset.*

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<sup>502</sup> Cic. *Dom.* 2.

<sup>503</sup> Cic. *Dom.* 12.

<sup>504</sup> Cic. *Dom.* 119.

<sup>505</sup> Cic. *Dom.* 26.

<sup>506</sup> Cic. *Dom.* 42.

<sup>507</sup> Cic. *Dom.* 141.

<sup>508</sup> Cic. *Dom.* 63-4, 96-9.

<sup>509</sup> Cic. *Dom.* 87, 137.

The supreme deliberative body of the Roman people, and indeed of all peoples, nations, and kings, is the senate; and the senate decreed that all who wished the *res publica* to be safe should rally to my sole defence, and intimated that the *res publica* could not have survived had I not existed, and would be annihilated should I not be restored. (Cic. *Dom.* 73.)

No one, Cicero says, has accused him of any crime except for ‘one single act of cruelty’ during the *durissima rei publicae tempora* when Cicero had repelled destruction from the *patria* – that is, the execution of the conspirators.<sup>510</sup>

Pompey’s starring role in *De Domo Sua* came courtesy of the grain supply commission, which was the political controversy *du jour*, temples of *Libertas* aside, and which Clodius seems to have used to accuse its proposer, Cicero, of passing over to the *populares*.<sup>511</sup> It is not true, Cicero tells Clodius, that the *pontifices* are angry with Cicero for saying recently that the *salus civium* was joined with *honos* for Pompey,<sup>512</sup> nor are any of Clodius’s criticisms of Cicero’s recent political activity valid.<sup>513</sup> What *is* true is that Cicero proposed Pompey for the grain commission because Pompey’s *fides*, *consilium*, *virtus*, *auctoritas* and *felicitas* would ensure the job got done;<sup>514</sup> and whether this happy outcome was a divine blessing bestowed in reward for Cicero’s return or the result of Cicero’s devotion to requiting the *populus Romanus* for their *beneficium*, the *res publica* has been spared an impending crisis.<sup>515</sup> Cicero will pass over the obvious reason to give Pompey this extraordinary commission (the remarkable number of extraordinary commissions Pompey has already completed and through which he augmented the name and *imperium* of the *populus Romanus*<sup>516</sup>) in favour of attacking Clodius’s hypocrisy, Clodius having cheerfully given various people extraordinary commands in order to buy their support.<sup>517</sup> The account of Clodius’s misdeeds segues into just what (or rather, who) it was that put an end to Clodius’s reign of terror:

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<sup>510</sup> Cic. *Dom.* 93.

<sup>511</sup> Cic. *Dom.* 4; Cic. *Att.* 4.1.6-7, Stockton 1971: 196, Rundell 1979: 321.

<sup>512</sup> Cic. *Dom.* 3.

<sup>513</sup> Cic. *Dom.* 6-16.

<sup>514</sup> Cic. *Dom.* 16.

<sup>515</sup> Cic. *Dom.* 17.

<sup>516</sup> Cic. *Dom.* 18-19.

<sup>517</sup> Cic. *Dom.* 20-24.

*Sed excitatus aliquando Cn. Pompei – dicam ipso audiente quod sensi et sentio, quoquo animo auditurus est – excitatus, inquam, aliquando Cn. Pompei nimium diu reconditus et penitus abstrusus animi dolor subvenit subito rei publicae, civitatemque fractam malis, imminutam ac debilitatam, abiectam metu ad aliquam spem libertatis et pristinae dignitatis erexit.*

But the resentment of Gnaeus Pompeius – and, though it is in his hearing, I shall speak frankly about what I have felt and what I still feel, whatever may be the sentiments with which he listens to me – the resentment of Gnaeus Pompeius, I say, which had lain too long dormant in the deep recesses of his mind, was roused at length, and came suddenly to the aid of the *res publica*, and bade the civic community, cowed, enfeebled, and cringing though it was, to entertain some hope of regaining its freedom and ancient dignity. (Cic. *Dom.* 25.)

It turns out to have been the *privatus* Pompey who was the driving force behind Cicero's recall from exile – or, as Cicero would have it, who came to the aid of the *res publica*. This justifies Cicero's proposal to give Pompey the grain commission,<sup>518</sup> despite the (completely unfounded!) rumours put about by malicious persons that Pompey had actually abandoned Cicero to Clodius's attack in the first place.<sup>519</sup> Lentulus might have been the public face of the effort to get Cicero recalled, but it was Pompey who put in all the serious work in the shadows.<sup>520</sup> At *Dom.* 66, Pompey is the *princeps civitatis*; at *Dom.* 110, it is the *princeps orbis terrae* whom Clodius had penned up in his own house; by *Dom.* 129, Pompey has become the *propugnator et custodis imperii*. Pompey is not just significant, but dominant; he holds no office, but looms over Roman political life to the point of overshadowing the consul. While Cicero puts a great deal of work into establishing his identification with the *res publica* based on the one-off heroics of his consular year, he attributes to Pompey more or less in passing the kind of permanent, regularly reinforced, dubiously official role of someone who can be expected to intervene in moments of crisis to give the *res publica* a hand if need be – precisely the sort of position that the

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<sup>518</sup> Cic. *Dom.* 25, 27.

<sup>519</sup> Cic. *Dom.* 28-30.

<sup>520</sup> Cic. *Dom.* 30.

emperors would come to hold. These rhetorical experiments were compelled by Cicero's personal circumstances, but they point to a larger transformation of what *res publica* can mean and how it was (and would be) conceived. It is ironic that this version of Pompey's role in Cicero's recall, and the hints dropped about his part in Cicero's exile, is so much more convincing than Cicero's contorted rhetoric on his own account.

#### 4.5 THE BELLS THAT STILL CAN RING

The self-aggrandising rhetoric Cicero developed in the *Post Reditum* speeches was continued in his other speeches from the 50s: he had saved the *res publica* in his consulship (and this was confirmed by other people),<sup>521</sup> his exile was *contra rem publicam* and his *inimici* were *hostes* (whether explicitly framed in these terms or not),<sup>522</sup> his return was a triumph for the *res publica* and all good citizens,<sup>523</sup> although Clodius and anyone else who might have agreed with him at any point continued to be thorns festering in the *res publica*,<sup>524</sup> which took a very personal interest in Cicero's activities.<sup>525</sup> In short, Cicero created a special relationship between himself and the *res publica* that could be invoked even when he had no formal responsibilities other than attending the senate. This was necessary not just because of the damage done by his exile but also because Cicero's capacity for independent political action was now constrained. The weakness of his position is laid bare by his anticlimactic promises: despite his dramatic account of saving the *res publica*, attack by *domestici hostes*, and restoration by senate, the *boni* and Pompey, his political position is the essentially Catonian one that he will conduct himself impeccably in ordinary business. At *Red. Sen.* 36, his political freedom will be deployed in defence of the *res publica*: having been 'restored to the *res publica* together with the *res publica*', he has no intention of remitting his *pristina libertas* in its defence, but will rather increase it. He goes a little further in the *Reditum ad Populum*, where he promises the *populus* to do the very most possible: firstly, to show to the *populus* the *pietas* usually given to the immortal gods, and secondly, since the *res publica* itself

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<sup>521</sup> Cic. *Pis.* 4-7.

<sup>522</sup> Cic. *Har. Resp.* 45, *Sest.* 5, 15-77, *Prov. Con.* 1-3, *Pis.* 16-20.

<sup>523</sup> Cic. *Har. Resp.* 46, *Vat.* 8, *Sest.* 120-131, *Pis.* 32-6, 51-2.

<sup>524</sup> Cic. *Har. Resp.* 47, *Prov. Con.* 24, *Vat.* 9.

<sup>525</sup> Cic. *Vat.* 7, *Planc.* 92.

has restored him *in civitatem*, that he will never fail the *res publica*.<sup>526</sup> He provides a fourfold list of assailants: those who hate him because he had preserved the *res publica*, which he had saved against their wishes; those who pretended to be his friends, but had betrayed him; those who envy his reputation and *dignitas*, which they are too lazy to attain for themselves; and those who ought to have been the *custodes rei publicae*, but nonetheless sold his *salus*, the *status civitatis* and the *dignitas* of the *imperium* in their care – this last presumably referring to Piso and Gabinius.<sup>527</sup> Each crime shall be avenged according to its provocation, says Cicero grandly:

*malos civis rem publicam bene gerendo, perfidos amicos nihil credendo  
atque omnia cavendo, invidios virtuti et gloriae serviendo, mercatores  
provinciarum revocando domum atque ab iis provinciarum rationem  
repetendo.*

bad citizens by managing the *res publica* well; my treacherous friends by crediting nothing and suspecting everything; the envious by a devotion to glory and virtue; and the traffickers in provinces by recalling them home, and holding them responsible for their provincial government. (Cic. *Red. Pop.* 21.)

In other words, business as usual, albeit with a paranoid twist. This is not the revenge of a man in a position to do much harm to his *inimici*, even if, as Cicero goes on to explain at some length, taking revenge is easier (therefore less important) than repaying *beneficia*, and also subject to rather less social policing.<sup>528</sup>

Cicero's letters to Atticus are candid about his vulnerability,<sup>529</sup> but his more polished epistles to his benefactor Lentulus show him negotiating his rhetorical persona and political limitations in the semi-formal space between public rhetoric and private communication.<sup>530</sup> The lengthy retrospective review of his post-exilic position and conduct given at *Fam.* 1.9, written in December 54, is particularly

<sup>526</sup> Cic. *Red. Pop.* 18.

<sup>527</sup> Cic. *Red. Pop.* 21.

<sup>528</sup> Cic. *Red. Pop.* 22-3.

<sup>529</sup> E.g. Cic. *Att.* 4.1, 4.3, 4.5, 4.6.

<sup>530</sup> Cic. *Fam.* 1.1, 1.2, 1.4, 1.5a, 1.5b, 1.6, 1.7, 1.8, 1.9.

telling. As Mitchell notes, the letter ‘tells no lies, but its ambiguities, subtle distortions, omissions, and skill in suggesting false conclusions convey the wrong impression if it is considered separately from the fuller and more honest contemporary accounts to Atticus and Quintus’.<sup>531</sup> Cicero was responding to what seems to have been his correspondent’s not-very-veiled criticism of his recent defence of Vatinius, whom Cicero had previously attacked in the *In Vatinium*, and perhaps also a subtler criticism of Cicero’s good relations with Caesar and Appius Claudius, given how Cicero repeats that Lentulus explicitly was not criticising this.<sup>532</sup> Cicero explains at length that his attempts to demonstrate his political independence had upset Crassus, Caesar and the inscrutable Pompey, the last of whom had met Quintus Cicero a few days after the conference at Luca in 56 and delicately threatened him on Cicero’s account.<sup>533</sup> He casts himself as someone who had striven to act in public affairs as befitted a *consularis* of unblemished reputation, and who had succeeded to the point of pulling the tail of the biggest, least communicative elephant in the room, whereupon the weakness of his position had been made abruptly clear. It was not possible, it transpired, to play the part of the independent, important *consularis*, not because Cicero had not done his best but because the current political landscape, combined with the debts incurred during Cicero’s exile, would not allow it. His detailed account of political manoeuvring lapses into oratory:

*Conlegi ipse me et cum ipsa quasi re publica conlocutus sum, ut mihi tam multa pro se perpresso atque perfuncto concederet ut officium meum memoremque in bene meritos animum fidemque fratris mei praestarem, eumque quem bonum civem semper habuisset bonum virum esse pateretur.*

I collected myself and spoke as if with the *res publica* itself. Would it not allow me, after all I had suffered and gone through for my sake, to behave with propriety and gratitude towards my benefactors and to honour my

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<sup>531</sup> Mitchell 1969: 320.

<sup>532</sup> Cic. *Fam.* 1.9.4, 19.

<sup>533</sup> Cic. *Fam.* 1.9.4-10; on Cicero’s role in creating the circumstances that produced the conference at Luca in 56, cf. Mitchell 1969 (‘Cicero has been given a prominence in the course of politics before Luca which he clearly does not deserve, and he had been credited with a boldness and initiative which he did not possess in this period’, 318).

brother's pledge? Would it not allow him whom it had always held to be a good citizen to be a good man? (Cic. *Fam.* 1.9.10.)

In his moment of revealed weakness, Cicero turns to the personified *res publica*, which he had spent so much rhetorical energy on establishing as client, patron and symbolic second self, to provide a way out of his dilemma. What might seem merely a petty political embarrassment, Cicero's changed public attitude towards a publicly acknowledged political *inimicus*, has become a matter of national importance on which the *res publica* may be expected to take a stand, if only because of its interest in the unstained character of its champion and avatar, Cicero. The *res publica*'s reply is not recorded, and the brevity of this particular flight of rhetoric may indicate it was a bit over the top for even a semi-formal letter, since Cicero goes on to reason his own way to a respectable outcome: while *he* had been carrying on in a way likely to annoy the Great Elephant, various ostensible supporters had been whispering behind his back about their pleasure that Pompey and Caesar would be alienated from him. Not only that, but they had taken up 'my opponent – mine? surely, indeed, of laws, justice, tranquillity, the fatherland, all good men'<sup>534</sup> – i.e. Old Nick himself, the unnamed Clodius.

On the one hand, then, those whom Cicero might be perceived as letting down stand revealed as hypocrites who had been happy (not for the first time) for Cicero to endanger himself in the cause of principled politics while they themselves cultivated a serious danger to the usual list of evocative elements. On the other hand, Cicero had positive reasons to bow to Pompey's wishes. If the *res publica* had been controlled by someone like Cinna, neither threats nor promises could have won him over, but the current *princeps* is Pompey, who has earned his power and glory through services to the *res publica*, has helped Cicero in the past and who shares an enemy with Cicero. Pompey's remarkable position is legitimate and his claim to Cicero's loyalty is valid; despite appearances to the contrary, it was not inconstancy for Cicero to change course and support this *summus vir*.<sup>535</sup> This led Cicero to the obvious conclusion that there was nothing wrong with embracing Pompey's friend (and Cicero's friend, and Quintus's friend) Caesar, either, not least because:

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<sup>534</sup> Cic. *Fam.* 1.9.10, *inimicum meum – meum autem? immo vero legum, iudiciorum, oti, patriae, bonorum omnium.*

<sup>535</sup> Cic. *Fam.* 1.9.11.

*Vehementer etiam res ipsa publica me movit, quae mihi videbatur contentionem, praesertim maximis rebus a Caesare gestis, cum illis viris nolle fieri et ne fieret vehementer recusare.*

Moreover I was strongly moved by the *res publica* itself, which seemed to me not to wish there to be a struggle with these men, especially after Caesar's great achievements, and to protest strongly that this should not happen. (Cic. *Fam.* 1.9.12.)

Once again, a difficult decision is rendered palatable through dialogue with the *res publica*; and once again, as if to tether rhetoric to reality, Cicero follows it up with a concrete reason to go along with Pompey: the pledges made by Pompey to Caesar and by Quintus to Pompey on Cicero's behalf.<sup>536</sup>

*Ad Fam.* 1.9 therefore shows Cicero deploying the rhetoric developed post-exile in a less high-pressure context than public oratory to justify the inconstancy forced upon him by his political vulnerability. The basic themes remain intact: Cicero trots out the rhetorical fiction of the personified *res publica*, the familiar narrative of his consulship, exile and restoration, and the supreme wickedness of Clodius. For Lentulus's discerning palate, however, there are emendations. The more ornate rhetorical passages are curtailed and the narrative focus shifts from the unnamed Clodius (who is practically a force of nature) to the culpability of anonymous *optimates* (whose cause Cicero justifies abandoning). An antithesis appears: in ordinary political life, Cicero can side *either* with these treacherous *optimates* *or* with the *princeps* Pompey, whose dominant *dignitas* does not need to be explained to Lentulus but benefits from a degree of justification based on Pompey's past services to the *res publica*. The result is a more nuanced account of political skullduggery that winds up with a mostly straightforward account of how Pompey and Caesar had arranged Cicero's reconciliation with Vatinius and Crassus, with the result that Cicero had defended the former in court and supported the latter in the senate. Even if he had had any choice in the matter, Cicero says, he would have done the same thing; after all, it was impossible for him to fight these people

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<sup>536</sup> Cic. *Fam.* 1.9.12.

and he wouldn't be in favour of cutting them down to size even if that were possible, so respectable accommodation was the only viable path.<sup>537</sup> This is an open admission of weakness, for all Cicero's attempts to cast his dilemma as the consequence of trying to behave independently in a world in which, thanks to the petty treachery of his critics, independent behaviour was not possible. The gap between Cicero's rhetorical flourishes and his detailed insider's perspective on how Roman politics actually functioned (X said something to Y, who said something to P, whom everyone thought was annoyed; meanwhile various people said various things that filtered back to the subject of their gossip, who was *definitely* annoyed; as a result, existing quarrels were resolved and political constellations shifted) shows up Cicero's invocation of the personified *res publica* to justify embarrassing (rather than epoch-defining, or perhaps even very important) decisions forced upon him by external actors with real power.

It is difficult to generalise from 'what Cicero did' to 'what other senators might do' given Cicero's atypical career. Writing to Appius Claudius in late June 50, Cicero expresses his pleasure that 'you write that the *res publica* itself defended you' in Appius's recent trial for *maiestas*, but it seems likely that Appius was laying claim to general political support rather than a particular relationship with the personified *res publica*, even if Cicero promptly elaborated such a relationship on Appius's behalf: the *res publica* should protect men like Appius in any age, but especially an age so bereft of good and strong citizens as the current one.<sup>538</sup> The pressures driving Cicero to associate himself and his well-being with a personified *res publica* were not universal. On the other hand, if Cicero's particular vulnerabilities were specific to his circumstances and history, the limitations imposed by his weakness and the existence of political titans like Pompey and Caesar put Cicero in a position comparable not just to contemporaries but also to former senators such as the elder Cato, who had scrambled for political currency in a *res publica* dominated by great generals. Cato's valorisation of impeccable conduct in ordinary political life was essentially an attempt to reconceptualise the relationship between the individual and the *res publica*. Similarly, Cicero occupied himself with rethinking how individuals should relate to the *res publica* during the latter half of the 50s, most obviously through the concept of the *rector rei publicae*, who first appears in Cicero's dialogue

<sup>537</sup> Cic. *Fam.* 1.9.19-22; cf. Balsdon 1960: 50.

<sup>538</sup> Cic. *Fam.* 3.11.3.

on oratory and the ideal orator, *De Oratore* (55 BC). Here the orator Marcus Antonius tells his companions,

*Sin autem quaereremus quis esset is, qui ad rem publicam moderandam usum et scientiam et studium suum contulisset, definirem hoc modo: qui quibus rebus utilitas rei publicae pareretur augeturque, teneretisque uteretur, hunc rei publicae rectorem et consili publici auctorem esse habendum.*

But if we were inquiring who is he that has devoted his experience, knowledge and enthusiasm to the guidance of the *res publica*, I should define him thus: “Whoever knows and uses everything by which the advantage of a *res publica* is secured and developed is the man to be deemed the *rector* of the *res publica*, and the originator of national policy.” (Cic. *De Orat.* 1.211.)

The current consensus on the *rector* follows Powell, for whom Cicero’s *rector rei publicae* is simply an ideal statesman.<sup>539</sup> He reappears in the *De Republica*, where he is placed in direct contrast to the tyrannical Tarquin (*Rep.* 2.51): whereas the tyrant’s abuse of his power overturns ‘that whole kind of regal community’ (*totum genus hoc regiae civitatis*), the *rector* is ‘good, wise and skilled in civil *utilitas* and *dignitas*, the guardian and protector (*tutor et procurator*), as one might say, of the *res publica*; for so may be called someone who is truly the guide and pilot (*rector et gubernator*) of a *civitas*’.<sup>540</sup> Scipio Aemilianus’s audience is advised to be sure they can recognise a *rector* in the wild, ‘for he is the one who, by counsel and work, can safeguard the *civitas*’.<sup>541</sup> According to Scipio the *rector*’s main duty is to focus on self-improvement in order to provide an example for others;<sup>542</sup> he should know about *ius et leges*, but for practical reasons rather than a subject of academic interest, and his actual involvement should be strictly limited, since his principal concern is with the stewardship of the *res publica*.<sup>543</sup> And ‘just as the aim of the helmsman is a successful voyage, of the physician, health, and of the general, victory, so this

<sup>539</sup> Powell 2001: 31; cf. likewise Wood 1988: 178, Nicgorski 1991: 238-44, Powell 1994: 20, 2001: 31, Morford 2002: 74-5, Steel 2005: 70, Asmis 2005: 414.

<sup>540</sup> Cic. *Rep.* 2.51.

<sup>541</sup> Cic. *Rep.* 2.51.

<sup>542</sup> Cic. *Rep.* 2.69.

<sup>543</sup> Cic. *Rep.* 5.5.

director (*moderator*) of the *res publica* has as his aim for his fellow-citizens a happy life, fortified by wealth, rich in material resources, great in glory and honoured for virtue'.<sup>544</sup> Once the prospect of pro-monarchic political theorising has been dismissed, what remains excites interest for Cicero's apparent conceptualisation of politics as a sort of profession to be practised, along with the possibility of a professional practitioner.<sup>545</sup> The *rector* should probably not be imagined as a single figure or official position, but rather as a generic type (after all, as Laelius says at *Rep.* 2.67, there are plenty of such men to be found in the Scipionic circle).<sup>546</sup> He is therefore an ideal statesman whose task it is to contemplate himself and to guide the *res publica* by virtue of being extremely wise; he is to have theoretical knowledge of laws and justice, but he is not to involve himself directly, since his task is not the administration of details but rather to ensure that the *res publica* as a whole remains *salva*. His role is fundamentally conservative; he works within the system to preserve the traditional *res publica*; and while circumstances may sometimes necessitate structural adjustments, he brings no grand reforms of the *mos maiorum* to the table. Rather, he himself is the embodiment of the political structures transmitted to the present by the *maiores*.<sup>547</sup>

It seems reasonable to read the ordinary life of Cicero's *rector* as a philosophically-informed update of the elder Cato's political persona, especially given explicit Catonian influences elsewhere in the dialogue.<sup>548</sup> On Zetzel's reading, Cicero 'attempts to combine a historical and traditionalist theory of governmental legitimacy with a rationalist one: he combines, to put it in the starkest terms, Cato with Plato'.<sup>549</sup> This is not to say that Cicero deliberately drew on Cato's political posturing for his *rector* in *De Republica*, or not necessarily anyway; rather that, given comparable social backgrounds and political weaknesses, it was natural for Cicero to resort to similar strategies in response to adverse circumstances. Cicero could not lay claim to the military achievements of someone like Pompey or Caesar, just as Cato could not have challenged those of the Scipiones; nor, given the stigma of exile and Cicero's vulnerable position on his return, was it easy to make an unproblematic claim to fame out of his consulship. Furthermore the domination of

<sup>544</sup> Cic. *Rep.* 5.8 (= *Att.* 8.11.1).

<sup>545</sup> Powell 1994: 20; cf. also Steel 2005: 70.

<sup>546</sup> Morford 2002: 74-5, Asmis 2005: 410.

<sup>547</sup> Asmis 2005: 412.

<sup>548</sup> Cic. *Rep.* 1.1, 1.27, 2.1-3, 2.37; Cornell 2001: 48, Zetzel 2001: 83-4, Asmis 2005: 393-5, 399.

<sup>549</sup> Zetzel 2001: 84.

the political landscape by much greater monsters rendered even independent political action difficult. Cicero, like Cato, responded by valorising a particular attitude towards the *res publica* rather than specific achievements on behalf of the *res publica*.

It is easy to see how the *rector rei publicae* aligned with Cicero's personal biography even without the helpful pointer at *Rep.* 1.6–7, where Cicero, speaking in his own *persona*, includes himself in a list of people held to have suffered for their efforts on behalf of the *civitas* and rejects the possibility of joining the list as a reason to avoid participating in the *res publica*. As in the *Post Reditum* speeches and the letter to Lentulus, Cicero's difficult political circumstances determined how he conceived the relationship between (him)self and the *res publica*. It is equally possible, however, to read this *rector* against Pompey as he appears in Cicero's speeches and letters: a supremely virtuous individual (admittedly Pompey's virtue fluctuates) who guides the *res publica* in private life as well as when holding public office, and whose capacity to step in during crises has been thoroughly elucidated in the *Post Reditum* and *De Domo Sua* speeches. And not (Cicero hoped) a king.

## **5. RES PUBLICA RECIPERATA**

In January 49, Caesar crossed the Rubicon. So far, I have stressed that different perspectives on *res publica* are more or less equally valid points on a spectrum and that speakers (or writers) select whichever perspective best suits the immediate circumstances, their political persona and their persuasive goal. My starting point for this chapter is that such positioning becomes especially interesting in a civil war, when victory potentially means not just the victory of particular individuals but also their particular ideological perspectives. Since the evidence for the civil war of the 80s is mostly limited to responses to Sulla and his eventual victory, it is easier in that case to examine the outcome than what people said while the outcome was still in doubt. When it comes to Caesar's civil war, however, we have a much clearer window onto contemporary conversation. It is consequently possible to distinguish at least five separate strands of relevant discourse. Two stand in outright opposition: the explicit 'Republican' claim to be fighting in defence of the *res publica*, a claim that foregrounds *res publica* as public (that is, political) space structured and defined by movable political institutions (5.1), is opposed by Caesar's largely implicit claim to have occupied the *res publica* by virtue of his occupation of Rome, a claim that foregrounds *res publica* as geographically fixed public property/business (5.2). The unhappy middle ground is exemplified by Cicero, whose initial hope that the *res publica* might be recovered from Caesar (*res publica reciperata*) gave way to despair over the *res publica amissa* (5.3). Caesar's assassination in March 44 revealed the political weakness of his *res publica*, which was premised on his presence; in the confused aftermath, the 'Liberators' invoked a *libera res publica*, which expresses political freedom (but not much more) as a necessary quality of the political sphere (5.4), while Cicero's *First Philippic* explained how he thought the *res publica* should operate in future, even though his invocation of *res publica* as rhetorical fiction in later speeches could only undermine this vision (5.5).

## 5.1 COMMAND OF WHAT

The most clearly defined political position in the Caesarian civil wars of 49–5 BC was occupied by the Pompeian camp, which made a convincing claim (how convincing is shown by its traditional label of ‘the Republican party’) to be defending the *res publica*.<sup>550</sup> This is implicit in several letters where Pompey makes the same claim to act *pro re publica* as any magistrate fighting a foreign enemy might have made,<sup>551</sup> and is explicit in a letter written on 17 February 49 to L. Domitius Ahenobarbus, who had ignored Pompey’s instructions to evacuate Italy and thereby ended up besieged by Caesar at Corfinium.<sup>552</sup> Domitius had requested relief, which Pompey (who had previously written to tell Domitius to evacuate Corfinium<sup>553</sup>) now refused:

*Neque enim eorum militum quos mecum habeo voluntate satis confido ut de omnibus fortunis rei publicae dimicem neque etiam qui ex dilectibus conscripti sunt consulibus convenerunt.*

I do not have enough confidence in the disposition of the men I have with me to fight a battle on which the whole future of the *res publica* would be staked, and the levies raised for the consuls have not yet been mustered. (Cic. *Att.* 8.12D.1.)

For Pompey, this was a fight for the *res publica* – specifically, a fight in which *his* side was fighting for the *res publica*. A private message from Pompey to Caesar transmitted in Caesar’s *Bellum Civile* similarly emphasises Pompey’s ‘position as guardian of the constitution’.<sup>554</sup> It was sent to Caesar at Ariminum care of the *adulescens* L. Caesar, son of one of Caesar’s legates, who explained to Caesar that he had been entrusted with a *privatum officium*:

<sup>550</sup> Wistrand 1978: 39–40, Raaflaub 1974: 194, 219, 2003: 49.

<sup>551</sup> Cic. *Att.* 8.6.2, 8.11C, 8.12A.1, 8.12A.4, 8.12B.1, 8.12C.3; cf. Raaflaub 1974: 194–5.

<sup>552</sup> Caes. *BC* 1.15–23; cf. von Fritz 1942, Shackleton Bailey 1956, Burns 1966, Leach 1978: 179–83, Greenhalgh 1981: 151–9.

<sup>553</sup> Cic. *Att.* 8.12C; on this letter cf. von Fritz 1942: 155, Shackleton Bailey 1956: 58–9; on Pompey’s circulation of his letters to Domitius to spare himself blame for the disaster cf. Burns 1966: 87–8.

<sup>554</sup> Leach 1978: 174.

*velle Pompeium se Caesari purgatum, ne ea quae rei publicae causa egerit in suam contumeliam vertat. Semper se rei publicae commoda privatis necessitudinibus habuisse potiora. Caesarem quoque pro sua dignitate debere et studium et iracundiam suam rei publicae dimittere neque adeo graviter irasci inimicis, ut cum illis nocere se sperat rei publicae noceat.*

Pompey wished to explain himself to Caesar, to stop Caesar turning to his discredit actions which he had taken for the benefit of the *res publica*. He had always, he said, regarded the advantage of the *res publica* as more important than his private interests. Caesar too had a duty laid on him by his position to set aside for the sake of the *res publica* his passion and resentment, and not to be so angry with his enemies that in the hope of harming them he did harm to the *res publica*. (Caes. *BC* 1.8.<sup>555</sup>)

Wistrand detects ‘unmistakeable irony in Caesar’s careful reproduction of Pompey’s characteristically sanctimonious language with its pretension to disinterested loyalty to the *res publica*’ here,<sup>556</sup> and certainly the surrounding narrative of Pompeian deceit and bad faith undercuts Pompey’s perfectly proper sentiments.<sup>557</sup> But it is hard to argue, modern attempts to make Caesar into a progressive champion of the Roman underclasses aside,<sup>558</sup> that when Caesar crossed the Rubicon, the cause that was legally, morally and politically (if not militarily) stronger did not belong to his opponents. Caesar did not go to war to spearhead a popular revolt of the downtrodden Roman underclasses; rather, he was a rogue general backed by his army in rebellion against the central authority. Cicero’s correspondent Caelius Rufus, when choosing sides, notoriously preferred the stronger over the better side in civil war,<sup>559</sup> and even the Caesarian continuator of the *Bellum Africanum* put speeches invoking the *res publica* into the mouths of ‘Republican’ commanders like Metellus

<sup>555</sup> The translations cited here are those of Carter 1990, 1993 (slightly amended).

<sup>556</sup> Wistrand 1978: 40; cf. also Batstone-Damon 2006: 58.

<sup>557</sup> On this cf. Burns 1966: 87-8 (on Caesar’s presentation of Domitius and the siege of Corfinium), Boatwright 1988:31, Carter 1990: 18, Henderson 1996, Batstone 1991: 127, Grillo 2012: 38-40, 60-2 and section 5.2 below. On Caesar’s deceptive chronology (despite his claim to have acted after meeting L. Caesar and L. Roscius, he must have occupied Arretium, Ariminum, Pisaurum, Fanum and Ancona several days before their arrival), cf. von Fritz 1941, Rambaud 1953: 35, Burns 1966: 79.

<sup>558</sup> Parenti 2003, Raaflaub 2003: 53, Wiseman 2009a: 198.

<sup>559</sup> Cic. *Fam.* 8.14.3; it is true that Caelius may have tailored his reasoning to his correspondent, but it is also true that his Caesarianism was temporary and ended in tears.

Scipio and Cato the Younger.<sup>560</sup> The legal and political strength of the ‘Republican’ camp derived from: (a) the *SCU* passed on 7 January 49, through which the consuls, praetors, tribunes and local proconsuls were called upon to see that the *res publica* should take no harm, and other senatorial decrees;<sup>561</sup> (b) the explicit support (or at the very least the absence from Rome) of both consuls, a significant number of other magistrates and the better part of the senate, whose evacuation Pompey had ordered on 17 January.<sup>562</sup>

The latter point is relevant not just because of the credibility these people gave the ‘Republican’ cause. Rather, it made it possible for the ‘Republicans’ to stake out a compelling position on the spectrum of what *res publica* could mean. In Chapter 1, I argued that one of the basic meanings of *res publica* is ‘the political sphere of a given civic community’ and that when *res publica* is used in this sense, the specifically Roman *res publica* will be ‘the currently constituted Roman political sphere’. Furthermore, the more granular political insider’s reading (as transmitted especially by Cicero’s speeches *De Lege Agraria* and *Post Reditum*) is that shared political institutions, in this case the magistrates, senate and popular assembly, together constitute the *res publica*, without which a given community (*civitas*) will lack both political autonomy and the ability to take political or military initiative. Cicero had his own reasons for expatiating on *res publica* in this particular way in these particular speeches, but there is no reason to think that his account was fundamentally inaccurate, as partial and skewed as it may have been. This is *res publica* in the sense of political space, and it is space defined and structured by inherited (or constituted, as in Sulla’s *res publica constituta*) political institutions within which everyday political activity comprised of horizontal peer-to-peer relationships might be channelled and contained. Pompey’s evacuation of the senior magistrates and senate, first from Rome and then from Italy, therefore left behind a

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<sup>560</sup> *B. Afr.* 22, 44.

<sup>561</sup> *Caes. BC* 1.2, 1.6, *Cic. Fam.* 16.11.2; cf. von Fritz 1941: 144, Taylor 1949: 160, Greenhalgh 1981: 132, Seager 2002: 149-51.

<sup>562</sup> On the evacuation of first Rome and then Italy, cf. von Fritz 1942, Taylor 1949: 163, Shackleton Bailey 1956: 58, Burns 1966: 79-80, Gelzer 1968: 196-7, Meier 1996: 368, Leach 1978: 176, Brunt 1986: 32, Seager 2002: 163. McDermott 1970: 342-4 points out Caesar’s difficulty in attracting senior politicians throughout his career and suggests Caesar may have offered Cicero the position of *magister equitum* in 47; Yavetz 1971: 184-5 notes ‘That L. Calpurnius Piso (his father-in-law), P. Cornelius Dolabella, C. Scribonius Curio, S. Sulpicius Rufus, and C. Trebonius Testa did not approve of the crossing of the Rubicon is not surprising, but it is startling to find that his staunchest supporters (among them Oppius, Balbus, and Matus) had their reservations as well... Caesar’s supporters never supported him wholeheartedly’.

*civitas* without a *res publica*. It was impossible to take the popular assembly too (the *populus* as a whole could not be shipped out of Italy, and probably would not have wanted to be anyway; furthermore, as observed above in connection with Sulla's first march on Rome, laws existed to prevent consuls abroad from treating their armies as a *populus* able to vote on measures put to them, so *comitia* could only be held in the designated places in Rome itself<sup>563</sup>), but in the absence of magisterial *imperium* and senatorial *consilium*, Rome was reduced to the same condition as a city like Capua. What remained of the senate was not only unimpressive (note Caesar's efforts to lure the dilatory Cicero back to Rome)<sup>564</sup> but also unimpressed by Caesar,<sup>565</sup> and the absence of the consuls left no one to preside over the consular elections.<sup>566</sup>

The implications for how the Roman *res publica* was, could, or should be conceived were tremendous. Cicero had spent the 50s personifying the *res publica* into his own client, protector and alter ego, a rhetorical fiction endowed with quasi-autonomous agency that might go into exile and return to Rome with him. This was the rhetoric of personal weakness and it seems unlikely that anyone other than Cicero took it very seriously, let alone literally. Now, though, Rome really *was* without consuls and was rather short on senatorial *consilium* or *auctoritas* too. These quintessentially Roman institutions were not personifications but were embodied in actual persons – and people could move themselves. Caesar might have the buildings, but Pompey had most of the constituent political elements. Against the concept of a *res publica* in exile, however, stood the far from minor matter of whether the Roman *res publica* (*qua* 'structured political sphere') could actually exist at a geographical distance from Rome. The point of its invocation in the *De Lege Agraria* speeches and the paradox of the *Post Reditum* speeches had been its physical location in the city; a *res publica* that literally could get up and leave Rome (even if what this meant in practice was the movement of magistrates and senators) was more than a rhetorical innovation. Cicero, who had previously innovated on the topic to such rhetorical effect, was distraught:

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<sup>563</sup> See n. [259259258](#) above.

<sup>564</sup> Gelzer 1968: 205-8, Stockton 1971: 257, Greenhalgh 1981: 168, Mitchell 1991: 258, Meier 1996: 378, Lintott 2008: 293.

<sup>565</sup> Gelzer 1968: 208-10, Meier 1996: 379-80, Greenhalgh 1981: 171.

<sup>566</sup> Cf. Cic. *Att.* 9.15.2 for the opinion that having a praetor hold consular elections or name a dictator (Caesar's chosen fudge) was not *ius*.

*Per Fortunas! quale tibi consilium Pompei videtur? Hoc quaero quod urbem reliquerit; ego enim ἀποῶ. Tamen nihil absurdius. Urbem tu relinquis? Ergo idem, si Galli venirent? 'Non est,' inquit, 'in parietibus res publica.' At in aris et focis.*

What *do* you think, for heaven's sake, of Pompey's plan? I mean, why has he abandoned the city? *I* don't know what to make of it. Yet there was nothing more absurd. You abandon the city? I suppose you would have done the same if the Gauls were coming? 'The *res publica* is not,' he says, 'within house walls.' But it is in altars and hearths. (Cic. *Att.* 7.11.3.<sup>567</sup>)

This was written possibly from Formiae on about 21 January 49, early in the crisis. It is not clear whether the letter records a genuine line of Pompey's or whether Cicero is imagining what Pompey's argument might be in the circumstances, but the point of what Pompey did or might have said is that the *res publica* is not compulsorily coexistent with the *urbs*: the latter is fixed in space, and therefore has a permanent geographical location, whereas the former is vested in individuals and groups, and therefore geographically flexible, if not wholly untethered. The *res publica* belongs to (the citizens of) Rome, but need not necessarily be situated within it. Cicero's kneejerk reaction, however, is to reject this eminently pragmatic reasoning: the location of the *res publica* may not be a matter of house walls, but it *is* tethered to the sacred spaces of the city of Rome. Interestingly, Cicero does not choose obvious political spaces such as the *curia* or the forum; unlike political actors, the gods of Rome could not be moved. On the face of it, this is a simple rhetorical contrast: what Pompey said or might be imagined to have said invokes private property, so Cicero retorts by invoking private religion (not just altars, but also hearths). But this should not overshadow Pompey's argument, which seems to be that anyone who jibes at his course of action is selfishly clinging to their private property in Rome; Cicero's response is therefore to affirm the importance of such property. Still, Cicero goes on to say, the thought of the *urbs* without magistrates or senate, and of Pompey on the

<sup>567</sup> On this letter cf. also Raaflaub 1974: 239-40, Mitchell 1991: 254.

run, has had a marvellous impact (Atticus will tell him whether this is also the case in Rome): people now think that nothing should be conceded to Caesar.<sup>568</sup>

The ‘Republicans’, then, occupied the moral high ground. If the *res publica* could not be evacuated intact from Italy on Pompey’s ships, there was at least very little left for Caesar to work with: ‘what he will do or how he will do it, without senate or magistrates, I don’t know. He will not be able to put up so much as a façade of constitutional behaviour’ (*ne simulare quidem poterit quicquam πολιτικῶς*).<sup>569</sup> Caesar, whose cause was himself (‘And he says he is doing all this for the sake of his *dignitas!*’<sup>570</sup>), was shown up as politically isolated against a mass of ideologically-motivated establishment figures, of whom Pompey was only one, albeit the greatest.<sup>571</sup> While some of Caesar’s opponents, notably Cicero, may have taken up arms only reluctantly and more as a matter of personal loyalty to Pompey,<sup>572</sup> others, like Cato Uticensis, did not follow Pompey as a person but used him to defend an ideological position.<sup>573</sup> The pardoned enemies L. Domitius Ahenobarbus and Lentulus Spinther, for example, were captured and released in Italy but went on to join Pompey’s camp.<sup>574</sup> (All of this was a political problem for Caesar, but the corresponding military problem for Pompey is obvious: his inability to treat people like Domitius as subordinates, as Caesar could with his legates.<sup>575</sup>) Their position was clear-cut: they were fighting for the *rei publicae causa* (if not *as the res publica*) against a *hostis* in a civil war, as Cicero characterised it while still vacillating over what *he* should do, ‘that has arisen not from a conflict in the civic body (*ex civium dissensione*) but from the audacity of one lost citizen (*ex unius perditii civis audacia*)’.<sup>576</sup>

<sup>568</sup> Cic. *Att.* 7.11.4; cf. Greenhalgh 1981: 167.

<sup>569</sup> Cic. *Att.* 7.13, writing on 23 January 49.

<sup>570</sup> Cic. *Att.* 7.11.1.

<sup>571</sup> Meier 1996: 365.

<sup>572</sup> Stockton 1971: 258, Mitchell 1991: 253.

<sup>573</sup> Cf. Taylor 1949: 162-82 on ‘the ideal of the republic which became associated with Cato’s name’ (162); also Leach 1978: 168, Greenhalgh 1981: 132, Brunt 1986: 31, Seager 2002: 150-1.

<sup>574</sup> von Fritz 1942: 169-70, Burns 1966: 89, Wistrand 1978: 46-7.

<sup>575</sup> von Fritz 1941: 150, 1942: 149, Taylor 1949: 165, Shackleton Bailey 1956: 58, Burns 1966: 84, Greenhalgh 1981: 151.

<sup>576</sup> Cic. *Att.* 7.13.

## 5.2 A DECENT PLACE TO STAND

Cicero's characterisation of Caesar as a 'lost citizen' is telling, since Caesar's response to the strong 'Republican' position was to frame the struggle not as a war for the *res publica* against (Pompeian) *hostes*, but rather as 'a matter of personal antagonism, *inimicitiae*' in which the conflict is really 'a difference of opinion, a *dissensio*' within the *res publica*,<sup>577</sup> Raaflaub's *contentio dignitatis*.<sup>578</sup> Wistrand observes the absence of *res publica* from the Caesarian correspondence aiming to convince Cicero to stay out of the fight and observes that in its place Caesar and his supporters appealed instead to the obligations of *amicitia*. 'When Caesar adds that it would be correct for Cicero as a *bonus civis* to stay neutral (*abesse a civilibus controversiis*), this is clearly an implicit denial of his adversaries' claim that it is every good citizen's duty to defend the *res publica*, that is to join Pompey'.<sup>579</sup> Likewise, in Caesar's own account of his grievances, given at *BC* 1.7–8 in the form of a speech supposedly addressed to his soldiers at Ravenna after receiving news of the *SCU* and resulting action against him,<sup>580</sup> his complaints are essentially political: he resents the wrongs done to him by his *inimici* in the past, that they had turned Pompey against him even though he had always supported Pompey's *honor* and *dignitas*, that a novelty had been introduced into the *res publica* (the suppression by force of the tribunician veto), and that the *SCU* was an inappropriate response in the current circumstances. The emphasis on Caesar's *inimici* and the role of the persuadable Pompey makes Caesar's claim to be defending his *dignitas*<sup>581</sup> more palatable and enables him to cast the opposition not as a swath of civic-minded citizens but as, first and foremost, Pompey, a former friend poisoned against Caesar by an envious mob of petty politicians. Caesar could therefore claim to be fighting not 'Republicans' but only 'Pompeians'.<sup>582</sup>

In section 2.1, I used Caesar's *Bellum Gallicum* to outline the relationship that magistrates and promagistrates enjoyed with the *res publica*. There is a marked

<sup>577</sup> Wistrand 1978: 39

<sup>578</sup> Raaflaub 1974: 3; cf. also Collins 1959: 119, Hellegouarc'h 1963: 388-9, 409, Raaflaub 2009: 190-1, Grillo 2012: 142-9, Meier 1996: 358-9, Brown 1999: 344.

<sup>579</sup> Wistrand 1978: 41; cf. *Cic. Att.* 10.8B.

<sup>580</sup> There is some uncertainty about where this speech was given, if at all; so Carter 1990: 163, 'Caesar is here employing a Thucydidean technique: this speech spells out, at the appropriate logical point, the considerations which actuated him to take the actions he did'. The main deception is his self-representation 'as responding to a threat, whereas the truth was that he himself, with his legions, constituted the threat': the senate had acted in response to him, not vice versa.

<sup>581</sup> *Caes. BC* 1.9.

<sup>582</sup> Cf. Batstone-Damon 2006: 149 on 'our men' versus 'Pompeians'.

shift of emphasis between the *Bellum Gallicum* and the *Bellum Civile*, where Caesar's self-justification to Lentulus Spinther takes a different tack:

*Cuius orationem Caesar interpellat: se non malefici causa ex provincia egressum sed uti se a contumeliis inimicorum defenderet, ut tribunos plebis in ea re ex civitate expulsos in suam dignitatem restitueret, ut se et populum Romanum factione paucorum oppressum in libertatem vindicaret.*

But Caesar interrupted him (Lentulus Spinther): it was not to do harm that he had crossed the boundary of his province, but to defend himself from the insults of his enemies, to restore to their proper dignity the tribunes who had been expelled from the *civitas* over the matter, and to restore liberty to himself and the Roman people, who were oppressed by a faction of the few. (Caes. *BC* 1.22.)

The compound here is no longer Caesar and the *res publica* but instead Caesar and the *populus Romanus*, both of whom are said to be oppressed and whose *libertas* requires restoration. Caesar's self-reported claim is programmatic for the *Bellum Civile* as a whole; Carter and, following him, Brown identify a grand ring-composition created by the speech of the centurion Crastinus at Pharsalus (*BC* 3.91), who exhorts his soldiers to follow him into this final battle so that their *imperator* can regain his *dignitas* and they can regain their *libertas*.<sup>583</sup> This rather improbably elegant speech, as Brown points out, is designed to express the 'popular acceptance and support' for Caesar's expressed cause<sup>584</sup> and exemplifies how the *BC* is constructed 'to recall and reinforce Caesar's own political stance'.<sup>585</sup> Raaflaub suggests that Caesar's *libertas populi* is an expression of his *popularis* political stance,<sup>586</sup> which may be true, but whatever other political overtones exist here,

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<sup>583</sup> Carter 1993: 213, Brown 1999: 349-52; cf. Caes. *BC* 3.91, 'sequimini me,' inquit, 'manipulares mei qui fuistis, et vestro imperatori quam constituistis operam date. Unum hoc proelium superest; quo confecto et ille suam dignitatem et nos nostram libertatem reciperabimus.'

<sup>584</sup> Brown 1999: 351.

<sup>585</sup> Brown 1999: 352.

<sup>586</sup> Raaflaub 2003: 52-3; cf. also Taylor 1942: 2 (who, however, points out that 'when he wrote those words Caesar had violated the sanctity of a tribune, the great symbol of the people's sovereignty, and had made a travesty of the popular assemblies. He was not interested in the liberty of the people. But it is noteworthy that he mentions himself first, and here we have a genuine statement of his aims. He had struggled for years against a faction of the oligarchy to assert his own personal freedom of

Caesar's decision to link himself with the *populus Romanus* can also be read as a forced alternative to the standard 'self and *res publica*' formula of the legitimate magistrate.

Caesar had linked himself with the *populus Romanus* before in the *Bellum Gallicum*.<sup>587</sup> There, however, he did so largely in international contexts: twice when addressed by non-Roman leaders, where it is those leaders (the pro-Roman Diviciacus and the book's chief anti-Roman antagonist, Ariovistus) who compound Caesar with the *populus Romanus* (*BG* 1.31 and 1.34), and three times in reference to benefits conferred on Ariovistus by the *populus Romanus* during Caesar's consulship (*BG* 1.35, 1.40, 1.42).<sup>588</sup> What these references have in common, other than being part of a specific sequence of events in Book 1, is the international context. The Roman *res publica* was not the sort of corporate political entity to which outsiders might appeal or which might confer *beneficia* or *auxilium* upon them. Instead, such interlocutors address the only 'entity' that embraces the Roman nation as a whole, the *populus Romanus*. For foreigners (and for Caesar when diplomatically engaged with foreigners), to deal with Romans was to deal with the *populus Romanus*. Diviciacus's appeal and Ariovistus's provocations gain point from the presence right on their doorstep of the *populus Romanus* as manifested in Caesar's army and represented by its commander, Caesar himself. At 4.17, the last Caesar/*populus Romanus* compound of the *Bellum Gallicum* explains Caesar's reluctance to let the trans-Rhine Ubii tribe transport his army across the river in boats as due not just to considerations of safety but also because he considers it 'worthy neither of his own nor the Roman people's dignity',<sup>589</sup> it may be that Caesar invokes the *populus* rather than the *res publica* here because the proposed indignity would have an immediate impact on a specific section of the *populus* (that part of it currently enrolled in Caesar's army).

When Caesar links himself with the *populus Romanus* in the *Bellum Civile*, however, the context is not international diplomacy but civil war and the events he narrates are part of Rome's internal political business, in which context it was both natural and relevant to talk about the Roman *res publica*. Caesar does invoke the *populus Romanus* elsewhere in the *Bellum Civile*: at 1.9, he reports himself writing

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action', 23), Wiseman 2009b: 116.

<sup>587</sup> Wiseman 1998: 3.

<sup>588</sup> On these benefits see Barlow 1998: 144.

<sup>589</sup> Caes. *BG* 4.17, *neque suae neque populi Romani dignitatis*.

to tell Pompey that he is upset because, among other things, a favour granted to him by the *populus* has been snatched away, a complaint recapped at 1.32, when Caesar, having reached Rome, reiterates it to what remains of the senate.<sup>590</sup> But set against the standard magistrate/*res publica* relationship, Caesar's choice of *populus Romanus* at BC 1.22 looks dangerously close to an admission of illegitimacy. Caesar cannot now make the magisterial claim to embody the *res publica*, as he could while proconsul in Gaul, because his command has expired and the various measures taken by the senate and magistrates in response to his invasion have made it clear that he does not. Caesar could have ignored this and claimed to be fighting to liberate 'himself and the *res publica*' anyway, but given the circumstances that would have looked decidedly hollow. Caesar therefore embarks on a subtler strategy: he falls back into the arms of the *populus Romanus* (which also has the attraction of a faint *popularis* flavour) and resorts to implying that he *would* have had such legitimacy if not for the machinations of the opposition, while simultaneously undermining the opposition's claim to represent the *res publica* themselves. Hence he makes the pointed complaint that he had been robbed of a gift bestowed by the *populus Romanus* (six months of his proconsulship and the right to stand for the consulship *in absentia*, which would have covered his legitimacy gap), while the whole opening section (BC 1.1–6) is designed to show Pompey and friends behaving as the illegitimate *factio paucorum* Caesar accuses of oppressing the *populus* at BC 1.22.

When the 'self and the *res publica*' compound eventually appears in Book 3, it is used in quite a different way. Caesar is again communicating with Pompey by way of a captured Pompeian prefect, L. Vibullius Rufus; his proposal is that since the current state of the war is so evenly balanced it might go either way, it would be a good time for them to negotiate peace, for which terms should be sought from the (Caesarian rump) senate and people at Rome. The summary of losses on both sides leads to the conclusion that 'they should spare themselves and the *res publica*, because thanks to their reverses they were in their own persons an adequate proof of how great the power of fortune was in war'.<sup>591</sup> Here Caesar links himself, Pompey and the *res publica*: they should *both* stop fighting over it, both out of self-interest and in the public interest, not because of what (if anything) they represent but

<sup>590</sup> Stanton 2003: 74-6 argues that this complaint should be taken seriously as one indication that Caesar was concerned about facing trial for his activities as consul; cf. also Raaflaub 1974: 125-36.

<sup>591</sup> Caes. BC 3.10, *sibi ac rei publicae parcerent*, <cum> *quantum in bello fortuna posset, iam ipsi incommodis suis satis essent documento*.

because of the damage done to the *res publica* by their quarrel. This is very much an insider's perspective, one elite Roman *civis* appealing to another *de re publica*, and it was calculated to put Pompey in a bad light when he rejected Caesar's disingenuous offer.<sup>592</sup> Meanwhile the legitimacy of Caesar's cause based on the support of the *populus Romanus* continues to be stressed throughout the text by other people. At 3.11, when one of Pompey's lieutenants (Lucius Torquatus) gets besieged by Caesar at Oricum, his attempts to convince the locals to defend their own walls are unsuccessful, as they are unwilling to fight 'against the *imperium* of the *populus Romanus*'. Immediately afterwards, Lucius Staberius at 3.12 fails to persuade the people of Apollonia to hand over hostages, 'close their gates against a consul, or take a decision that went against the judgement of all Italy and the Roman people'.<sup>593</sup> Furthermore, Caesar's continuators go on to compound Caesar with the *populus Romanus* in the *Bellum Hispaniense* and *Bellum Alexandrinum*.<sup>594</sup> Fall-back position or not, the resort to the *populus* had its merits.

Caesar's invocation of the *populus Romanus* at BC 1.22 is therefore both marked and a sign of weakness. If Caesar could have made a plausible claim to be the champion of the *res publica*, or at least to deny outright the claim of his opponents to represent it, he would presumably have done so. What Caesar claims instead, having received Pompey's confidential message from young L. Caesar, is to have swallowed the insult of a lost gift from the *populus* in the *rei publicae causa* and to be willing 'to descend to any depths and put up with anything for the sake of the *res publica*' – if Pompey would only agree to go to his provinces, to universal disarmament, and to permit 'free elections and all the *res publica* for the senate and people of Rome'.<sup>595</sup> As in his letters to Cicero, Caesar's rejection of the opposition line is implicit, if also unobvious. He suggests that the *res publica* is under the illegitimate control of his *inimici*, presumably the *factio paucorum* of BC 1.22, and the obvious conclusion to be drawn is that those currently claiming to champion the *res publica* are only a fraction of the political elite exerting an illegitimate dominance over the political sphere. This serves to undermine the various senatorial

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<sup>592</sup> Carter 1993: 153.

<sup>593</sup> Caes. *BC* 3.12, *neque portas consuli praeclusuros neque sibi iudicium sumptuos contra atque omnis Italia populusque Romanus iudicavisset*.

<sup>594</sup> *B. Alex.* 24, 34, 65; *B. Hisp.* 42; cf. Boatwright 1988 on the prominence given to Caesar's official position in the *Bellum Civile* once he became consul for the second time.

<sup>595</sup> Caes. *BC* 1.9; on this cf. especially von Fritz's detailed analysis of Caesar's strategic vagueness in his account of both his demands and the senate's response (1941: 133-7).

decrees passed against Caesar that the ‘Republican’ opposition could use as evidence that Caesar was a *hostis*. Framing the conflict as a struggle within the *res publica* rather than a war for it made it safer to reject the stronger ‘Republican’ position through implication rather than outright attack, especially given the state of the political sphere in Rome at the time. While the personal angle might be less compelling than the ‘Republican’ stance, however, it did mean Caesar could afford to acknowledge neutrality and to forgive those who fought against him, which was a valuable political tool.<sup>596</sup> Indeed, Cicero brings up Caesar’s self-presentation to defend the Pompeian Q. Ligarius: Caesar had said originally that the war was not a *bellum* but a *secessio*, not *hostile odium* but *civile discidium* in which both sides wanted the *res publica* to be *salva* but deviated from the *communis utilitas*, partly from *consilia* and partly from *studia*.<sup>597</sup> Even after Caesar had clawed his way to victory, it remained a viable defence to say that those fighting against Caesar, especially hapless allies like King Deiotarus of Galatia, had *thought* they were fighting on behalf of the *res publica*; after all, that was what the senate had been telling them.<sup>598</sup>

Implied denunciation continues to be the order of the day throughout the Caesarian corpus. I have already mentioned Caesar’s bad faith suggestion at *BC* 3.10 that he and Pompey should both stop fighting on behalf of the *res publica*. This might give the correct impression that the most distinctive thing about *res publica* in Caesar’s account of his civil war is its lack of distinction. *Res publica* is not absent from the text (that would have been counterproductive, since the *Bellum Civile* is a work ‘designed to show that his own behaviour was legal and reasonable while that of his opponents was a subversion of the principles of the very Republic which they claimed to be defending’<sup>599</sup>), but there is a marked lack of the sort of exciting rhetorical tricks to which Cicero resorted in the 50s. Mostly, *res publica* is used (as at *BC* 3.10) by Caesar’s opponents, with the underlying aim of depicting them as hypocrites who appeal to the *res publica* to maintain their political domination and persecute the innocent Caesar.<sup>600</sup> So, in the abrupt opening section, the delivery of

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<sup>596</sup> Wistrand 1978: 45.

<sup>597</sup> Cic. *Lig.* 19; cf. Raaflaub 1974: 1-2. On this speech and its background, cf. McDermott 1970, Montague 1992.

<sup>598</sup> Cic. *Marc.* 20, *Lig.* 20, *Deiot.* 11-13.

<sup>599</sup> Carter 1990: 18; cf. also Collins 1959: 119, Boatwright 1988: 31, Batstone-Damon 2006: 41.

<sup>600</sup> Cf. Batstone 1991: 127.

Caesar's letter is followed by a senatorial debate in which both consuls have something to say about the *res publica*:

*L. Lentulus consul senatui rei publicae se non defuturum pollicetur, si audacter ac fortiter sententias dicere velint; sin Caesarem respiciant atque eius gratiam sequantur, ut superioribus fecerint temporibus, se sibi consilium capturum neque senatus auctoritati obtemperaturum; habere se quoque ad Caesaris gratiam atque amicitiam receptum. In eandem sententiam loquitur Scipio: Pompeio esse in animo rei publicae non deesse, si senatus sequatur; si cunctetur atque agat lenius, nequiquam eius auxilium, si postea velit, senatum imploraturum.*

Consul Lucius Lentulus promised the senate that he would not fail the *res publica*, if they were willing to express their opinions boldly and forcefully; but if they kept an eye on Caesar and tried to please him, as they had done on previous occasions, he would decide for himself what to do and would not obey the authority of the senate; he too could take refuge in Caesar's favour and friendship. Scipio spoke to the same effect: Pompey's intention was to do his duty to the *res publica*, if the senate would follow him; but if they hesitated and procrastinated they would beg in vain for his help if they wanted it later. (Caes. *BC* 1.1.)

Both consuls are shown to be making a show of traditional behaviour while trying to coerce the senate into make a firm declaration against Caesar.<sup>601</sup> Lentulus is open about his intention to ignore any pro-Caesarian *sententia* and drops a not-very-veiled threat to go over to Caesar, while Scipio channels the intentions of the inscrutable Pompey, currently lurking outside the *pomerium* so as not to sacrifice the *imperium* attached to the Spanish proconsulship he continues to exercise through legates.<sup>602</sup> This is compounded by the 'abuse' (*convicium*) hurled by Lentulus at more moderate views,<sup>603</sup> which, together with the 'fear of the looming army' (*terror praesentis exercitus*) and the threats of Pompey's friends, is said to have forced the majority to

<sup>601</sup> Batstone-Damon 2006: 43-9, Raaflaub 1974: 200-1.

<sup>602</sup> Caes. *BC* 1.2.

<sup>603</sup> Caes. *BC* 1.2.

vote ‘unwilling and compelled’ (*inviti et coacti*) for Scipio’s motion: ‘that Caesar should dismiss his army before a certain date; and if he did not, he would be judged to be committing an act hostile to the *res publica*’.<sup>604</sup> Later, in the second book, the ‘Republican’ M. Varro is shown terrorising the frightened (*perterriti*) Roman citizens in Spain into promising money, silver and wheat ‘to administer the *res publica*’ (*ad rem publicam administrandam*), exacting more from those *civitates* he suspects of being friends with Caesar and putting *privati* on trial ‘who might have spoken in conversation or speeches against the *res publica*’.<sup>605</sup> In contrast, Caesar depicts himself seeking a meeting with Pompey in the interests of *res publica et communis salus*,<sup>606</sup> while the citizens of Auximum refuse to fortify the city against ‘Gaius Caesar, *imperator*, who deserved well of the *res publica*’.<sup>607</sup> Whereas the ‘Republicans’ invoke the *res publica* hypocritically, Caesar’s nine years of working for the *res publica*<sup>608</sup> are recognised by the communities in the path of Caesar’s armies.<sup>609</sup> In sum, Caesar constructs ‘a contest for Rome and whether it will remain Rome, the republic, the possession of the public, protected by “our men”, or become the private possession of his enemies, men who abandon Rome and throw away their insignia of office’,<sup>610</sup> but he does so through innuendo and narrative implication in the *Bellum Civile*, rather than stating it outright in his letters or reported speeches.

Rhetorically, this is elegant; conceptually, it might seem to add little to *res publica*. But Caesar’s reserve is striking: it is the challenger in this civil war who stakes his position on a restrained, conceptually conservative version of ‘political reality’. The obvious reason, as suggested above, is that Caesar would have had to strain so hard to make *res publica* relevant to his actions that he was better off saying as little as possible about it. Understandably, however, his opponents were strident on the topic of their fight for the *res publica*, so Caesar responded by pretending as far as possible that his pet civil war was a heightened version of ‘politics as normal’, a pretence furthered by keeping the invocation of *res publica* to an acceptable minimum on his own behalf and also by downplaying as much as possible just how far Pompey’s evacuation had dismantled the structures of Rome’s political sphere.

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<sup>604</sup> Caes. *BC* 1.2.

<sup>605</sup> Caes. *BC* 2.18.

<sup>606</sup> Caes. *BC* 1.24.

<sup>607</sup> Caes. *BC* 1.13.

<sup>608</sup> Caes. *BC* 1.7.

<sup>609</sup> Grillo 2012: 9.

<sup>610</sup> Batstone-Damon 2006: 42, cf. also Batstone-Damon 2006: 147, Brown 1999: 343-57, Rossi 2000.

Caesar's deliberate textual conservatism does not, however, mean that his conceptualisation of *res publica* added nothing to the debate that no one really knew they were having. This becomes apparent at *BC* 1.32–3, where Caesar's unsatisfying first return to Rome (he failed to sweet-talk the senate, faced tribunician opposition, crossed the *pomerium* to plunder the treasury in the Temple of Saturn against the opposition of that same tribune, got cold feet about addressing the people and departed the city in anger) becomes an orderly, if largely wasted, visit. Caesar claims to have dismissed his soldiers beforehand, shunts the summoning of the senate into a discreet ablative absolute (*coacto senatu*) that conceals just who was doing the summoning and on what authority,<sup>611</sup> and reports the speech he had given (*docet*) to the senate laying out his grievances and proposing a senatorial peace mission to Pompey. This the senate as a body agrees to send, but as individual senators refuse to join, since, according to Caesar, they were afraid of Pompey, who had already made it clear that *he* did not recognise political neutrality.<sup>612</sup> The plunder of the treasury is omitted ('Caesar's bad conscience is evident'<sup>613</sup>); three days of dilly-dallying and the obstruction of the tribune L. Metellus, 'put up by Caesar's enemies (*inimici*) to disrupt this business and to interfere with whatever else he decided to do', eventually cause Caesar to abandon his original aims and to leave Rome for Gaul.<sup>614</sup> Pompey's threats had rendered this last attempt on Caesar's part to make peace futile: henceforth 'it will be war, and the terms that refer to governmental processes are, for the most part, abandoned'.<sup>615</sup>

Caesar gives the impression that routine channels for public business and communication remain available, albeit blocked by political deadlock, an impression underscored by Caesar's report of his own speech, in which he complains at length about his *inimici* (Cato and Pompey are both named), makes disingenuous gestures to his own proven willingness to compromise, and:

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<sup>611</sup> According to Dio 41.15, the senate was summoned by the tribunes M. Antonius and Q. Cassius, who had supplied Caesar's original pretext for invasion.

<sup>612</sup> Compare Cic. *Att.* 10.1.4, rejecting Caesar's sincerity; cf. von Fritz 1941, Carter 1990: 183, Batstone-Damon 2006: 72-4.

<sup>613</sup> Meier 1996: 381.

<sup>614</sup> Caes. *BC* 1.32-3.

<sup>615</sup> Batstone-Damon 2006: 74.

*Pro quibus rebus hortatur ac postulat ut rem publicam suscipiant atque una secum administrent. Sin timore defugiant illi, se oneri non defuturum et per se rem publicam administraturum.*

For these reasons he encouraged and requested them to take responsibility for the *res publica* and administer it with him. But if they were frightened and ran away, he would not shirk the task and would administer the *res publica* by himself. (Caes. *BC* 1.32.<sup>616</sup>)

On the face of it, telling the senate to ‘take up’ the *res publica* should not be controversial. Naturally, though, Caesar’s account is misleading. Firstly, there was the problem of whether the handful of largely undistinguished senators remaining in Rome could really be considered the ‘senate’. Cicero’s opinion was that it was only a ‘gathering of senators’ (*consessus senatorum*),<sup>617</sup> hence his refusal to attend. This is therefore Caesar asking a body of doubtful legitimacy to collude in administering the *res publica* ‘with him’, he being a dubiously legitimate proconsul in open revolt against the *res publica*, as proclaimed by previously passed senatorial decrees and the actions of the consuls. Exactly what Caesar might mean in practical terms by ‘administering the *res publica*’, other than ‘passing decrees against my *inimici*, whose unfairness towards me I have just explained’ and ‘sending a “senatorial delegation” to Pompey so that his inevitable refusal will undermine his claim to represent the *res publica*’, is not obvious, especially given the dearth of magistrates willing and able to carry out the usual civic business. The fundamental point of addressing “the senate” must have been to get its endorsement of Caesar’s take on the civil wars, and the refusal of the senators to comply with this was a definite problem. Caesar implies that fear (of Pompey, presumably) is the only reason the remaining senators might have to be unwilling to work with him; his willingness to shoulder the burden of administering the *res publica* if they fled might be taken as a pledge to ensure political stability whether or not other political figures were willing to help, but looks a lot more like a threat in the turbulent context indicated by other sources.

<sup>616</sup> I follow Carter 1991 on the Latin text here.

<sup>617</sup> Cic. *Att.* 10.1.2; cf. Raaflaub 1974: 244.

What this implies for the conceptualisation of *res publica* requires some rather fine hair-splitting, because the conception being used here is entirely unarticulated, but a number of useful points may be made. The lack of articulation and the refusal to pontificate over whether or not Caesar is dealing with “the senate” or merely an unrepresentative gaggle of senators conceal a problem: what, and where, is the Roman *res publica* when a significant proportion of the people who embody its constituent institutions have removed themselves from Rome? This might be resolved by taking Cicero as the outlier – by arguing, in other words, that Cicero’s occasional, not very detailed attempts to articulate just what constituted the *res publica* should not be taken as typical of Roman political thought, which might be more typically represented by Caesar’s understated use of *res publica* here. If so, any concern for constituent elements might be abandoned and the standard Roman understanding of *res publica* reduced to an indefinite, unitary, easily personified concept (or, as Morgan prefers, slogan<sup>618</sup>) that genuinely resisted articulation, except perhaps in a single sentence that boils down to ‘this is a good thing’. This solution might be tempting, or at least simple, but it does Caesar the injustice (he might not see it this way) of accepting uncritically his claim to present a plain, objective, non-innovative account of events. Instead, it seems more fruitful to distinguish between *res publica* as ‘space’ (the insider’s perspective, the *res publica* as an arena within which politicians move and which is defined by its political institutions) and *res publica* as ‘business’ (the public property and affairs magistrates were elected to administer, a perspective that fed into *popularis*/contional oratory in which the literal meaning of *res publica* is stressed and magistrates are cast as stewards selected by the *populus* to look after its property). Caesar’s opponents clearly viewed *res publica* from the former perspective, as the political structures that Caesar’s invasion had displaced, whereas *res publica* as it appears at *BC* 1.32 looks more like the latter: the public business routinely administered by magistrates and senate, including sending peace embassies to revolting citizens.

It is important to remember that these are differences of perspective, not policy. In ordinary circumstances, these different perspectives on the *res publica* would be complementary rather than contradictory; after all, *rem publicam administrare* (or *gerere*) was a standard term for any magistrate’s activities that

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<sup>618</sup> Morgan 1997: 27.

carried no particular political connotations, whatever use the *populares* made of the implicit relationship between magistrates, public business and the *populus*. In periods of political turbulence, however, differences of perspective become significant, and this is particularly true of a civil war in which one side staked its position on the defence of the *res publica*. Once ordinary political activity gave way to war, pushing both perspectives to their logical extremes resulted in two distinctively different conceptions of what *res publica* meant. Quite apart from any lingering *popularis* sympathies, the advantages to Caesar of adopting this perspective were considerable. Caesar and past *populares* faced similar obstacles (opposition from the senate and fellow magistrates) and so shared a similar strategy even if in pursuit of different aims. The *populares* had appealed directly to the *populus* in order to bypass the opposition of senate and fellow magistrates; Caesar in 49, meanwhile, faced the awkward problem that a substantial proportion of the people who constituted the structures of the spatial *res publica* had removed themselves from Rome. On his chosen perspective, the *res publica* looks less like a combination of political institutions and more like an amorphous amalgamation of public property (revenues, temples, public monuments) and routine civic business (justice, wars, provincial government), all of which remained to be administered whether the magistrates and senators were present in Rome or not. Consequently, the most charitable version of the reasoning underpinning *BC* 1.32 seems to be that Caesar, as the most senior quasi-magistrate (troublesome issues of non-prorogued *imperium* and crossed *pomerium* aside) currently in Rome, was left with the responsibility of administering the *res publica*, which would ideally be done in consultation with the senate but was ultimately the business of the magistrates. The co-operation of the senate (what remained of it) would therefore be appreciated, and was certainly to be expected from appropriately dutiful senators, but was not actually necessary: Caesar was competent to keep routine public business ticking over without it. The less charitable reading is that Caesar's army ensured his competence to administer the *res publica* whether the senate liked it or not.

Against the untethered 'Republican' *res publica*, then, Caesar opposes a *res publica* vested in the civic business of the *urbs*, which he held. To return to a quotation cited in Chapter 1, when Caesar said that 'the *res publica* is nothing, a

mere name without body or form’,<sup>619</sup> this may be his response to the ‘Republican’ claim that the *res publica* could get up and leave Rome with them. Wistrand puts it most generously: ‘Caesar’s adversaries thought – or rather some thought and others may have pretended to think – that the war was a war for or against the *res publica*, that is, on their part, a holy war in defence of a sacred ideal. Caesar saw the war as a conflict between rivals and personal enemies: on one side were himself and his friends, on the other Pompey and his allies. They had corporeal existence, they could be seen. I would like to think that the phrase quoted was Caesar’s spirited answer to those who – as Cicero said – *rei publicae sanctissimum nomen opponebant*’.<sup>620</sup> Spirited or not, it would have been more convincing if the senate had been willing to go along with Caesar at the time. Technically he had relinquished his proconsular *imperium* by crossing the *pomerium* to seize the treasury, but he bolstered his position at the end of the year with a dubiously legal fudge (Cicero was not impressed<sup>621</sup>) that saw him appointed dictator by the praetor M. Lepidus in order to oversee his own election as consul in December 49.<sup>622</sup> It is doubtful whether the ‘Republicans’ accepted the validity of this election, but Caesar’s line must have been that propounded uncritically by Meier: ‘Caesar was now consul. His opponents could no longer claim to be the lawful rulers. The republic was with him’.<sup>623</sup> In the third book of the *Bellum Civile*, Caesar’s occupation of the consulship is therefore promoted by the narrative: ‘both foreign and citizen groups recognize Caesar as the legitimate holder of Roman consular power’ and ‘the emphasis on his consulship is aimed at clarifying his position as the civil war against Pompey culminates’.<sup>624</sup> It also appears in a letter from Dolabella encouraging Cicero to abandon the ‘Republican’ side:

*Satis factum est iam a te vel officio vel familiaritati, satis factum etiam partibus et ei rei publicae quam tu probabas; reliquum est, ubi nunc est res publica, ibi simus potius quam, dum illam veterem sequamur, simus in nulla.*

<sup>619</sup> Suet. *Jul.* 77, *nihil esse rem publicam, appellationem modo sine corpore ac specie*.

<sup>620</sup> Wistrand 1978: 42-3.

<sup>621</sup> Cic. *Att.* 9.15.2.

<sup>622</sup> Caes. *BC* 2.21, 3.1; Meier 1996: 385-6, Gelzer 1968: 220, Weigel 1992: 26-7.

<sup>623</sup> Meier 1996: 387; ditto Wiseman 2009a: 124.

<sup>624</sup> Boatwright 1988: 34.

You have done enough for obligation and friendship; you have done enough for your party too and for that *res publica* which you approved. It is time now to take our stand where the *res publica* actually is, rather than, by following after that old one, to find ourselves in none. (Cic. *Fam.* 9.9.2.)

For Caesar and his supporters, the physical occupation of Rome and the consulship gave him a claim to occupy and derive legitimacy from the *res publica*. Meier sees it as ‘a bold use of language to localize the republic in this way; it was no longer just a question of the legitimacy of the magistrates’.<sup>625</sup> In fact, locating the *res publica* firmly and physically in Rome was an obvious counterpoint to the untethered ‘Republican’ alternative, which had fled the city to end up – where? *in nulla*. Furthermore, focusing on the administration of public business conceals how dramatically Caesar had disrupted Rome’s political structures. This can be seen in the works of Caesar’s continuators, not just in the characterisation of docile pro-Caesarian communities and kings as keen supporters of the *res publica*<sup>626</sup> or Caesar’s reported invocation of the *res publica* while dismissing a military tribune, C. Avienus, during his African campaign,<sup>627</sup> but also in two passages in the *Bellum Alexandrinum* that echo Dolabella’s location of the *res publica* in Caesar’s camp. The first concerns the chaotic situation in Rome in Caesar’s absence:

*Cum in Syriam Caesar ex Aegypto venisset atque ab eis qui Roma venerant ad eum cognosceret litterisque urbanis animadverteret multa Romae male et inutiliter administrari neque ullam partem rei publicae satis commode geri.*

On his arrival in Syria from Egypt Caesar learned from those who had joined him there from Rome, as well as from information contained in dispatches from the city, that there was much that was bad and unprofitable in the administration at Rome, nor was any part of the *res publica* being really efficiently conducted. (*B. Alex.* 65.)

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<sup>625</sup> Meier 1996: 387.

<sup>626</sup> *B. Alex.* 42.3, 66.5.

<sup>627</sup> *B. Afr.* 54.4.

The reason given was rivalry among the tribunes and lax legionary commanders; the solution, Caesar reportedly saw, would be his immediate return to Rome; and the excuse given for his failure to do so was his belief that it was more important to organise the provinces thoroughly. On the one hand, then, the *res publica* and its administration is located in Rome, whither Caesar will have to return if he wants to sort out the mess his subordinates have made of the situation. On the other hand, the *res publica* now requires Caesar's presence to function properly, since the political isolation that gave Caesar his military edge left him without competent managers to oversee the routine business of the *res publica* in Rome and Italy. What had previously been administered by the magistrates and senate together, in conjunction with the will of the *populus* as expressed formally through the *comitia*, was now reliant on Caesar personally. As long as Caesar still had wars to fight abroad, this would continue to be a problem. So in December 46 Cicero wrote to Trebonius, then on his way to Spain with Caesar, that 'whereas in the old days people in Rome used to write to their friends in the provinces *de re publica*, it is now for you to write to me, for the *res publica* is over there with you'.<sup>628</sup> Caesar becomes the avatar of the *res publica* that Cicero had once considered himself to be, but in a rather more concrete way, since Caesar was now (at least as far as those who supported him, or at least conformed to his regime, were concerned) the sole source of meaningful political initiative. Both public business and political activity had warped around a single figure, and *he* was only irregularly in Rome.

The second passage reports Caesar's tart remarks to King Deiotarus, who begged Caesar's pardon for siding with Pompey on the grounds that he had been compelled to do so by the nearness of Pompey's armies – and after all, it was not Deiotarus's business to pass judgement on the disputes (*controversaria*) of the *populus Romanus*, only to obey the present possessor of *imperium*.<sup>629</sup> According to the continuator,

*Contra quem Caesar, cum plurima sua commemorasset officia quae consul ei decretis publicis tribuisset, cumque defensionem eius nullam posse excusationem eius imprudentiae recipere coarguisset, quod homo tantae*

<sup>628</sup> Cic. *Fam.* 15.20.2, *quod olim solebant qui Romae erant ad provincialis amicos de re publica scribere, nunc tu nobis scribas oportet (res enim publica istic est).*

<sup>629</sup> *B. Alex.* 67.

*prudential ac diligentiae scire potuisset quis urbem Italiamque teneret, ubi senatus populusque Romanus, ubi res publica esset, quis denique post L. Lentulum, C. Marcellum consul esset.*

In his reply Caesar reminded him of all the many loyal services he himself as consul had rendered to him by official decrees, and went on to point out that his apology could not be accepted as any excuse for his imprudence; a man, in fact, as wise and careful as he was could have known who held the city and Italy, where the senate and people of Rome were, where the *res publica* was, and finally who was consul after L. Lentulus and C. Marcellus. (*B. Alex.* 68.)

Senate, people and *res publica* are all located in Rome and Italy, which had been held by Caesar at the time when Deiotarus took up arms for Pompey; and not only had Caesar therefore held all three by virtue of occupation, but to cap it all off he had been the consul of 48. (Deiotarus would presumably be forgiven for forgetting Caesar's colleague, P. Servilius Isauricus.) Caesar presents two claims to have held the *res publica*, one *de facto* and one *de iure*, and dismisses completely any implication that there might have been a case to have been made for the legitimacy of the opposition's claims. When he pardons Deiotarus, the pardon (as represented by Caesar's continuator) is therefore based on the king's pre-existing personal ties to Caesar rather than his political excuses.<sup>630</sup>

It is no coincidence that subtlety slips when the narrative escapes Caesar's control. Cluett diagnoses the continuators as 'Romans on campaign abroad' who saw themselves as fighting foreign enemies and 'enemies who behaved as foreigners',<sup>631</sup> a combination that 'gives Caesar's cause a double legitimacy: not only is he a legitimate commander, as one of his centurions retorts to Scipio (*Afr.* 45), but he is engaged in a legitimate assertion of Roman power abroad'.<sup>632</sup> The authors were personally loyal to Caesar, who emerges from the texts as omniscient, ubiquitous and supremely rational, even if his troops do not always appreciate this, a portrayal that implies 'an assumption and acceptance that all power – at Rome and in the field

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<sup>630</sup> *B. Alex.* 68.

<sup>631</sup> Cluett 2003: 121.

<sup>632</sup> Cluett 2003: 123.

– ultimately rests with Caesar’.<sup>633</sup> This was not likely to mollify Caesar’s opponents, but reflects at the very least the views of Caesar’s supporters and, increasingly, reality. Caesar himself was less winning in person than in text, as White’s study of the correspondence between Caesar and Cicero shows: whereas the limitations of letters tended to work out to Caesar’s advantage, especially when he was absent from Italy,<sup>634</sup> in face-to-face encounters ‘it was not so easy to pretend that peer relationships were simply dyadic, or to elude direct encounters indefinitely, or to leave requests and controversies unsettled’.<sup>635</sup> Caesar’s remark on the insubstantiality of *res publica*, for example, was transmitted to show his *inpotentia* by one of his enemies, Titus Ampius, whatever Caesar himself meant by it.<sup>636</sup> His abrasiveness was on full display in his response to the tribune Pontius Aquila, who refused to rise for the triumphal procession for Caesar’s Spanish victory in October 45:

*indignatus sit, ut proclamaverit: ‘Repete ergo a me Aquila rem publicam tribunus!’ Nec destiterit per continuos dies quicquam cuiquam nisi sub exceptione polliceri: ‘Si tamen per Pontium Aquilam licuerit.’*

he was so incensed that he cried: “Come then, Aquila, take back the *res publica* from me, you tribune!” For several days he would not make a promise to any one without adding, “That is, if Pontius Aquila will allow me.” (Suet. *Jul.* 78.)

There is no ambiguity here. The *res publica* is something to be possessed, as it is currently possessed by Caesar, who is not going to give it up to a mere tribune or indeed to anyone else. This is the least charitable version possible of what Caesar represents himself as promising to what remained of the senate after marching on Rome: a straightforward vertical relationship between himself (in possession of the *potestas* formerly exercised by the magistrates as a body, now concentrated on Caesar by virtue of military superiority) and the *res publica*. There was space in this

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<sup>633</sup> Cluett 2003: 125-8.

<sup>634</sup> White 2003: 91.

<sup>635</sup> White 2003: 92; cf. also Yavetz 1983: 188-209 on the incidents that made Caesar enemies in Rome.

<sup>636</sup> Suet. *Jul.* 77.

worldview for senators and other magistrates, but only insofar as they were willing to assist and accommodate themselves to Caesar. (He expanded the senate and increased the magistracies, after all.<sup>637</sup>) Against both the basic premise of *popularis* activity and Caesar's own remarks in the *Bellum Civile* on the topic of returning the *res publica* to the *senatus populusque Romanus*, however, there was very little space for the *comitia*.<sup>638</sup> In this new world, the elite owed magistracies and *dignitas* not to the *beneficia* of the *populus Romanus* but to the *gratia* of Caesar himself.<sup>639</sup>

### 5.3 COMPLAIN, COMPLAIN

If Caesar and his 'Republican' opponents each adopted different perspectives on what constituted the *res publica*, there lay between them a convincing middle ground: despair. Cicero's letters, some of which have been cited above, provide ample evidence of this.<sup>640</sup> He has a great deal to say about the *res publica*, which is dearer to him than anything else;<sup>641</sup> he would happily have sacrificed himself to save it from civil war;<sup>642</sup> he is uncertain whether *ulla res publica* will survive,<sup>643</sup> or whether there is anything he or anyone else can now do to help it.<sup>644</sup> No one had been more affected than he by this disaster to the *res publica*.<sup>645</sup> His perception of *res publica* here is consistent with that expressed in his less experimental rhetoric: ordinary political structures rooted in a specific civic locale, in this case Rome. He, like L. Domitius Ahenobarbus, had complicated Pompey's plans for the evacuation of Italy, although unlike Domitius he had not taken up arms in Italy but had instead refused to take command of Sicily and then done very little in defence of the Campanian coast.<sup>646</sup> Writing to Atticus from Formiae in December 50, he had protested that the plan of Pompey and his *consilium* to send him to Sicily because he had *imperium* was senseless:

<sup>637</sup> Taylor 1949: 173-4, Yavetz 1983: 109-110, 168-71, Syme 1938.

<sup>638</sup> Yavetz 1983: 127-132.

<sup>639</sup> Demonstrated most conspicuously by the election of the suffect consul C. Caninius Rebilus for several hours on December 31 45; cf. Yavetz 1983: 194-5, Stockton 1971: 278-9, Lintott 2008: 338.

<sup>640</sup> E.g. Cic. *Att.* 7.7, 8.11, 9.7, 9.10, 9.11, 9.14, 9.15, 10.7, 10.8.7; cf. Stockton 1971: 256-7, Mitchell 1991: 244-5, Bringmann 2002: 117.

<sup>641</sup> Cic. *Fam.* 2.15.3.

<sup>642</sup> Cic. *Fam.* 2.16.4.

<sup>643</sup> Cic. *Fam.* 2.16.5.

<sup>644</sup> Cic. *Fam.* 4.1.1.

<sup>645</sup> Cic. *Fam.* 4.3.1.

<sup>646</sup> Stockton 1971: 256.

*Nec enim senatus decrevit nec populus iussit me imperium in Sicilia habere; sin hoc res publica ad Pompeium refert, qui me magis quam privatum aliquem mittit?*

For the senate has not decreed nor has the *populus* ordered me to hold command in Sicily. If on the other hand the *res publica* refers this to Pompey, why send me rather than a private individual? (Cic. *Att.* 7.7.4.)

This was written before Caesar crossed the Rubicon. *Res publica* here functions as a compression of ‘the decrees of the senate and the orders of the *populus*’, or at least ‘the political will of the community’. It is purely political; there is nothing to tie this concept of *res publica* down to any specific place, should the senate and *populus* decide to take to the road. It is also a casual usage, if a slightly odd one. The complaint is that Cicero has not received any formal instruction from any competent element of the political *res publica* to take his *imperium* to Sicily, and if Pompey has been empowered to issue such commands then he is not limited to persons in possession of *imperium* and could choose anyone he wants for a task that Cicero certainly did not want. To say that the *res publica* had referred the matter to Pompey was another way to say that Pompey had been given overall responsibility for the issue, a minor act of personification that harks back to Cicero’s depiction of Pompey’s relationship with the *res publica* in the speeches after his exile.

On the face of it, Cicero should have been open (at least on a theoretical basis) to the decision taken by Pompey, and supported by senatorial decrees, to evacuate the political *res publica* from Rome. The various despairing letters cited above show that this was not the case; Cicero was intensely unhappy about the evacuation of Rome and Italy and eventually threw in his lot with Pompey more as a matter of personal loyalty than political commitment (so he said).<sup>647</sup> This is certainly the claim of his Caesarian speeches, which tactfully reflect Caesar’s chosen explanation of the civil wars. In the *Pro Marcello*, for example, Cicero claims to have followed an individual (Pompey) as a matter of *privatum officium*<sup>648</sup> and describes the war as a confused situation in which both sides had good qualities and many people were

<sup>647</sup> Mitchell 1991: 253; Brunt 1986 argues that Cicero’s loyalty was not so much personal as political and that ultimately Cicero really did think Pompey’s victory was in the interests of the *res publica*.

<sup>648</sup> Cic. *Marc.* 14.

unsure what to do.<sup>649</sup> His letters bear out the confusion and uncertainty of the time, even if they are less charitable about the participants: Caesar's supporters are a mob of desperadoes,<sup>650</sup> while Pompey's actions 'have throughout been destitute alike of wisdom and of courage (*nihil actum... sapienter, nihil fortiter*); and, I might add, contrary throughout to my advice and influence (*consilium auctoritatemque meam*)', Cicero told Atticus, before going on to rehash Pompey's previous involvement with Caesar at considerable length.<sup>651</sup> At this point, Cicero was distinctly unwilling to accept a wandering *res publica*. This particular letter was written on 18–19 February 49, while Cicero was still coming to terms with the prospect that Pompey might really abandon Italy, and features a revealing theme: *rem publicam recipere*, 'to recover the *res publica*'. In considering whether to remain in the city, Cicero identifies two issues: the first practical, how far Caesar was to be trusted, and the second moral,

*sitne viri fortis et boni civis esse in ea urbe in qua cum summis honoribus imperiisque usus sit, res maximas gesserit, sacerdotio sit amplissimo praeditus, non futurus <sit qui fuerit>, subeundumque periculum sit cum aliquo fore dedecore, si quando Pompeius rem publicam reciperit.*

whether it is the part of a brave man and a good citizen to remain in a city in which he has held the highest offices and commands, has done great things, and been invested with an exalted priestly function, in a reduced status and in prospect of danger along perhaps with some discredit should Pompey ever recover the *res publica*. (Cic. *Att.* 8.3.2.)

Since the basic meaning of *recipere* is 'to recover' (money, persons, territory, things), the phrase either concerns or at least has connotations of an actual repossession: that is, recovering a concrete thing from, it is implied, some other people who have improperly possessed it.<sup>652</sup> As Cicero uses it, that thing is clearly located *in ea urbe*, Rome. Pompey will recover the *res publica* only when he

<sup>649</sup> Cic. *Marc.* 30-1; cf. also *Marc.* 13, *Lig.* 17-19, *Deiot.* 10-12.

<sup>650</sup> Cic. *Att.* 9.18.2.

<sup>651</sup> Cic. *Att.* 8.3.3.

<sup>652</sup> Compare Cic. *Rosc. Am.* 141 on the Sullan victory: the *nobilitas* had *reciperavit* the *res publica* by *armis atque ferro*.

recovers the city. This is clear from the way Cicero sets out the case against leaving Italy, which turns on Pompey's imprudence to date and the insufficiency of his preparations for a war in Italy. Having vented his feelings on Pompey's past political alliances, Cicero expresses a deep pessimism about the war to come. 'But he may recover (*reciperabit*) the *res publica*', he imagines Atticus saying, to which he retorts: how? 'Picenum has been lost, the road to the city left open, its entire wealth, public and private, handed over to the enemy. To cap it all, there is no organisation (*causa*), no power (*nullae vires*), no rallying-point (*sedes quo concurrant*) for those who want the *res publica* defended'.<sup>653</sup> As far as Cicero was concerned, the *res publica* to be recovered or defended, insofar as it existed at all, was located in the *urbs Roma*. This supports the point that the 'Republicans' and Caesar should be seen as pushing complementary perspectives to extremes (or perhaps trying to divorce the opposite ends of a spectrum) rather than staking their claims on genuinely opposing theologies of state. Cicero, wholly convinced by neither side, was torn between them; he 'equated the city with the fatherland, and viewed Pompey's withdrawal, which left the city without Senate or magistrates, laws or courts, and a prey to arson and pillage, as a virtual dissolution of the Republic'.<sup>654</sup>

Ultimately, *rem publicam recipere* was a mirage. The phrase reappeared when Cicero's decision to stay put was wavering in a letter to Atticus on 2 March 49, in which he balances the horrors of an overseas war against Pompey's claims to his loyalty. He does not, he says, consider those who have gone abroad to prepare war laudable, although the situation in Italy was unbearable, but he is moved by the thought of Pompey, whose companion in flight and fellow in recovering (*reciperans*) the *res publica* Cicero feels he ought to be.<sup>655</sup> The result of this sentiment was not happy and the phrase next appears in the *Brutus* of 46, where it is used in relation to the *tumultus* for *recuperanda re publica* during Cicero's youth, that is to say Sulla's return from the east, during which various orators died but the *leges et iudicia* were *constituta* and *recuperata res publica*, an interesting party-political stance on the Sullan civil wars in a dialogue containing a not-very-hidden hint that its addressee should imitate his illustrious tyrant-killing ancestors.<sup>656</sup> Meanwhile, the contrast between Cicero's speeches and his letters following Caesar's victory at Pharsalus,

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<sup>653</sup> Cic. *Att.* 8.3.4.

<sup>654</sup> Mitchell 1991: 254.

<sup>655</sup> Cic. *Att.* 8.14.2.

<sup>656</sup> Cic. *Brut.* 311; Lintott 2008: 309.

when Cicero had given up the fight for the *res publica*, is marked. What stands revealed is resistance on the part of even lukewarm ‘Republicans’ to Caesar’s account of what the *res publica* was.

This tension underlies the *Pro Marcello* of 46,<sup>657</sup> where Cicero casts Marcellus’s pardon as the return of both Marcellus and himself (his long silence having finally broken) to the *res publica*,<sup>658</sup> just as restoring Ligarius would be a gift to the *res publica* as well as to Ligarius’s brothers.<sup>659</sup> Caesar, he says, has raised a standard (*signum*) for all those present to hope well (*ad bene... sperandum*) for the *res publica* and has shown that he places senatorial *auctoritas* and the *dignitas rei publica* before his own *dolor* or *suspiciones*;<sup>660</sup> it is to his credit that he had wished to see Cicero and the salvaged Pompeians with him in the *res publica*.<sup>661</sup> This praise is undercut as the speech goes on: the welfare of all citizens is now bound up with the welfare of Caesar, which gives Cicero cause for *dolor*, since the *res publica*, which should be immortal, is now dependent on the *anima* of one mortal man.<sup>662</sup> It is consequently vulnerable – what if Caesar should fall prey to chance or ill-health or (heaven forbid!) human treachery? How could any god help the *res publica* then, even if s/he wanted to?<sup>663</sup> Caesar should therefore raise up everything that had been overturned by the war: he should restore *iudicia* and *fides*, rein in bad behaviour, encourage people to have children,<sup>664</sup> and, since his *res gestae* had embraced *cuncta res publica*, he should devote himself to ensuring its *salus*.<sup>665</sup> Should Caesar leave the *res publica* in its current condition, his *divina virtus* would win only admiration, rather than *gloria*.<sup>666</sup> It remained for Caesar to *constituere rem publicam*, as Sulla had done, and so win the *tranquillitas et otium* that Sulla had won.<sup>667</sup>

Although Sulla is not named, his precedent stands behind the course Cicero advocates: put things back the way you found them, then get out of the way.<sup>668</sup> Cicero acknowledges the existence of a *res publica*, but only one in poor shape.

<sup>657</sup> For the historical circumstances of the *Pro Marcello* and a rhetorical analysis speech as a whole cf. Dyer 1990.

<sup>658</sup> Cic. *Marc.* 2, 13.

<sup>659</sup> Cic. *Lig.* 36.

<sup>660</sup> Cic. *Marc.* 2-3.

<sup>661</sup> Cic. *Marc.* 19.

<sup>662</sup> Cic. *Marc.* 22.

<sup>663</sup> Cic. *Marc.* 23.

<sup>664</sup> Cic. *Marc.* 23.

<sup>665</sup> Cic. *Marc.* 25.

<sup>666</sup> Cic. *Marc.* 26.

<sup>667</sup> Cic. *Marc.* 27.

<sup>668</sup> Gelzer 1968: 282, Dyer 1990: Lintott 2008: 317.

Meanwhile, his private commentary for Servius Sulpicius Rufus was even less sanguine: he had been inspired to speak by the impression of seeing ‘some semblance’ (*species aliqua*) of ‘a reviving (*reviviscens*) *res publica*’ and had thereby forfeited his *honestum otium*, while escaping Caesar’s displeasure, since Caesar ‘might have thought I did not consider this a *res publica* if I was silent in perpetuity’.<sup>669</sup> This implies that Caesar was still rather sensitive about what people like Cicero thought of his *res publica* and that he suspected they were not too impressed by it, as indeed Cicero’s underwhelming impression of green shoots confirms.<sup>670</sup> Cicero had written to Marcellus too to encourage him to come home: if there was going to be any sort of *res publica*, he said, Marcellus should be in it; and if not, well, Rome was still the best place to be in exile.<sup>671</sup>

It might be tempting to read defensiveness into Cicero’s letter to Sulpicius, i.e. that Cicero felt a need to justify his broken silence, in which case this is all the more telling, since Cicero had at least gone so far as to join Pompey abroad. Sulpicius, on the other hand, had remained in Rome after Caesar crossed the Rubicon, was one of the two *consulares* who had attended the desultory senate meeting that Cicero refused to attend,<sup>672</sup> and spent the war quietly outside Italy.<sup>673</sup> Furthermore, Caesar had appointed Sulpicius as the proconsul of Achaia,<sup>674</sup> he was barely even a lukewarm ‘Republican’ like Cicero, let alone a diehard like Cato. All the same, after Tullia’s death the following year, Sulpicius wrote to console Cicero with the thoughtful recommendation to tell himself that

*illam, quam diu ei opus fuerit, vixisse, una cum re publica floruisse, te, patrem suum, praetorem consulem augurem vidisse, adolescentibus primariis nuptam fuisse, omnibus bonis prope perfunctam esse, cum res publica occideret vita excessisse.*

she lived as long as it was well for her to live, and that she and the *res publica* flourished together. She saw you, her father, praetor, consul and augur. She was married to young men of distinction. Almost all that life can

<sup>669</sup> Cic. *Fam.* 4.4.3-4.

<sup>670</sup> Cf. Bringmann 2002: 118.

<sup>671</sup> Cic. *Fam.* 4.8.2.

<sup>672</sup> Gelzer 1968: 208.

<sup>673</sup> Stockton 1971: 276 (‘Sulpicius was a genuine Republican’ – i.e. neutral).

<sup>674</sup> Lintott 2008: 313.

give, she enjoyed, and she left life when the *res publica* was ruined. (Cic. *Fam.* 4.5.5.)

Cicero should not, he adds, give people reason to think his mourning is for Tullia so much as for the *rei publicae tempora* and the victory of others.<sup>675</sup> Sulpicius's attitude is mirrored in Cicero's reply, in which he points out that the loss of the *res publica* only makes his condition worse. Whereas former bereaved statesmen could be consoled by their *dignitas* derived *ex re publica*, this had been snatched away from Cicero; his sole remaining comfort, given the current state of the forum and the curia, had been his daughter. In the past, he had withdrawn *a re publica* to the sanctuary of his *domus*, but he could not now seek refuge *ad rem publicam* from his domestic grief. Both *domus* and forum gave him *dolor*, and so he avoided both.<sup>676</sup> He was looking forward to seeing Sulpicius soon, however, so that they could discuss how best to behave at a time when everything had to be accommodated to the wishes of a single man – a man *prudens* and *liberalis*, no enemy of Cicero's and very friendly to Sulpicius, but nonetheless in need of consideration.<sup>677</sup> This is *res publica* perceived as political space, as Cicero's liberal use of prepositions indicates. Stockton observes that on the evidence of Sulpicius's former letters 'his blank despair at the seemingly irretrievable loss of the Republic is no polite pose', but rather the result of 'the continuing arbitrariness of Caesar's rule, understandable and acceptable for a comparatively brief period of emergency but increasingly difficult to bear as time hardened it and bedded it deeper in the soil of the Republic'.<sup>678</sup> For men such as Cicero and Sulpicius, the *res publica* of Caesar's regime was either a very poor shadow of itself or did not exist at all, however much routine business might be conducted in Rome.

#### 5.4 AGAINST THE SIDE OF HEAVEN

'To sum up, even those who reject the idea that Caesar tried to establish a monarchy and a divine cult must admit that he was much more than just a

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<sup>675</sup> Cic. *Fam.* 4.5.6.

<sup>676</sup> Cic. *Fam.* 4.6.1-2.

<sup>677</sup> Cic. *Fam.* 4.11.3.

<sup>678</sup> Stockton 1971: 276-7; cf. Taylor 1949: 173, Gelzer 1968: 300-301.

Roman dictator. They must also agree that his performance and achievements made restoration of the old Republic impossible once and for all.’ (Yavetz 1983: 212.)

It is uncontroversial that Caesar was more than ‘just’ a Roman dictator; the only other dictator like him had been Sulla, whose precedent Caesar had pointedly not followed, both in his policy of *clementia* and in his disregard for *res publica*. If the impact of Nasica’s murder of Tiberius Gracchus manifested in the general concern afterwards for *res publica salva*, and if Sulla’s dictatorship was similarly remembered in the *res publica constituta*, the mark of Caesar’s divorce of *res publica* as participatory political arena from *res publica* as routine political business must be the modern catchphrase for the traditional Republic: *libera res publica*. The term is both rare and late; while the *res publica* is regularly ‘liberated’ from various *pestes* and perils in Cicero’s rhetoric,<sup>679</sup> it is *libera* only on three secure occasions that I have been able to find: (1) at *Fam.* 11.3.4, a letter sent by Marcus Brutus and C. Cassius to Antony on 4 August 44; (2) in Cicero’s *Thirteenth Philippic*, delivered on 20 March 43 (*Phil.* 13.6); (3) in Velleius Paterculus, writing under the Principate (2.32).<sup>680</sup> The distinction between *liberata* and *libera* is fine but revealing: the *res publica* might be liberated as many times and from as many minor or major perils as individual orators required, since ‘liberation’ is an event and events may be repeated. *Libera*, however, expresses an essential quality. So, for example, the category of ‘freedmen’ (*libertini*) stands in contrast to ‘free men’ (*liberi*): a *libertinus* is defined by having once been freed, whereas a *liber* is a man who has always been free. To cast the *res publica* as *libera* both expresses freedom as an essential quality of the Roman *res publica* and implies that this quality (since it needs to be expressed) may be contingent. In other words, *libera res publica* is a discursive reaction to the very recent past when the Roman *res publica* had *not* been free. It defines *res publica* against an alternative, specifically an alternative that had only occurred before in

<sup>679</sup> E.g. Cic. *Rab. Per.* 29, *Cat.* 1.20, 3.14, 3.17, *Mur.* 32, *Sull.* 33, *Planc.* 70, *Prov. Con.* 32, *Sest.* 1, 73, *Pis.* 95, *Mil.* 34, *Phil.* 1.13, 7.11, 7.27, 8.13, 11.26, 13.8, 14.4, *Fam.* 10.12.4, 11.5.3, 11.7.2, 11.8.1, 11.10.5, 11.14.3, 12.10.4, 12.25a.1, 18.4.13, *Brut.* 5.1, 23.6.

<sup>680</sup> There are also two insecure references: *in libera <re publica>* proposed by Wesenberg at Cic. *Fam.* 5.21.3, which Cicero wrote to Mescinius Rufus in April 46, and *nobis maiores nostri rem publicam <liberam> reliquerunt* at Rut. *Lup.* 2.16.24 (proposed by H. Sauppe and accepted by Halm 1863, but not by Brooks 1970).

Rome as ancient history, political rhetoric or under Sulla, who, however, had resigned his dictatorship and ostentatiously retired into ordinary life.

After Sulla, the *res publica* was *constituta* rather than *libera* because it preserved at least the outwards form of the traditional *res publica* of the *maiores*; there was a lively quarrel to be had over *libertas* within the *res publica*,<sup>681</sup> but not so much over liberty as an essential quality of the *res publica*. Furthermore, *res publica constituta* expresses a single event (the Sullan settlement of 82–1), whereas *res publica libera* echoes the concern over *res publica salva* which appeared with Nasica and never really went away. That, too, was not just an innocent phrase but indicated a strong concern that the *res publica* was not or soon would not be *salva* and that something must be done about this. The appearance of *libera res publica* after Caesar's death indicates a new twist resulting from the conflict between Caesar's limited conception of *res publica*, wherein the political organisation is subordinated to routine public business, and the more expansive version espoused by his opponents, who saw Caesar as a *rex* or *tyrannus* oppressing the *res publica* and who intended his assassination to reset the Roman *res publica* to its default factory setting, that is, *libera*. Whereas *res publica salva* implies an extended metaphor (the 'body politic'), *res publica libera* makes a political claim about how the *res publica* should be organised.

For Caesar and his opponents, the situation at the start of the civil wars was relatively clear-cut, both as far as legitimacy went (he lacked it) and for the war more generally (those fighting were fighting for or against Caesar). Caesar's biggest non-military challenge was to manoeuvre himself into an ideological position where he could make the same claim to legitimacy that he had made in the *Bellum Gallicum*, even though it was highly questionable whether he could now claim *any* relationship with the *res publica*. This clarity was missing after Caesar's death, when his various fellow magistrates were left to haggle over the future shape of Rome's political sphere and their places in it.<sup>682</sup> The impact of Caesar's regime and the lack of

<sup>681</sup> Wirszubski 1950, Hellegouarc'h 1963: 542–65, Brunt 1988: 283, Nicolet 1980: 320, Mouritsen 2001: 11. Cf. also Arena 2007, who argues that Cicero provided *libertas* with a philosophical makeover in the *De Officiis* and the *Philippics*, such that *libertas* is 'founded on the moral *autarkeia* of virtue, which requires a commitment to what is morally good and control over one's own emotions' (58), a reinterpretation that serves to rule out any compromise with a tyrannical figure, since tyranny 'leaves its victims prone to a condition of slavery, that is a condition of dominance by an external agent' (55).

<sup>682</sup> Cic. *Fam.* 11.1.1, a letter in which Decimus Brutus advocates the departure of Caesar's assassins from Rome, reports also that Antony 'is afraid lest, if our position were enhanced even to a moderate

forethought on the part of the ‘Liberators’ resulted in a confused and difficult period in which Cicero complained to Atticus, not long after the assassination in April 44, that ‘I can only be sorry that the *res publica* has not been recovered (*reciperata*) at the same time as liberty, a thing that has never happened in any *civitas*’.<sup>683</sup> Note the reappearance of *res publica recipere*, now in the negative: the removal of Caesar, which restored *libertas*, was not sufficient to restore a functioning political sphere.<sup>684</sup> Although Caesar was dead, his supporters were not, most prominently the other consul of 44, Marcus Antonius, and the *magister equitum*, Marcus Aemilius Lepidus. Additionally, some inadvisable *realpolitik* had induced the senate to confirm Caesar’s appointments (which ensured the ‘Liberators’ their offices, but also confirmed various Caesarians in theirs) and *acta* (which could be tampered with by Antony, who acquired Caesar’s notebooks from Caesar’s wife Calpurnia).<sup>685</sup> As a result, not only were most of the legions commanded by Caesarians,<sup>686</sup> but those commands had been confirmed by senatorial *auctoritas*, so the position of the senate (which Caesar had packed with loyalists anyway) was compromised. This resurrected an old problem: how to rein in magistrates, especially those at a distance from Rome? Cicero’s letters show just how complicated this could get in a situation where the central authority (now Caesar) had been abruptly removed and multiple managers of the *res publica* were left to float free in a contentious vacuum.

Senators were supposed to *consulere rei publicae*, that is, to serve as a well of practical wisdom (*consilium*) for the guidance of the magistrates in the management of the *res publica*.<sup>687</sup> The fact that magistrates and promagistrates writing home from their *provincia* typically address their official reports to the magistrates, senate and people of Rome indicates that while individual magistrates might embody the *res publica* abroad, this particular combination of elements traditionally comprised the (caretakers, advisors and possessors of the) *res publica* at

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degree, these people (i.e. the Caesarians) would have no further part to play in the *res publica*’ (*timere eum ne, si mediocre auxilium dignitatis nostrae habuissemus, nullae partes iis in re publica relinquerentur*).

<sup>683</sup> Cic. *Att.* 14.4.1, *equidem doleo, quod numquam in ulla civitate accedit, non una cum libertate rem publicam reciperatam*; cf. Lintott 2008: 341.

<sup>684</sup> Cf. also Cic. *Att.* 14.14.6, ‘You hand your neighbours the Massilians back their own as though the *res publica* had already been recovered (*reciperata*)’.

<sup>685</sup> Cf. Taylor 1949: 143, Stockton 1971: 281, Clarke 1981: 41-2, Wistrand 1981: 21-2, 24-5, Mitchell 1991: 290-95, Weigel 1992: 45-7.

<sup>686</sup> Thirty, to Caecilius Bassus’s one in Syria and Sextus Pompeius’s eventual seven in Spain; cf. Huzar 1986: 81-92, Lintott 2008: 341.

<sup>687</sup> See n.66 above.

home.<sup>688</sup> Those in the field or governing provinces had considerable freedom, but were tethered to the central hub in Rome – until Caesar’s regime collapsed the individual elements into a single source of *publicum consilium*, himself, which then dissolved on Caesar’s death. In the aftermath, it was not clear what had or should replace him. For the ‘Liberators’ and those who, like Cicero, applauded Caesar’s death, it was a particular problem that many of the magistrates and senators were Caesarians. This is clear from *Fam.* 11.3.4, a joint letter from Marcus Brutus and Gaius Cassius to the consul Marcus Antonius written in August 44:

*Deos quaesumus consilia tua rei publicae salutaria sint ac tibi; si minus, ut salva atque honesta re publica tibi quam minimum noceant optamus.*

We pray to the gods that your counsels should be salutary for the *res publica* and for you. If not, then we pray they may bring you as little hurt as possible without detriment to the welfare and honour of the *res publica*. (Cic. *Fam.* 11.3.4.)

Antony, as consul, was intimately linked with the *res publica*, a reality reflected in the careful formalities of this letter. The difficulty of distinguishing between a disaster for the consul (even if that consul is Antony) and a disaster for the *res publica* is apparent, as is the fact that Brutus and Cassius were in the awkward position of having to do so.

These contortions indicate the dangerous fragmentation of legitimacy derived from the magistrate’s traditional relationship with the *res publica* in what was shaping up to be a new civil war. There were people on all sides with some claim to represent the *res publica*. It will come as no surprise that Cicero and his various friends among or supporting the ‘Liberators’ used this discourse; so in a letter from March 43, Cicero informs Q. Cornificius that he has been attacking someone (Calvisius) who had formerly been acting as a provincial governor *in absentia*, a gross insult to Cornificius and the *res publica*.<sup>689</sup> Elsewhere, on 7 May 43, Cassius

<sup>688</sup> Reporting from Cilicia, Cicero wrote to the consuls, praetors, tribunes of the plebs and senate (Cic. *Fam.* 15.1, 15.2); in 44–43, however, L. Munatius Plancus, P. Lentulus Spinther, M. Aemilius Lepidus and D. Junius Brutus addressed the magistrates, senate, people and plebs of Rome (Cic. *Fam.* 10.8, 12.15, 10.35, 11.13a).

<sup>689</sup> Cic. *Fam.* 12.25.2.

wrote to Cicero from Syria, a province where he was not supposed to be, to commend his *dignitas* and questionably raised army to Cicero's care, since Cicero 'would appear not only to wish me well, as you have always done both for my sake and that of the *res publica*, but to have taken a grave responsibility upon yourself and to be very anxious on my account'.<sup>690</sup> Again, the younger Cornelius Lentulus Spinther, who had originally gone to Asia as Trebonius's quaestor, wrote a letter to Cicero and a dispatch to the senate and people from Perge at the end of May 43 to update them on his activities in the region as *proquaestor propraetor* after Trebonius's death in Smyrna at Dolabella's hands.<sup>691</sup> He resented the efforts of the Rhodians to obstruct his pursuit of Dolabella, who had a proconsular command in Asia and whom the Rhodians seem to have taken more seriously than Lentulus: 'The contempt which the Rhodians have displayed for me and for the *res publica* you will see from my official dispatch',<sup>692</sup> he told Cicero, and asked Cicero to try to get him appointed to govern Asia in the period until one or other of the consuls (to whom Asia had been assigned) was able to take up the command in person. 'I want to collect and make good the sums I gave Cassius and lost by Trebonius' death, also by Dolabella's ruthlessness or the bad faith of those who broke their word to me and to the *res publica*'.<sup>693</sup> Similarly, in the dispatch Lentulus protests his devotion to the senate and *res publica* and promises to keep them updated: 'As soon as I have made a rapid tour of the province and found out who has kept faith with me and the *res publica* in preserving intact the funds I deposited, as well as the villains who went to Dolabella with the public money in their hands as an offering with which to buy their way into a partnership of crime, I shall apprise you accordingly'.<sup>694</sup> The language in all these passages is that of rightfully appointed magistrates of unquestionable legitimacy, even though the actions they describe are dubious, to say the least.

The misuse of legitimacy becomes an open conflict in a three-way conversation during March and May 43 between Cicero, L. Munatius Plancus

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<sup>690</sup> Cic. *Fam.* 12.12.1, *id quod et nostra et rei publicae causa semper fecisti.*

<sup>691</sup> Cic. *Fam.* 12.14, 12.15.

<sup>692</sup> Cic. *Fam.* 12.14.3, *Rhodii nos et rem publicam quam valde spreverint ex litteris quas publice misi cognosces.*

<sup>693</sup> Cic. *Fam.* 12.14.5, *nunc, quod Cassio dedi, quod Treboni morte amisimus, quod etiam crudelitate Dolabellae aut perfidia eorum qui fidem mihi rei publicae non praestiterunt, id consequi et reficere volo.*

<sup>694</sup> Cic. *Fam.* 12.15.6, *si percurrero provinciam et cognovero qui nobis et rei publicae fidem praestiterunt in conservanda pecunia a me deposita quique scelesti ultro deferentes pecuniam publicam hoc munere societatem facinorum cum Dolabella inierunt, faciam vos certiores.*

(proconsul of Gallia Comata and consul-designate) and Caesar's former *magister equitum* M. Aemilius Lepidus (proconsul of Gallia Transalpina and Hispania Citerior).<sup>695</sup> The main unknown quantity was Lepidus, a Caesarian of exceedingly uncertain loyalties moving around in the shadows in possession of an army, although Plancus too commanded an army and had fought for Caesar both in Gaul and during the civil war. Plancus, who was in the field and in open dialogue with Lepidus, claimed to be friendly to Cicero, loyal to the senate, and doing his best to persuade Lepidus onto the side of all that was good and proper; meanwhile Lepidus himself teetered dangerously between being at best fickle and at worst outright treacherous.<sup>696</sup> Cicero, writing from Rome, aimed to yoke Lepidus to the senatorial cause; his efforts are attested by the *Fifth* and *Thirteenth Philippics*, where he expounds his theory that educating Lepidus on his duties and rewarding Lepidus for behaving dutifully would have the happy effect of making this behaviour continue.<sup>697</sup> The reward in question was a vote of thanks and a gilded equestrian statue on the Rostra; when Lepidus sent a letter arguing for peace in which he failed to thank the senate for this, Cicero wrote on 20 March 43 to chide him. He was glad Lepidus wanted to restore *pax inter civis*, but not altogether sanguine about Lepidus's long-term plans: 'If you draw a line between peace and slavery, you will take thought (*consules*) both for the *res publica* and your own standing (*dignitas*)'.<sup>698</sup> Cicero's language concedes a degree of qualified legitimacy to Lepidus: if Lepidus behaves as Cicero thinks appropriate, Cicero will allow and confirm his legitimacy in return. In linking Lepidus's *dignitas* with the *res publica*, self-interest with public-spiritedness, Cicero uses the standard, self-reinforcing duality in an attempt to convince Lepidus to do as Cicero says. Lepidus should refrain from making peace with his fellow citizen Antony, because civil war with Antony is in the interests of both the *res publica* and of Lepidus. Lepidus's positive relationship with the *res publica*, in other words, was contingent on his behaviour.

Plancus, who had sent a similar letter to the senate, received a somewhat more nuanced response: 'our Furnius' had reported good things about Plancus's political sentiments (*de animo tuo in rem publicam*) to an approving senate and

<sup>695</sup> On Caesar and Lepidus, cf. Weigel 1992: 26-40.

<sup>696</sup> For Lepidus's activities between Caesar's assassination and his alliance with Antony and Octavian, and in particular for an account of the complicated manoeuvring that went on in the western provinces, cf. Weigel 1992: 2-3, 44-65.

<sup>697</sup> Cic. *Phil.* 5.38-40, 13.13-17.

<sup>698</sup> Cic. *Fam.* 10.27.1, *eam si a servitute seiungis, consules et rei publicae et dignitati tuae.*

people, but Plancus himself had written to advocate for peace when D. Brutus was besieged by Antony. Unless Plancus dissociated himself from his Caesarian correspondents and joined himself with the *libertas populi Romani* and the *senatus auctoritas*, all his *gradus dignitatis* would be meaningless.<sup>699</sup> An elaborate and self-justifying letter from Plancus survives, written at about the same time to the magistrates, senate and people, in which Plancus explains his various delays and deceptions as perfectly understandable responses to the constraints of the situation;<sup>700</sup> he also wrote to Cicero insisting on his ambition to be recognised and remembered as someone who had been a great guard for the *res publica*,<sup>701</sup> in furtherance of which he kept Cicero updated on his progression towards Mutina and the opening of communications with Lepidus after the deaths of the consuls at Mutina.<sup>702</sup> By 18 May, Plancus was willing to risk negotiating directly with Lepidus, in the hope (so he said) of bolstering the waverer and his army; he was striking camp on the Isara and going to meet Lepidus.<sup>703</sup> A day later, Lepidus himself wrote Cicero a brief, informative letter: hearing that M. Antony and his brother Lucius were on the move, he had started to advance against them; various people had joined or deserted Antony; and ‘as for this war, I shall not fail the senate or the *res publica*’.<sup>704</sup> Addressing a senator in residence at the central hub of public activity, Lepidus genuflected towards the senate as a legitimate locus of *consilium* on the *res publica*’s behalf.

The culmination to all this careful diplomacy came at the end of the month. On 30 May, after the exchange of more letters by all and sundry,<sup>705</sup> Lepidus wrote to the praetors, tribunes of the plebs, senate, people and plebs to inform them that although his heart was in the right place (*deos hominesque testor, patres conscripti,*

<sup>699</sup> Cic. *Fam.* 10.6, Cicero to Plancus 20 March 43.

<sup>700</sup> Cic. *Fam.* 10.8.

<sup>701</sup> Cic. *Fam.* 10.7.2, *quod spero... me consecuturum, ut maximo praesidio rei publicae nos fuisse*; cf. Cic. *Fam.* 10.12 for Cicero’s fulsome response.

<sup>702</sup> Cic. *Fam.* 10.9, 10.11; the deaths of the consuls: Cic. *Fam.* 12.25a. On 11 May, Plancus reported success as far as persuading Lepidus to the side of the good went: ‘My assiduity has, I hope, borne fruit both for me and for the *res publica*’ (Cic. *Fam.* 10.15.1, *sedulitas mea, ut spero, et mihi et rei publicae tulit fructum*); two days later he complained of Lepidus’s *levitas* and reported that his go-between Laterensis despaired of Lepidus’s *fides*, not to mention the disposition of Lepidus’s soldiers. Since it would be dangerous to progress, Plancus therefore intended to turn back and urges Cicero to get an army sent across the Alps as soon as possible (Cic. *Fam.* 10.21).

<sup>703</sup> Cic. *Fam.* 10.18.

<sup>704</sup> Cic. *Fam.* 10.34.2, *quod ad bellum hoc attinet, nec senatui nec rei publicae deerimus*.

<sup>705</sup> Cic. *Fam.* 10.17, 10.34a, 10.16, 10.20.

*qua mente et quo animo semper in rem publicam fuerim*), his army, dedicated as it was to preserving Roman citizens, had mutinied:

*In qua re ego vos, patres conscripti, oro atque obsecro ut privatis offensionibus omissis summae rei publicae consulatis neve misericordiam nostram exercitusque nostri in civili dissensione sceleris loco ponatis. quod si salutis omnium ac dignitatis rationem habueritis, melius et vobis et rei publicae consuletis.*

Therefore, conscript fathers, I beg and implore you to put private offences aside and to consult the supreme interests of the *res publica*. Do not treat the compassion shown by me and my army in a conflict between fellow countrymen as a crime. If you take account of the welfare and dignity of all, you will better consult your own interests and those of the *res publica*. (Cic. *Fam.* 10.35.2.)

Lepidus again yokes the senate and *res publica* together: it will be in the interests of both for the senators to take into account the *salus ac dignitas* of all players and to treat his alliance with Antony as mercy shown in a civil dissension rather than a crime. This is perhaps a response to Cicero: whereas Cicero casts the struggle as slavery versus freedom, Lepidus talks of civil war, *misericordia* and the duties owed to fellow citizens; *this*, he says, is what taking thought for the *res publica* (the senate's duty) is all about. There may also be an echo of Caesar's disingenuous proposal to Pompey at *BC* 3.10 and the threat is not particularly veiled, especially as Lepidus links *himself* with his army, *misericordiam nostram exercitusque nostri*. When political life had fragmented to this extent, traditional claims to legitimacy became largely meaningless because people on all sides could reasonably make them: what mattered was whether or not such claims could be backed up with force. The instability of all political constellations at this point is illustrated by the diplomatic consul-designate Munatius Plancus, whose impending office gave him a reasonable claim to represent the *res publica* and who joined the triumvirs and held the consulship as Lepidus's colleague in 42.

To return to my starting point, then, the explicitly *libera res publica* is a symptom of this crisis. As a concept, it stands in pointed contrast not just to Caesar's regime but also to the impending resumption of the civil war Caesar had begun. For this, we need only look at my first reference, *Fam.* 11.3, that tart letter from M. Brutus and Cassius to Antony written at Naples on 4 August 44. I cited it above to highlight the difficulty of divorcing the consul from the *res publica* at a time when people claiming to champion the *res publica* were developing a stance of public (and potentially military) opposition to that very consul. This letter, and the associated correspondence from which the vagaries of source survival exclude us, are therefore part of a universal renegotiation of all aspects of (and perspectives on) *res publica* in the crisis of legitimacy created by Caesar's death. This makes for some interesting tension in the text, where Brutus and Cassius are at pains to be perfectly proper in a situation that is not at all proper and looks likely to get even less so in the very near future. Since the popular (Caesarian) reaction in Rome had given the 'Liberators' the idea that it might be prudent to leave town, Brutus had been lurking near Naples for about a month, hoping to hear good news from Rome of the response to the *ludi Apollinares* that he was responsible for organising as the urban praetor (albeit an urban praetor at a safe distance from the *urbs*).<sup>706</sup> At the end of July, he and Cassius had issued an edict offering to leave Italy and refrain from starting any more civil wars;<sup>707</sup> this had provoked a sharp public and private response from Antony, to which *Fam.* 11.3 is their 'firm and dignified reply'.<sup>708</sup>

The formality of the address ('Brutus and Cassius, Praetors, to Antonius, Consul, greetings') establishes that the letter is being written by two magistrates to a third, while the opening paragraph offers a critique of Antony on grounds of appropriate conduct. Antony's letter, like his edict, was 'offensive and menacing' (*contumeliosas, minacis*), and scarcely worthy (*minime dignas*) of being sent 'by you to us', not simply because of the offensive content but because this attack had been unprovoked. The letter is couched in the language of traditional political activity. Brutus and Cassius had 'attacked you with no insult' (*te nulla lacessi<i>mus iniuria*) and had supposed that Antony would not be surprised 'if, as praetors and men of that *dignitas* we should ask something in an edict from a consul (*si praetores et ea*

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<sup>706</sup> Clarke 1981: 45.

<sup>707</sup> Cic. *Phil.* 1.8, Vell. Pat. 2.62.

<sup>708</sup> Clarke 1981: 45.

*dignitate homines aliquid edicto postulassemus a consule)*'. If Antony should resent (*si indignaris*) them for daring to issue their edict, he must concede to them a corresponding *dolor* that even this was not granted by him to Brutus and Cassius.<sup>709</sup> In short, Antony's overbearing behaviour is not how a consul should interact with praetors; they therefore have every right to hold a grudge against him. Antony's accusations are untrue; and since, as Antony says, he has made no protest about these alleged actions, it is surprising that Antony could not contain his anger (*iracundia*) so far as not to throw Caesar's death at them.<sup>710</sup> Furthermore, Antony should consider how tolerable it was that 'praetors should not be permitted in the interests of concord and liberty to abate the rights of their office by edict without a consul threatening military violence'. Brutus and Cassius will not be intimidated by Antony's threats and Antony should not 'order around those by whose labour he is free' (*iis imperet quorum opera liber est*), not least because it will not work: 'free men are not impressed by threats' (*nulla enim minantis auctoritas apud liberos est*).<sup>711</sup> So,

*Nos in hac sententia sumus ut te cupiamus in libera re publica magnum atque honestum esse, vocemus te ad nullas inimicitias, sed tamen pluris nostram libertatem quam tuam amicitiam aestimemus. Tu etiam atque etiam vide quid suscipias, quid sustinere possis; neque quam diu vixerit Caesar sed quam non diu regnarit fac cogites.*

To summarise our position, we are desirous to see you an important and respected member of a *libera res publica*. We are not fastening any quarrel upon you. At the same time, our liberty means more to us than your friendship. On your part, consider well what you undertake and what you can sustain. Bear in mind not only the length of Caesar's life, but the brevity of his reign. (Cic. *Fam.* 11.3.4.)

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<sup>709</sup> Cic. *Fam.* 11.3.1.

<sup>710</sup> Cic. *Fam.* 11.3.2.

<sup>711</sup> Cic. *Fam.* 11.3.3.

The *res publica* of the letter is *libera* in the first place because the rhetoric of *libertas* suffuses the whole letter, as it does Brutus and Cassius's rhetoric in general.<sup>712</sup> Thus Antony's use of the assassination of Caesar as an accusation (one which, unlike the other accusations, Brutus and Cassius do not deny, but merely use to point up the hypocrisy of what was presumably *praeteritio* on Antony's part) is transformed into a commendation with the pointed remark that Antony is free thanks to Brutus and Cassius; from free men the letter then moves to a free *res publica*. This *libera res publica* looks both backwards and forwards: backwards to the condition of the non-*libera res publica* under Caesar, from whose *regnum* the 'Liberators' had freed it, and forwards to a highly uncertain future in which Antony might be a great and respected man among other great and respected men in a *res publica* that remains *libera* – or the civil wars may resume, the *res publica* might lose its freedom, and Antony could prove to be a new Caesar (in which case he should consider Caesar's fate). Even though *libera res publica* expresses an essential quality, it invokes a past when the *res publica* had not been *libera* (although it *should* have been) and evokes a future in which free men may have to act to keep it *libera*. It stands, in other words, as a standard for a future fight.

It seems reasonable to conclude from this letter that an explicitly *libera res publica* belongs to the rhetoric of the 'Liberators' and is anchored in this specific and ephemeral context. It is a *res publica* principally perceived as (free) political space and (free) movement within the political structures that Caesar's regime had disregarded. Cicero invoked it the following year in an argument against peace initiatives that carries the same implications of contingent *libertas*: if *Sapientia* advised self-preservation above all, even at the cost of slavery, then he would ignore her, but he would obey as if obeying a god if she told him instead:

*Tu vero ita vitam corpusque servato, ita fortunas, ita rem familiarem, ut haec libertate posteriora ducas itaque his uti velis, si libera re publica possis, nec pro his libertatem, sed pro libertate haec proicias tamquam pignora iniuriae.*

Preserve your life and body, your fortunes and property, but only as valuing them less than freedom and as desiring to enjoy them only if you can do so in

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<sup>712</sup> Taylor 1949: 176, Wirszubski 1950: 88, Clarke 1981: 66, Arena 2012: 42-3.

a *libera res publica*, and do not sacrifice liberty in exchange for these things but them for liberty, regarding them as pledges exposed to ill-usage. (Cic. *Phil.* 13.6.)

By the time Velleius Paterculus had Q. Lutatius Catulus argue against the *lex Gabinia* on the grounds that Pompey was certainly great but was becoming too great for a *libera res publica*, the lively debate of 44–43 and the preceding decades had crystallised into tragic history.<sup>713</sup> There are, however, broader points to be gleaned from *Fam.* 11.3, of which the most important concerns its authors’ dimly perceived shape of the future. In the contentious vacuum created by Caesar’s sudden removal from the scene, everyone was obliged to renegotiate not just how they related to each other but also (because the ‘Liberators’ had wrongly thought that the old ways would snap back into place with Caesar dead and therefore took no measures to ensure that the former structures of the *res publica* would be re-established) just what sort of political system they were going to end up with. The *libera res publica* defines the sort of *res publica* Brutus and Cassius want to have: one not dominated by a single man or clique, as opaque a definition as anything Caesar came up with (which might be charitably attributed to the fact that this is a letter rather than a political pamphlet). It is distinct from Pompey’s rallying cry: he and the ‘Republicans’ had fought for the *res publica*, whereas the ‘Liberators’ express their willingness to fight for the *res publica* to be free. They make, it might be said, a purer claim: not a *res publica* for themselves and their allies, but a *libera res publica* in which everyone, including Antony and the Caesarians (if they are willing to go along with this) can participate.<sup>714</sup>

Against this claim, Antony’s communications seem to have struck a personal chord. In *Fam.* 11.3, he is reported to have made personal attacks on the ‘Liberators’, to have accused them outright of preparing for a new civil war, and to hold Caesar’s assassination against them. This fits with what we hear about the former Caesarians elsewhere; Cicero had previously written on 14 May 44, after a dinner with A. Hirtius, that ‘they are scared of peace (*otium*). Their theme and slogan is that a great man (*clarissimum <virum>*) has been killed, that the whole *res publica* has been plunged into chaos by his death, that all he did will be null and void the moment we

<sup>713</sup> Vell. Pat. 2.32.

<sup>714</sup> Wistrand 1981: 6, 10–12, 23.

cease to be afraid, that clemency was his undoing, but for which nothing of the sort could have happened to him'.<sup>715</sup> Antony's own self-justification is expressed in a letter sent to Hirtius and Octavian a year later in March 43, sarcastically dissected and so preserved by Cicero at *Phil.* 13.22–48; Lintott supplies the reconstruction and translation I use here.<sup>716</sup> Given the care taken by Brutus and Cassius to use the proper formulae, it is worth noting the abruptness of the letter, which begins 'Antony to Hirtius and Caesar'. Cicero takes the opportunity to comment on the lack of titles, observing that 'rather than give them their proper titles, he has chosen to drop one that is not rightfully his' (that of *imperator*).<sup>717</sup> But Antony's implication is the reverse: he means that Hirtius, having been 'honoured through Caesar's generosity and left by him such a figure that you are amazed at yourself', and Octavian, a *puer* who owes everything to the name inherited from Caesar, do not deserve the titles they claim, since they are actively hindering attempts to exact revenge for Caesar's murder. The importance of exacting punishment on the assassins of Caesar is the keynote of the letter, where Antony reproaches Hirtius and Octavian for siding with the senate (which he calls the *castra Pompeii*), for taking the *victus* Cicero as their leader and for doing or deliberately overlooking many dubiously legal things: in short, Antony asks, had they done anything that Pompey himself, if revived, or his son Sextus, had he the power, would not have done? He describes the recent death of the assassin C. Trebonius at Dolabella's hands, which Cicero regarded as a crime,<sup>718</sup> as Trebonius's penalty 'to the ash and bones of a supremely distinguished man' and an indication that the *numen deorum* was in action after less than a year, since a parricide had already been partially revenged; however,

*Iudicatum hostem populi Romani Dolabellam eo quod sicarium occiderit, et videri cario rem rei publicae filium scurrae quam C. Caesarem, patriae parentem, ingemiscendum est.*

It is a matter for grief that Dolabella has been declared an enemy of the Roman people on the ground that he killed an assassin, and the son of a

<sup>715</sup> Cic. *Att.* 14.22; cf. also Lintott 2008: 360-2 on the correspondence between Cicero and Matius after Caesar's death.

<sup>716</sup> Lintott 2008: 445-6; cf. Huzar 1986: 107-8 for more context.

<sup>717</sup> Cic. *Phil.* 13.22.

<sup>718</sup> *Phil.* 11.1, 11.5-8, 13.22-3.

comedian seems dearer to the *res publica* than Gaius Caesar, the father of his fatherland.

It was worse, though, that Hirtius and Octavian should justify Dolabella's treatment and try to liberate the *venefica* D. Brutus from siege so that Cassius and M. Brutus should be *potentissimi*. Hirtius and Caesar represented themselves as intervening on behalf of the soldiers interned by Antony's siege; Antony's response was that the soldiers could leave – all he wanted was 'the death of the man who deserved it'. Nor did Antony believe that the senate had talked of reconciliation. Hirtius and Octavian should therefore consider whose death they should be avenging and whom they should be fighting. They are all on the same side, Antony tells them: that is to say Caesar's side, which should now devote itself to hunting down Caesar's assassins and repressing the resurrected *castra Pompeii*. Fortune herself had so far avoided the spectacle of two armies from the same side fighting with Cicero (who is *felix* to have deceived Hirtius and Octavian with the honours he once boasted of having used to deceive Caesar) for a *lanista*.<sup>719</sup> Antony would not abandon his men, the party Pompey hated, or his allies Lepidus and Plancus; if he survives, he will rejoice, but if he falls, he can at least die rejoicing in anticipation of the punishment of Hirtius and Octavian by the Pompeians. Ultimately, however, he expresses a willingness to forgive actions taken against him and his men if those concerned (his correspondents are implied) will join him in seeking revenge for Caesar.

'One may question Cicero's wisdom in reading this to the senate', Lintott remarks, noting that while for Cicero, 'the letter proved that Antonius was an irreconcilable enemy to the *res publica*, as indeed he was to Cicero', his 'largely Caesarian audience' must have found it less comfortable to hear – especially those references to Lepidus and Plancus.<sup>720</sup> The contrast with the sentiments expressed by Brutus and Cassius is striking. Whereas the 'Liberators' staked their cause on an abstract political principle, Antony stakes his on a very personal principle: revenge for that *clarissimus vir*, Caesar. He has little to say about the *res publica*, but a great deal to say about the dead Pompey, whose defeated *causa* he depicts as dominating the senate under Cicero's treacherous leadership. If the contrast between political

<sup>719</sup> Cf. also Cic. *Fam.* 12.3.1 for reports that Antony accused Cicero of a leading part in the assassination.

<sup>720</sup> Lintott 2008: 400-1.

and personal principles seems reminiscent of the ‘Republicans’ against Caesar, it is unsurprising that the themes of the first round of civil wars should be echoed by the successors to that struggle. Like the ‘Liberators’, Antony inherits an apologia to which he adds his own twist. For the ‘Liberators’ it was *libertas*; for Antony, revenge. This came with the happy bonus that Antony was free to ignore senatorial decrees, fight fellow magistrates and in general pursue his own interests at the expense of anything that could be considered the *res publica*, since the senate was only the *castra Pompeii* and anyone who had been involved in Caesar’s assassination or got in the way of Antony’s personal mission deserved whatever they got. The *res publica*, meanwhile, features only as a word used to discredit those who wanted to avenge Caesar; it remains as the spoils, presumably, for whichever party wins out in the end. For Antony, the civil war was one to be fought over the *res publica*, not in aid of a particular vision of it.

## 5.5 THE CAPTAIN

It remains to discuss someone who *did* make a detailed attempt to define what *res publica* should mean amid all this confusion: the Pompeian *lanista* Cicero, who had had a very gloomy summer but who by late October 44 was starting to feel a little more hopeful: ‘it seems’, he wrote to Atticus, ‘the *res publica* may recover its *ius*’.<sup>721</sup> My starting point for the *Philippics*, then, is that in these difficult and conflicted times there was a real place for argument over the shape of Rome’s shared political space, if only because the structures of the *res publica constituta* had been seriously eroded, if not displaced altogether, by Caesar’s regime. Delivered on 2 September 44, Cicero’s *First Philippic* is concerned, consciously or not, with working out parameters for the (*libera*) *res publica* that he calls upon Antony as consul to administer and will spend the rest of the *Philippics* calling on the senate to defend against Antony.<sup>722</sup> By praising Antony’s actions from 15 March to 1 June, and by passing comment on what should and should not be acceptable, he aimed (or at least managed) to establish a set of working guidelines for the post-Caesar future. This begins with the narrative of events after Caesar’s assassination at *Phil.* 1.1–5 and Cicero’s hope that the *res publica* had now been recalled (*revocare*) to the *consilium*

<sup>721</sup> Cic. *Att.* 15.13.4; on his gloomy summer cf. Lintott 2008: 339–50.

<sup>722</sup> Manuwald 2007a: 96–7, Cowan 2008: 141.

and *auctoritas* of the senate. At the time, Antony had been the model of a consul in difficult times: he had helped calm things down during the senate meeting on 17 March and had continued on the same fine lines, laying admirable proposals before the senate, discovering no unexpected material in Caesar's papers, restoring only a single exile, granting no exemptions from taxes and approving an approvable motion moved by Servius Sulpicius on the topic of Caesar's decrees. He also 'regularly brought the *principes civitatis* to those deliberations *de re publica* which he was holding in his home'. Best of all, Antony had wholly removed the dictatorship (an office that had gained the 'force of regal power', *vis regiae potestatis*) from the *res publica*, through a bill that he had put to the senate, which had naturally cheered him all the way to a decree of thanks.<sup>723</sup> He and his colleague Dolabella had saved the senate from a massacre, and Dolabella by himself had taken action to stop riots.<sup>724</sup> It seemed, Cicero says, as if some light had dawned (*lux quaedam videbatur oblata*),

*non modo regno, quod pertuleramus, sed etiam regni timore sublato, magnumque pignus ab eo rei publicae datum, se liberam civitatem esse velle, cum dictatoris nomen, quod saepe iustum fuisset, propter perpetuae dictaturae recentem memoriam funditus ex re publica sustulisset.*

with the removal not only of the monarchy which we had endured, but even of the fear of its recurrence; it seemed as if Antony had given the *res publica* a mighty pledge of his desire for a *libera civitas* when, because of the recollection of the recent *dictator perpetuus* he totally removed from our *res publica* the office of dictator, legitimate though it had often been. (Cic. *Phil.* 1.4.)

The future *res publica* that Cicero wants is one where the traumatic immediate past is forgotten (he himself argued for an amnesty along the lines of 'the ancient Athenian precedent' in which *discordia* are laid to rest, he says),<sup>725</sup> Caesar's decrees are not rejected wholesale but are handled carefully, the magistrates consult with leading statesmen (*principes*) before doing anything, a traditional (albeit

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<sup>723</sup> Cic. *Phil.* 1.1-3.

<sup>724</sup> Cic. *Phil.* 1.5.

<sup>725</sup> Cic. *Phil.* 1.1.

controversial) magistracy is removed entirely, and the senate's safety is ensured. This is a mix of the traditional and the not-so-traditional; and, crucially, it is a *res publica* tucked snugly under a senatorial wing.

Against the positive view of what the *res publica* should be, the activity that allegedly made for a sharp break after 1 June stands as a negative foil. 'Nothing was enacted through the senate, but many important measures were put *per populum* – in the absence of the people and against their will'; the consuls-designate claimed they dared not attend the senate; the 'liberators of the fatherland (*patriae*)' were missing from the city 'from whose neck they had cast off the yoke of slavery', even though the consuls still praised them hypocritically in public; and the veterans (who had been carefully cultivated by the senate) were incited to hope for fresh plunder.<sup>726</sup> Cicero presents this as his reason for leaving Rome, but the account also functions as an alternative *res publica* dominated by rogue consuls backed up by greedy troops, where people with a right (indeed an obligation) to take part in public business dare not do so, while public heroes dare not stay in the city at all. Rather than overt opposition, Cicero's reaction was to retreat. He returned to Rome, he claims, only when a chance delay gives him time to find three reasons to be hopeful: a speech of Antony's, Brutus and Cassius's edict, and a somewhat exaggerated account of what was going on in Rome according to which Antony would repudiate his evil advisors, give up Gaul and 'return to the guidance of the senate (*ad auctoritatem senatus esse rediturum*)'.<sup>727</sup> He hoped, in other words, that his preferred version of the *res publica* (one firmly guided by senatorial *auctoritas*, rather than the whims of magistrates) had been adopted by those currently in a position to make or break it. He therefore rushed back towards Rome to present his congratulations,<sup>728</sup> which, however, turned out to be premature. A meeting with M. Brutus at Velia enlightened Cicero and gave him a model, that of L. Piso, who had made a (not very well supported) speech against Antony in the senate. By the time he arrived in Rome, his intention was to follow Piso's lead, 'not in order to achieve anything – that was not in my hopes or power to guarantee – but so that I might leave the words I speak today as witnesses to the *res publica* of my abiding loyalty (*mea perpetua voluntas*)'.<sup>729</sup>

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<sup>726</sup> Cic. *Phil.* 1.6.

<sup>727</sup> Cic. *Phil.* 1.8.

<sup>728</sup> Cic. *Phil.* 1.9.

<sup>729</sup> Cic. *Phil.* 1.10.

What follows is a fairly tactful argument that Antony should adopt Cicero's preferred *res publica*, in the course of which Cicero provides detail for his political vision by listing what should and should not be carried over from Caesar's regime. Like Brutus and Cassius in *Fam.* 11.3, he critiques Antony and the senate on the grounds of appropriate behaviour. Cicero's *amicus* Antony should not have been harsh about Cicero's failure to attend a meeting of the senate devoted to voting on a thanksgiving; the proposal at hand was a bad one anyway; and the failure of any other *consulares* to talk about the other *mali rei publicae* or to support L. Piso indicates a sort of voluntary slavery that Cicero himself rejects: whereas in the past (that is, under Caesar) some such slavery was unavoidable, things are different now.<sup>730</sup> These criticisms apply the standards of the pre-Caesar era: had the *populus Romanus* made Cicero and the other *consulares* consuls in order that 'we in so exalted a station, the highest in the land, might set the *res publica* at naught?'<sup>731</sup> In contrast, Piso is thanked as someone 'who did not think about how much he could achieve in the *res publica* but about what he ought to do',<sup>732</sup> a credit that marks the transition to Cicero's positive recommendations on Caesar's *acta*,<sup>733</sup> the retention and rejection of specific laws,<sup>734</sup> and the suggestion that any laws that *may* in future be passed in a forum surrounded by armed guards should not be considered laws.<sup>735</sup> Furthermore, Cicero suggests limits on how the consuls should conduct themselves in office – not just in how they pass laws, but in how they behave towards other inhabitants of the political sphere. The consuls should not be angry with Cicero for speaking *pro re publica* like this, he tells Dolabella; he has no problem incurring Antony's *inimicitia* if he attacks Antony personally, but

*sin consuetudinem meam quam in re publica semper habui tenuero, id est si libere quae sentiam de re publica dixerō, primum deprecor ne irascatur; deinde, si hoc non impetro, peto ut sic irascatur ut civi. Armis utatur, si ita necesse est, ut dicit, sui defendendi causa: eis qui pro re publica quae ipsis visa erunt dixerint ista arma ne noceant.*

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<sup>730</sup> Cic. *Phil.* 1.11-15.

<sup>731</sup> Cic. *Phil.* 1.14, *ut in altissimo gradu dignitatis locati rem publicam pro nihilo haberemus.*

<sup>732</sup> Cic. *Phil.* 1.15.

<sup>733</sup> Cic. *Phil.* 1.16-18.

<sup>734</sup> Cic. *Phil.* 1.19-24.

<sup>735</sup> Cic. *Phil.* 1.26.

if I hold to my invariable practice *in re publica*, that is, if I speak my mind freely *de re publica*, in the first place I beg him not to be angry: and if that plea fails, then I ask him to be angry with me as a fellow citizen. Let him use arms, if that is necessary (as he says it is) for his own defence, but let those arms do no injury to people who speak their own minds on behalf of the *res publica*. (Cic. *Phil.* 1.27.)

Cicero argues not just for the structures of the old *res publica* to be restored, but also for the restoration of its culture. Against this plea, he reports that Antony's friends have told him Antony is inclined to be deeply offended by contrary views and will not grant Cicero the same licence as Piso, who, after all, had been Caesar's father-in-law: death is as good a reason not to attend the senate as illness.<sup>736</sup> Whatever the truth of this, there was evidently some renegotiation of traditional patterns of behaviour versus inconvenient realities underway, and Cicero was pushing for the reinstatement of the former (or at least an idealised version of it). He substantiates this push with a brief discursion on the nature of *gloria*, which 'consists in the credit for honourable deeds (*laus recte factorum*) and the reputation (*fama*) for great services benefiting the *res publica*, approved by the testimony of the best among us and also by that of the multitude'.<sup>737</sup> Dolabella and Antony both seek *gloria*,<sup>738</sup> but are ignorant of the 'true path of glory', which may lead them wrongly to think that supreme power is glorious and to prefer fear over esteem. What is actually glorious is 'to be a dear citizen, to deserve well of the *res publica*, to be praised and courted and esteemed', whereas to be feared is *invidiosum*, *detestabile*, *imbecillum*, *caducum*.<sup>739</sup> Antony and Dolabella should therefore change course and 'so guide the *res publica* that your fellow countrymen will be glad that you were born',<sup>740</sup> – all the way back to the version of the *res publica* preferred both by Cicero and by the *populus Romanus*, as various manifestations of popular will have shown.<sup>741</sup>

What *Phil.* 1 proposes, then, is a combination of the old and new. Cicero recommends a *res publica* that incorporates Caesar's measures selectively, is founded on the free interaction of peers, adheres to traditional political etiquette and

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<sup>736</sup> Cic. *Phil.* 1.28.

<sup>737</sup> Cic. *Phil.* 1.29.

<sup>738</sup> Cic. *Phil.* 1.29-32.

<sup>739</sup> Cic. *Phil.* 1.33.

<sup>740</sup> Cic. *Phil.* 1.35.

<sup>741</sup> Cic. *Phil.* 1.36-7.

subordinates the magistrates to the senate's *auctoritas*.<sup>742</sup> The redefinition of *gloria* is telling: it was not the first time Cicero had played this particular semantic game,<sup>743</sup> but with everything in flux, criticism of 'the motivational nexus that drove political competition at Rome' began to look like a genuine manifesto for change.<sup>744</sup> This sort of *gloria* valorises ordinary political activity over an extraordinary political position and is linked to 'social approval on the part of the good';<sup>745</sup> in political terms, it adds conceptual glitz to the hope that the consuls will return to a senatorial fold. Stressing the authority of the senate was not new, of course, and it would be cynical to suggest Cicero stressed it now because his ability to influence events was mostly limited to his influence in the senate; the particular emphasis given to it in *Phil.* 1, however, starting with Cicero's hope that the *res publica* had been returned not to the *populus Romanus* but to the senate's *consilium* and *auctoritas*, indicates something beyond the fact that Cicero was addressing a senatorial audience. Rather, it reflects the trauma of the recent past, in which excessively powerful magistrates had disregarded senatorial authority all the way to civil war and *regnum*, and the uncertainty of the present, in which the most senior magistrates were former Caesarians and the champions of *libertas rei publicae* lacked the military support to back up their principles. Subordinating the magistrates to the senate was one way with at least a reasonable claim to traditionalism to reduce the (high) risk of this happening again.

This strategy became more problematic as events unfolded and Cicero's hopes turned out to rest on the unauthorised military exploits of magistrates and private citizens acting on their own initiative. The actions taken to "save" or "recover" the *res publica*<sup>746</sup> (and saving/recovering the *res publica* is the major theme of the *Philippics*<sup>747</sup>) could only undermine Cicero's orderly vision of what the *res publica* should be. It is therefore worth considering Cicero's resort to a somewhat

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<sup>742</sup> Cf. also Braunert 1974: 349-50, 352 on Cicero's assimilation of senate to *res publica* in the *Third Philippic*.

<sup>743</sup> Cf. Gildenhard 2007: 167-81, 2011: 164-7 on Cicero's philosophical redefinition of the traditional Roman understanding of *gloria* elsewhere, especially at *Tusc. Disp.* 3.2-4 (where the opinion of the *multitudo* is dismissed as a source of true glory, which consists instead in the 'agreed approval of good men', *consentiens laus bonorum*) and *Phil.* 5.49-50; for a more mundane understanding of *gloria* cf. Hellegouarc'h 1963: 369-83.

<sup>744</sup> Gildenhard 2011: 165; cf. also Long 1995: 231.

<sup>745</sup> Gildenhard 2011: 165.

<sup>746</sup> E.g. Cic. *Phil.* 3.4-5, 3.7, 3.8, 3.14, 3.27, 3.38, 4.1, 4.2, 4.5, 4.8, 4.10, 5.11, 5.36, 5.40, 5.43, 5.46, 5.50, 7.11, 7.27, 8.5, 10.23, 11.20, 11.37, 12.7, 12.29, 14.4, 14.31; cf. Manuwald 2007a: 92-3.

<sup>747</sup> Manuwald 2007a: 98.

gelatinous rhetorical fiction at certain key moments in the texts. Dawes points out the intangibility implied by Cicero's expression in the *Second Philippic*:

*Habet populus Romanus ad quos gubernacula rei publicae deferat: qui ubicumque terrarum sunt, ibi omne est rei publicae praesidium vel potius ipsa res publica, quae se adhuc tantum modo ultra est, nondum recuperavit.*

The Roman people has men to whom it can commit the helm of the *res publica*: wherever in the world they are, there is the entire defence of the *res publica*, or rather, there is the *res publica* itself, which has so far only avenged itself, not recovered itself. (Cic. *Phil.* 2.113.)

Whereas *Phil.* 1 provided concrete criticism and recommendations, this formula returns us to the realm of a wandering *res publica*, which 'defies locality and a definite semantic meaning' and is defined more in 'moral rather than constitutional' terms.<sup>748</sup> It is superficially similar to the claims of the 'Republicans' in the Caesarian civil wars, but there are significant differences. I argued above that Pompey's evacuation of Rome had dismantled the *res publica* in a rather concrete way, whereas Cicero's identification here of the *res publica* with the 'Liberators' (most of whom were wandering around in other people's provinces in the east on very little authority whatsoever) is a purely rhetorical move based on the premise that they had liberated the *res publica* from Caesar. This is closer to Cicero's rhetoric of the 50s, in that the surface glitter of the oratory is intended to conceal the weakness of the actual argument, but the weakness then had been personal rather than structural: in the 50s, Cicero had been defending himself against personal attacks, rather than arguing for his conception of the *res publica* and the men he conceived to be defending it during a civil war. Cicero might have wanted to end up with the *res publica* of the *First Philippic*, but he was willing to take it down some very unlikely rhetorical paths to get there. This mattered because once the dust settled, those left standing were likely to need some decent apologia to stand on; and the further Cicero pushed his rhetoric, the more rhetorical ground he gave them.

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<sup>748</sup> Dawes 2008: 271.

The unlikely rhetorical path that demonstrates this most clearly is Cicero's argument in the *Tenth Philippic* that the legality or otherwise of M. Brutus's claim to his Eastern armies was immaterial, since all armies belonged to the *res publica*, which Brutus was fighting to defend.<sup>749</sup> Cicero had previously argued in the *Fourth Philippic* that the resistance of D. Brutus's Gallic province to Antony showed that Antony was not a consul, on the 'outrageously sophistic argument' that all provinces ought to acknowledge the *ius* and *imperium* of the consul.<sup>750</sup> Even if Gaul had been entitled to decide for itself who was or was not the consul, this argument 'neglects the fact that in the late Republic the root of the Roman conception of *provincia* was the separation of the fields of action of magistrates when they were not specifically required to cooperate';<sup>751</sup> it was not in fact true that the consuls could exert *imperium* in whichever *provincia* they pleased, only in those entrusted to them by the senate. While the point is to deny Antony's legitimacy as consul, taking Cicero's argument seriously breaks down the boundaries between different areas of responsibility and transforms the whole *res publica* into a consular province, which increases the consuls' powers dramatically and opens the way for conflict between the consuls themselves. The same dangerous blurring of legal protocol appears at *Phil.* 10.11–14, where Cicero distinguishes between the illegal activities of M. Brutus and C. Antonius in Illyricum on the basis that

*Omnes legiones, omnes copiae quae ubique sunt rei publicae sunt: nec enim eae legiones quae M. Antonium reliquerunt Antoni potius quam rei publicae fuisse dicentur. Omne enim et exercitus et imperi ius amittit is qui eo imperio et exercitu rem publicam oppugnat.*

All legions, all forces, wherever they are, belong to the *res publica*: and the legions that abandoned Marcus Antonius will not be said to have belonged to Antonius rather than to the *res publica*. For all right to an army and authority is forfeited by a man who uses his military authority and his army to attack the *res publica*. (Cic. *Phil.* 10.12.<sup>752</sup>)

<sup>749</sup> Clarke 1981: 52, Dawes 2008: 278.

<sup>750</sup> Lintott 2008: 388; Cic. *Phil.* 4.9.

<sup>751</sup> Lintott 2008: 388, n.53; cf. Lintott 1999b: 99–102 on the separation of magisterial *provincia*.

<sup>752</sup> Cf. also *Phil.* 13.14, where a similar argument is applied to Lepidus.

This is a very grand perspective. Rather than legitimately elected and appointed magistrates administering specific *provincia* of the *res publica*, Cicero edges towards a *res publica* that appoints its own heroes to take whatever action required in whichever province requires it. Indeed,

*Quod si ipsa res publica iudicaret aut si omne ius decretis eius statueretur, Antonione an Bruto legiones populi Romani adiudicaret?*

If the *res publica* itself were to judge, or if all rights were determined by its decisions, would it judge the legions of the Roman people to Antonius or to Brutus? (Cic. *Phil.* 10.12.)

This is a rhetorical fiction, but it expresses something interesting about the conception of *res publica* developing in these speeches. Cicero's goal in *Phil.* 10 was to convince the senate (which was still full of Caesarians) that in a situation of at best murky legality, and at worst outright illegality, his preferred champions were doing the right thing. He evaded the problem by skipping the details, resorting instead to a rhetorical personification that 'holds Macedon, holds Illyria, and safeguards Greece' through its avatars in the region.<sup>753</sup> The legal status of individuals here matters less than their attitude towards the *res publica*, which Cicero takes it upon himself to illumine, and magistrates are subordinate not just to the senate but to the *res publica*, which is free to strip them of their magistracies whenever it pleases, a superficially attractive claim, except that (a) it was untrue; and (b) to echo Caesar and misquote Margaret Thatcher,<sup>754</sup> there was no such thing as the Roman *res publica*. Except as a tendentious rhetorical extension, the *res publica* did not exist in any way that would allow it to make such spontaneous decisions (or indeed any other decisions, lacking critical decision-making faculties). Traditionally it had magistrates, who took action after consultation with the senate and affirmation from the *populus* in the form of voting assemblies. But since the traditional *res publica* was in flux, Cicero was free to remake it in his rhetoric, which elides legal constructs into 'a more coloured

<sup>753</sup> Cic. *Phil.* 10.14; cf. Dawes 2008: 273-4 on how *res publica* becomes synonymous with M. Brutus in the *Tenth Philippic* to support an argument based on legitimacy rather than legality.

<sup>754</sup> '[...] who is society? There is no such thing! There are individual men and women and there are families and no government can do anything except through people [...] There is no such thing as society' (from a *Women's Own* interview first published on 31 October 1987, full transcript available from the Margaret Thatcher Foundation here: <http://www.margaretthatcher.org/document/106689>).

*narratio* and *argumentatio* which develop around ethical argument'.<sup>755</sup> Stripped of colour, the implication is that Cicero adds to the prescriptions of *Phil.* 1 a firm, not to say arbitrary, control over magistrates and military commands; he attributes this control rhetorically to the *res publica*, but in practice presumably assumes that decisions will be referred to the *consilium* of the *res publica*'s critical decision-making faculty, which he wants to be the senate. This is a sharp divergence from the traditional *res publica* where *honores* are the *beneficia* of the *populus*. Like the adaptation of consular *imperium* for *Phil.* 4, it dramatically enlarges the competence of the political element entrusted with such decisions – in this case, whichever element ended up in control of the *res publica*.

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<sup>755</sup> Dawes 2008: 275.

## 6. PRO RE PUBLICA

*Annos undeviginti natus exercitum privato consilio et privata impensa comparavi, per quem rem publicam a dominatione factionis oppressam in libertatem vindicavi.*

At the age of nineteen years, I raised an army on my private initiative and at my private expense, with which I restored the liberty of the *res publica*, oppressed by the domination of a faction. (Aug. *RG* 1.1.<sup>756</sup>)

The element that eventually ended up in control of the *res publica* was the wildcard, Octavian, the grand-nephew and dubiously adopted son of Julius Caesar. How the concept of *res publica* developed during the triumviral period and under the Augustan principate cannot be considered here, but what is relevant for a study on the Republican *res publica* (and has already been foreshadowed by the rhetorical relationship Cicero constructed between himself, Pompey and the *res publica* after his exile) is expressed in the opening line of Augustus's *Res Gestae*: private individuals taking action outside the political structures of Rome's *res publica* in order to save it. Although Pompey's reported actions in 58–7 remained within standard political and legal practice (he advocated for Cicero's return, and his avocation was so powerful that it had a significant influence on the outcome), this was not true of the activities proudly recalled by Augustus at *RG* 1.1. Furthermore, the precedents for *privatum consilium* in public matters were problematic. My final chapter therefore examines the Republican background to Augustus's claim, starting with (6.1) the claim itself and the *exemplum* that stands behind it, P. Scipio Nasica, who was lauded by Cicero as a *privatus* who acted to keep the *res publica salva*. The interplay between the *exemplum* of Nasica and that provided by the consul who suppressed Gaius Gracchus can be traced in Cicero's corpus from 63 and the 50s, when Cicero came under attack for failing to apply Nasica's remedy to Clodius. Despite Caesar's demonstration of the dangers of *privatum consilium* in 49 (6.2),

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<sup>756</sup> The text and translations (slightly adapted) are those of Cooley 2009. On the generic influences on the *Res Gestae*, cf. especially Brunt-Moore 1967: 2-5, Ramage 1987: 15, Ridley 2003: 53-66, Cooley 2009: 30-34.

Cicero went on to praise the actions of Octavian and the ‘Liberators’ using the language of this tradition (6.3). In doing so, he faced opposition from both opponents of war (particularly Q. Fufius Calenus) and his own allies (specifically M. Brutus) and was obliged to talk fast when the discourse seemed dangerously close to escaping his control (6.4).

## 6.1 AN ANTHEM OF FORGIVING

Augustus exploits Republican themes throughout his *Res Gestae*, a feature of the text that is concentrated in its opening sentence, which foregrounds the young Octavian’s raising of an army, *privato consilio et privata impensa*, at the age of nineteen. The starting point is therefore the autumn of 44, rather than the aftermath of Caesar’s assassination when Octavian had been eighteen, presumably because the credibility of Octavian’s claim to have liberated the *res publica* rested on his military intervention against Antony. Velleius Paterculus’s summation, which echoes the *Res Gestae*,<sup>757</sup> is clear enough: although Antony’s domination was universally resented, no one was willing to take action ‘until Gaius Caesar, shortly after his nineteenth birthday, with marvellous daring and supreme success, on his private initiative (*privatum consilium*) showed a courage on behalf of the *res publica* which exceeded that of the senate. He summoned his father’s veterans first from Calatia then from Casilinum; other veterans followed their example, and in a short time they united to form a regular army’.<sup>758</sup> By raising an army, Octavian made himself politically relevant, but his move was strikingly illegal in two respects: he was too young (the entrance of politicians into public life had been subject to regulation since the formalisation of the *cursus honorum* in 180;<sup>759</sup> Octavian, entering public life at the age of nineteen, was too young to have set foot on the lowest rung of the ladder, the quaestorship, for which the minimum age was thirty<sup>760</sup>) and he was a private citizen with no authorisation to do anything of the sort.

Rather than the public authorisation that he lacked, Augustus emphasises his younger self’s *privatum consilium*. Given the importance of public consultation and

<sup>757</sup> Woodman 1983: 127-8; Cooley 2009: 106.

<sup>758</sup> Vell. Pat. 2.61.1-2, *cum C. Caesar XVIII annum egressus, mira ausus ac summa consecutus privato consilio maiorem senatu pro re publica animum habuit primumque a Calatia, mox a Casilino veteranos excivit paternos; quorum exemplum secuti alii brevi in formam iusti coiere exercitus.*

<sup>759</sup> Hopkins 1983: 47, Evans-Kleijwegt 1992: 181-2, Lintott 1999b: 145.

<sup>760</sup> Lintott 1999b: 145.

concerted action to conventional political activity, this is awkward; after all, the Romans themselves believed there was an etymological link between the title ‘consul’ and the word *consilium*.<sup>761</sup> There was space for *privatum consilium* in the system: privately a *consilium* of family members and friends would be convened by the *paterfamilias* in matters involving capital punishment or the manumission of slaves;<sup>762</sup> likewise any prominent Roman was expected to consult his *consilium* prior to taking important decisions, as Tiberius Gracchus did in 133 on the matter of his planned legislation and as M. Brutus did in 44 after Caesar’s assassination failed to produce the desired results.<sup>763</sup> Similarly, magistrates were obliged to consult their *consilia*, although here the institution was more formal: the urban and peregrine praetors were probably assisted in their official duties by *consilia*,<sup>764</sup> provincial governors consulted their judicial councils,<sup>765</sup> a general in the field was obliged to consult his *consilium* (sometimes *consilium castrense*),<sup>766</sup> and the role of the senate in relation to the magistrates, in particular the consuls,<sup>767</sup> earned it the occasional name of *publicum consilium*.<sup>768</sup> A magistrate who sought the *consilium* of the senate (like a *paterfamilias* who sought the *consilium* of friends and family) was not obliged to accept its advice; however, given the senate’s *auctoritas*,<sup>769</sup> it was usually in his interests to gain its approval. On the flipside, people are commonly said to act *publico consilio* (or *nullo consilio*), where *publicum consilium* takes on the technical aspect of the outcome of senatorial consultation, a motion that lacked legal backing (which could only be conferred by a vote of the people) but carried considerable *auctoritas*, being voted on, written down, publicly posted and stored in the treasury as the *senatus consultum*.<sup>770</sup> An action taken *publico consilio* has the full weight of the civic body behind it;<sup>771</sup> the lack of *publicum consilium* delegitimizes

<sup>761</sup> *Acc. praet.* 39, *Carbo orat.* 8, *Var. L.* 5.80, *Cic. Leg.* 3.8, *Quint. Inst.* 1.6.32, *Hor. Carm.* 4.9.39; on *consilium* generally cf. Hellegouarc’h 1963: 254-6.

<sup>762</sup> Crook 1955: 4; cf. Wiseman 1985: 15.

<sup>763</sup> Beard-Crawford 1985: 66.

<sup>764</sup> Kunkel 1995: 136.

<sup>765</sup> Kunkel 1995: 139.

<sup>766</sup> Kunkel 1995: 140.

<sup>767</sup> Crook 1955: 5, Beard-Crawford 1985: 67, Kunkel 1995: 138-9, Lintott 1999b: 72.

<sup>768</sup> E.g. *Cic. Sest.* 42, 97, *Prov.* 25, *Lig.* 3, *Phil.* 4.14.

<sup>769</sup> Cf. Lintott 1999b: 86-7, Hölkeskamp 2000: 213-14.

<sup>770</sup> *Cic. Ver.* 2.2.8, *Agr.* 2.88, 2.91, *Rab. Perd.* 4, *Cat.* 1.2, 3.7, *Sest.* 32, *Vat.* 35, *Pis.* 77, *Rep.* 1.47; Lintott 1999b: 3-4, Kaster 2006: 182.

<sup>771</sup> *Cic. Ver.* 2.2.163, *Planc.* 87; *Liv.* 4.31.6, 4.53.1, 6.25.2, 9.45.6, 21.18.2, 21.18.6, 21.18.8, 21.18.10, 26.30.2, 29.30.6, 7.13.8.

actions/actors;<sup>772</sup> and civic bodies may disclaim responsibility for the actions of individuals who work *nullo publico consilio*.<sup>773</sup>

Augustus' claim to have acted *privato consilio* is therefore obtrusive; it lays stress on precisely what his younger self had lacked, the authority of *publicum consilium* and the public office that would have enabled him to gain such *consilium* from the senate. As a private citizen (*privatus*), Octavian acts on his own instigation (*consilium*); he may seek the advice (*consilium*) of his personal advisors, but what he does not do and, as a *privatus*, could not have done, is to follow the usual rules of Republican politics by convening the senate, requesting their advice (*consilium*), and acting in accordance with *publicum consilium* as provided in the form of a *senatus consultum*. Instead, *RG* 1.1 foregrounds the fact that the young Octavian's actions were outside the usual sphere of public action, which enables Augustus to advertise the measures that the senate was obliged to take (*imperium mihi dedit*, *RG* 1.2) to reconcile his actions with the established political framework. He thereby promotes his youthful army-raising as an event of such importance that the rules had to be bent to accommodate his illegal activities.

Augustus's justification for having taken action very much outside the *res publica* is that the *res publica* had been oppressed by a *dominatio factionis*: its political structures had not been functioning properly and so he had been justified in embarking on an unauthorised civil war in order to remove the political blockage, a justification accepted and approved by the senate when it belatedly voted him *imperium*. Two sources are generally thought to stand behind Augustus's formula here: Caesar's self-defence at *BC* 1.22, with its stress on liberation,<sup>774</sup> and Cicero's defence of Octavian's *privatum consilium* as a laudable liberation of the *res publica* from Antony in the *Third Philippic*,<sup>775</sup> where Cicero had claimed:

<sup>772</sup> Cic. *Ver.* 2.2.13, *Lig.* 3, *Sest.* 43, *Phil.* 4.14, *Att.* 7.11.1; Liv. 8.23.5.

<sup>773</sup> Caes. *BG.* 5.1, Liv. 30.22.1.

<sup>774</sup> Wiseman 2009b: 116, Raaflaub 2003: 50, 66, Westall 2011. The similarity between Caesar's and Augustus's phrasing is noted by Carter 1990: 176, Seager 1972a: 54, Wirszubski 1950: 103, Mouritsen 2001: 9, Hellegouarc'h 1963: 102.

<sup>775</sup> Wirszubski 1950: 100-1, Braunert 1974: 358; Woodman 1983: 127-8, Ramage 1987: 67, Galinsky 1996: 45-6, Manuwald 2007b: 336-8, Cooley 2009: 106-8. On this passage cf. Manuwald 2007b: 336-8, Shackleton Bailey 1977: 495, McGushin 1992: 146-7, Woodman 1983: 127-8, Galinsky 1996: 45-6.

*Qua peste privato consilio rem publicam – neque enim fieri potuit aliter – Caesar liberavit: qui nisi in hac re publica natus esset, rem publicam scelere Antoni nullam haberemus.*

From this scourge Caesar by his private initiative – there was no other way – delivered the *res publica*: had he not been born in this *res publica*, through the criminality of Antonius we would no longer have a *res publica*. (Cic. *Phil.* 3.5.<sup>776</sup>)

Whereas Julius Caesar had complained about those oppressing the *populus Romanus*, Cicero's focus is on the oppressed *res publica*. Caesar's self-justification has been examined above in section 5.2; as for Cicero, however, I want to flag up another piece of *privatum consilium* he praised at about the same time in very similar language:

*Nec plus Africanus, singularis et vir et imperator, in excindenda Numantia rei publicae profuit quam eodem tempore P. Nasica privatus, cum Ti. Gracchum interemit.*

Nor did Africanus, though a great man and a soldier of extraordinary ability, do more for the *res publica* by destroying Numantia than was done at the same time by the private citizen Publius Nasica, when he killed Tiberius Gracchus. (Cic. *Off.* 1.76.<sup>777</sup>)

There was a precedent for taking action outside the *res publica* in order to save the *res publica* – or, at least, P. Scipio Nasica's murder of Ti. Sempronius Gracchus (the original 'sporadic anticipation of imminent danger' and the first time *res publica salva* can be seen to spring up as a nervous catchphrase, discussed above in section 3.1) could be pressed into action as such a precedent.

In his 1972 review of the scholarship on Tiberius Gracchus's tribunate, Badian observes that 'It is becoming increasingly difficult to give an exhaustive

<sup>776</sup> The text and translations of *Phil.* 3-9 cited here are those of Manuwald 2007b, slightly adapted.

<sup>777</sup> Cf. likewise Cic. *Cat.* 1.3, *Dom.* 91, *Planc.* 88, *Brut.* 212, *Tusc.* 4.51, *Off.* 1.76, 1.109; *Mil.* 72, *Phil.* 8.13; Wiseman 2009a: 179.

survey of work even in a tiny corner of our field’,<sup>778</sup> and the challenge has not become easier since then. All the same, a brief survey of the various opinions on just what precedents the year 133 did set may be useful. Passing over Tiberius’s earlier history,<sup>779</sup> the question of whether he aimed ‘to redress social misery’<sup>780</sup> or was principally concerned with the crisis in military recruitment,<sup>781</sup> the eminence and significance of such supporters as the consul Scaevola and Appius Claudius, *princeps senatus*,<sup>782</sup> and finally the arguments that putting legislation straight to the *concilium plebis* was a strikingly radical move<sup>783</sup> or that Tiberius should have expected to meet with a veto from a fellow tribune,<sup>784</sup> the key points remaining are the deposition of his colleague Marcus Octavius, the acquisition of Pergamum, the legality of iterating the tribunate and Tiberius’s violent end. Two basic positions can be discerned for most of these issues: (a) the ‘context’ view: Tiberius’ tribunate, viewed in its historical context, was the explosive culmination of existing trends; it focused and refined them into the turbulent future that resulted;<sup>785</sup> and (b) the ‘departure’ view: Tiberius’ tribunate broke wholly with and was a complete departure from all existing precedent.<sup>786</sup>

Traditionally, the deposition of Octavius was interpreted as the destruction of the tribunician veto (supposedly a key tool enabling the senate to maintain its pre-eminence), thereby unleashing the forces of demagogy upon an unsuspecting and hitherto satisfactorily (i.e. senatorially) managed *res publica*.<sup>787</sup> Slightly more recently, it has been argued that the deposition of Octavius departed drastically from

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<sup>778</sup> Badian 1972: 668.

<sup>779</sup> Cf. Morgan-Walsh 1978.

<sup>780</sup> Brunt 1965: 192; cf. Badian 1972: 673-677 for a useful examination of Brunt’s critique of Earl 1963.

<sup>781</sup> Earl 1963: 30-35.

<sup>782</sup> Tiberius’s backers: Plut. *TG* 9.1; Earl 1963: 8-12; Astin 1967: 191-2; Briscoe 1974; Bernstein 1978: 109-110.

<sup>783</sup> For this view cf. Mommsen 1970 (1895): 15-16, ‘It was revolution against the spirit of the constitution, when Gracchus submitted the domain question to the people’, and Earl 1963: 44, for whom putting legislation directly before the *concilium plebis* was perfectly legal but ‘violated a constitutional custom of long standing’; *contra* Astin 1967: 202; Badian 1972: 694-5; Stockton 1979: 62-4.

<sup>784</sup> So Astin 1967: 204, for example; *contra* Badian 1972: 697-707 arguing carefully and at considerable length that it was Octavius’s persistence in vetoing that was unprecedented and led Tiberius to hope he would find the senate sympathetic (followed by Wiseman 2009a: 186), although Morgan-Walsh 1978: 205 dispute this.

<sup>785</sup> Taylor 1962, Astin 1967: 190-191, 225; Gruen 1968: 45, Stockton 1979: 78-9, 82-4, Lintott 1999a: 176-77.

<sup>786</sup> Mommsen 1970 (1895): 15-16; Last 1951: 28; Earl 1963: 46-7, 86-88; Linderski 2002: 339, Wiseman 2009a: 178.

<sup>787</sup> Mommsen 1970 (1895): 15-16, Last 1951: 28; Earl 1963: 46-7, 86-88.

both established constitutional precedent and legality, and that ‘whatever else Tiberius did, the deposition of M. Octavius was the crucial, the unpardonable, mistake’: after the deposition, his *inimici* were watching eagle-eyed for him to trip up.<sup>788</sup> In contrast, Astin’s contextualisation of the deposition by reference to contemporary political behaviour, specifically the dubiously legal career of Scipio Aemilianus, leads him to argue that ‘if the *Populus* could in effect override electoral regulations, it could certainly take action which was not explicitly in conflict with any law, even though it was contrary to the *mos maiorum*; and at the same time these events had propagated the notion that the *Populus* had the right to have whomsoever it wished in office’.<sup>789</sup> Badian likewise notes among other things the failure of the other tribunes to veto Octavius’s deposition and suggests that they thought ‘Octavius had been in the wrong to persist in his veto, and certainly that, when it came to his own peril, the People must be allowed to decide’.<sup>790</sup> Badian takes Tiberius’s justification of his action against Octavius<sup>791</sup> to show Tiberius thought it was impermissible to use the veto in the popular assemblies, because that prevented the people from exercising their power of decision, and suggests that ‘what evidence we have makes it likely that this, with some qualifications, was part of the conventions of *concordia* during the Classical Republic’.<sup>792</sup> However, the view of Octavius’s deposition as a major departure from contemporary custom has been developed by those who hold that the deposition was a violation of Octavius’s tribunician *sacrosanctitas* that could be used (whether at the time or after the event) to justify Tiberius’s violent death. The case is put most vividly by Linderski, who characterises the encounter as ‘one tribune claiming the will of the people, the other the protection of the gods, of his *sacrosancta potestas*. The will of the people prevailed, for a moment, but after that time nothing remained in Rome safe, sacred or secure – as Tiberius was soon to learn’.<sup>793</sup>

On a ‘departure’ account, then, Tiberius’s tribunate is usually viewed as a grotesque and unprecedented violation of established principle from the deposition of Octavius onwards. Proponents of a more contextual approach, on the other hand, tend to place more weight on the annexation of Pergamum; so Astin and Badian

<sup>788</sup> Morgan-Walsh 1978: 210; cf. also Earl 1963: 86-8.

<sup>789</sup> Astin 1967: 207.

<sup>790</sup> Badian 1972: 721; cf. also Taylor 1962: 26-7, Stockton 1979: 71-2, 81.

<sup>791</sup> Plut. *TG* 15.

<sup>792</sup> Badian 1972: 700, following Sumner 1963: 337; cf. also Stockton 1979: 71.

<sup>793</sup> Linderski 2002: 339; cf. also Spaeth 1990: 185.

stress the importance of Tiberius's disruption of senatorial control over public finances and foreign affairs in order to fund legislation that the senate had deliberately snubbed. Although 'seen in its context, it certainly was not intended as a revolutionary step, a conscious attack on the senate as such',<sup>794</sup> all the same, this startling violation of senatorial privileges was asking for trouble. So for Badian, while deposing Octavius might have been considered 'a legitimate reaction to an impossible situation', this was not true of Tiberius's solution to his financial woes: even if Tiberius could not hope to get his funding legitimately (and he probably could not), he had not even tried; and his pronounced failure to proceed by the usual channels of consensus politics was compounded by his exploitation of inherited Pergamene *clientelae* 'to seize this vast treasure left to Rome; to seize it, practically, for himself and then distribute it to the People, in some form, as his personal bounty' – behaviour reminiscent of a would-be tyrant.<sup>795</sup> Worse still, Tiberius's failure to respect the will's stipulation of freedom for the cities involved Rome in the revolt of Aristonicus.<sup>796</sup> After Pergamum's annexation, therefore, while Astin can compare Tiberius's attempt to stand a second time for the tribunate with the dubious elections of Nasica Corculum to the censorship and consulship within the ten-year limit, or Scipio Aemilianus's exemption (twice) from the *lex Villia annalis*,<sup>797</sup> the legality of iterating the tribunate may be only of tangential relevance. In the broader historical context, such politicians as Nasica Corculum and Scipio Aemilianus had proven that the laws were negotiable given sufficient popular support; in the immediate political context, however, Tiberius's canvass for a second tribunate could be interpreted in the worst possible way by an already hostile senate and his earlier actions could be cast in a much nastier light in hindsight.<sup>798</sup> So Badian adds to the destruction of collegiality (Octavius's deposition) and Tiberius's tyrannical affectations (the Pergamene bequest, the acquisition of a bodyguard) the intended destruction of annual tenure (iteration of the tribunate), and concludes that '*Regnum*, in this sense, was not a mere term of abuse or a slogan'; rather, it 'was a reflection of a genuine and deep-seated fear'.<sup>799</sup>

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<sup>794</sup> Astin 1967: 212.

<sup>795</sup> Badian 1972: 713-14; cf. also Stockton 1979: 69; Bernstein 1978: 208-9; Earl 1963: 93.

<sup>796</sup> Badian 1972: 714.

<sup>797</sup> Astin 1967: 216.

<sup>798</sup> Cf. Stockton 1979: 72-4.

<sup>799</sup> Badian 1972: 722; cf. also Wirszubski 1950: 47-9, Boren 1961: 369, Earl 1963: 104, 107.

All this sets the scene for the moment when Rome's political consensus was ruptured beyond any precedent, legendary would-be-tyrant killers such as Servilius Ahala aside: Tiberius's untimely and violent death. At this point, the convenient context/departure dichotomy breaks down; it is generally agreed that the death set a new and horrible precedent for political conduct in Rome. Five positions on said new and horrible precedent can be identified, however. (1) First, and most straightforwardly, that the death of Tiberius Gracchus and some three hundred supporters at the hands of a senatorial mob led by Scipio Nasica was a chaotic mess,<sup>800</sup> to which may be added Astin's argument that the slaughter was unpremeditated, although after the event neither side had an interest in admitting this; premeditated slaughter was a useful charge for the Gracchans against their opponents, who could only plausibly justify their actions (which had really aimed to break up the assembly and thereby prevent Tiberius from being re-elected) by pretending that they had behaved in an appropriately thoughtful and consensual fashion.<sup>801</sup> (2) That in addition to this, the arrangement of Nasica's toga as reported by Plutarch and Appian (draped over his head, possibly in the sacrificial *cinctus Gabinus* dress) had vaguely religious connotations, since the *privatus* Nasica's claim to authority could only be his position as *pontifex maximus*.<sup>802</sup> (3) That the religious connotations were clear and distinct, although there is no consensus among those who hold this view as to what those connotations were. For Earl, the arrangement of Nasica's toga indicates that Tiberius was being offered up for sacrifice;<sup>803</sup> he explains its 'obliteration' from the Latin tradition and replacement with a 'military interpretation' on the rather dubious grounds that Nasica's claim was untenable and could not be allowed to set a precedent.<sup>804</sup> For Linderski, a particularly eloquent proponent of this line of argument, Tiberius was not offered up as a sacrifice;<sup>805</sup> rather, Nasica covered his head for the archaic *consecratio capitis* rite: 'when Nasica

<sup>800</sup> Stockton 1979: 76, Boren 1968: 69, Bernstein 1978: 224-5.

<sup>801</sup> Astin 1967: 220-1; contested by Lintott 1999a: 221.

<sup>802</sup> Badian 1972: 724-5 (but cf. Badian 2004: 265, 271).

<sup>803</sup> Earl 1963: 118-9; but cf. Stockton 1979: 76 n.43. On making someone *sacer* cf. Barton 2003: 345-6, 355-6 (on the Gracchi specifically).

<sup>804</sup> Earl 1963: 119 n.1; while Nasica's position (if Earl is correct) would certainly have been untenable and the precedent that he in fact set was ugly, no matter how it was justified, it is not clear how Nasica's justification could have been 'obliterated' (or who is supposed to have obliterated it), especially in the highly charged political atmosphere following Tiberius's death. It is also far from obvious why Nasica's rearrangement of his toga should have been preserved at all by Plutarch and Appian's sources, if the reasons for it were intended to be carefully forgotten.

<sup>805</sup> Linderski 2002: 352.

displayed the purple border on his veiled head this was a striking arrangement: he was loudly proclaiming that he, the *pontifex maximus*, was proceeding to consecrate Tiberius and his followers to the wrath of the gods. The old religious and public regulations of the Republic, the *leges sacratae*, prescribed that the heads of those who attempted to establish tyranny (*adfectio regni*), and of those who injured the tribunes of the plebs, be forfeited to Jupiter, the guarantor of the constitution. And who was better qualified to pronounce the curse than the *pontifex maximus*?<sup>806</sup> (4) A corollary to the third view, building primarily on the arguments of Spaeth and Linderski: since Nasica (it is argued) claimed the authority of his religious office to take action against Tiberius on religious grounds, the murder must have been premeditated even before the senatorial meeting took place. So for Flower, ‘these deaths were deliberately caused by Nasica, who went to the senate that day with a plan he intended to put into action, and surely also with some accomplices who were fully aware of the plan. Should Scaevola fail to take the lead against Tiberius – and even that cannot itself have been completely unexpected in senatorial circles – Nasica had every intention of intervening’.<sup>807</sup> (5) Lastly, and to some extent reacting against views (2) – (4), Wiseman argues that Nasica’s actions were purely political. *Contra* Linderski (and following Badian), the constitutional impropriety was Octavius’ veto; if Nasica justified his actions at all by reference to Octavius’ wounded *sacrosanctitas*, his was probably a minority viewpoint.<sup>808</sup> It is unwise to place much, if any, faith in the authenticity of the *leges sacratae*, which were supposedly enacted very early in the history of the Republic and which belong to a

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<sup>806</sup> Linderski 2002: 364-5; cf. also Spaeth 1990: 191-2, Badian 2004: 265, 271, Binot 2001: 194, Clark 2007: 128. That Nasica wore the *toga praetexta* is nowhere stated clearly in the ancient sources, but must rather be inferred from the phrase used at Plutarch *TG* 19 and Appian *BC* 1.16, τὸ κράσπεδον τοῦ ἱματίου, ‘the border/skirt of his cloak’ – ‘obviously’, says Linderski 2002: 350, ‘the purple border of his toga’ – and by taking Appian’s τῷ παρασήμῳ τοῦ σχήματος to read ‘by the badge of his [pontifical] costume’, following Tod 1924: 99-102. Unlike Earl, Linderski offers no explanation for the disappearance of Nasica’s self-justification from either the Latin or Greek tradition. Spaeth 1990: 193 argues that Tiberius’s killers claimed he should suffer *consecratio* on the grounds that Octavius’s *sacrosanctitas* had been violated and that Tiberius had attempted to establish a tyranny, but that the former claim was dropped after the event because Tiberius’s *sacrosanctitas* had been violated by his death. If so, Nasica *et al.* can only have knowingly placed themselves in an incredibly awkward position: why would they have stressed, ahead of the event, a justification for killing that not only became invalid but that could be turned back on them as soon as the killing had been committed?

<sup>807</sup> Flower 2006: 71; cf. also Spaeth 1990: 190-1. For Linderski 2002: 364-66, Nasica intended Tiberius’s death when he left the senate; it is not clear, however, whether Linderski thinks Nasica had come to the senate with murder in mind.

<sup>808</sup> Wiseman 2009a: 186.

historiographical tradition demonstrably subject to reworking;<sup>809</sup> and finally (the ‘fatal’ objection), any ritualistic implications are totally absent from Cicero’s speeches and writings: for Cicero, ‘Gracchus’ crime was political, and Nasica punished him for it not as a *pontifex* but as a private citizen’, a view Wiseman thinks may reasonably be taken as ‘evidence for an optimate way of thinking that had hardly changed since the time of the event itself’.<sup>810</sup> It is implicit in Wiseman’s analysis that the slaughter was premeditated: ‘the rich unilaterally defined legislation against their financial interests as “seeking to reign”, an act that must activate the oath sworn after the expulsion of Tarquin’.<sup>811</sup>

No matter how the events of 133 are explained, the year’s broader significance is undisputed. For ancient authors such as Appian, Tiberius’s death sparked the troubles that threw the Republic into disarray and eventually brought Augustus to sole power: after the (legendary) Coriolanus, ‘the sword was never carried into the assembly, and there was no civil butchery until Tiberius Gracchus, while serving as tribune and bringing forward new laws, was the first to fall a victim to internal commotion’.<sup>812</sup> Similarly, for Last the tribunate ‘opens a new epoch in the affairs of Rome’,<sup>813</sup> while Stockton likens the ‘chief themes’ of the years dominated by Tiberius and his brother Gaius to ‘the leading motifs in the first movement of a Sibelius symphony, stated there only to be worked out fully in those that follow’.<sup>814</sup> When Cicero came down on Nasica’s side, in any case, it was a strategic choice rather than a necessary or inevitable rhetorical move, since the anti-Gracchan position was not the only option available.<sup>815</sup> In fact, the pro-Gracchan tradition was a strong one, as the *Rhetorica ad Herennium* shows.<sup>816</sup> It supplies a vivid account of Tiberius Gracchus’s death in which Tiberius features as a martyred hero; his killer, Scipio Nasica, is ‘filled with wicked and criminal designs (*scelere et malis cogitationibus*)’ and appears on the scene ‘in a sweat, with eyes blazing, hair bristling, toga awry (*sudans, oculis ardentibus, erecto capillo, contorta toga*)...

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<sup>809</sup> Wiseman 2009a: 186.

<sup>810</sup> Wiseman 2009a: 187.

<sup>811</sup> Wiseman 2009a: 187; for Wiseman, Tiberius’s offence was to promulgate agrarian laws in the first place, and he does not discuss the Pergamene bequest or iteration of the tribunate at all.

<sup>812</sup> App. *BC* 1.2; cf. also Plut. *TG* 20.1, Vell. Pat. 2.3.

<sup>813</sup> Last 1951: 1.

<sup>814</sup> Stockton 1979: 4; cf. also Greenidge 1970 (1904): 22, Astin 1967: 225-6, Badian 1972: 669, Binot 2001: 192, Mouritsen 2001: 68, Flower 2006: 70, Wiseman 2009a: 177-8, Gildenhard 2011: 144, 217.

<sup>815</sup> Van der Blom 2010: 106; cf. Béranger 1973 for a survey of Cicero’s references to the Gracchi.

<sup>816</sup> *Rhet. Her.* 4.48-9; on this section cf. von Ungern-Sternberg 1973: 158-162.

frothing crime from his mouth, breathing forth cruelty from the depth of his lungs (*spumans ex ore scelus, anhelans ex infimo pectore crudelitatem, contorquet brachium*). After the death, Nasica is ‘bespattered with the pitiable blood of the bravest of men (*iste viri fortissimi miserando sanguine asperses*), looks about him as if he had done a most admirable deed (*quasi facinus praeclarissimum fecisset*), gaily extends his murderous hand to his followers as they congratulate him (*hilare sceleratam gratulantibus manum porrigens*), and betakes himself to the temple of Jupiter.’<sup>817</sup> Such rhetoric was available to anyone who wanted to ingratiate himself with the *populus*, not just to confirmed *populares*; in his early career, Cicero had cited Gaius Gracchus as ‘in my opinion, by far the ablest and most eloquent (*ingeniosissimi atque eloquentissimi*) of our fellow-countrymen’, even though his point concerned Gaius’s unjustly attacked opponent Piso Frugi.<sup>818</sup> It is therefore noteworthy that Cicero turned to Nasica’s *exemplum* during and after the Catilinarian crisis, not least given that Nasica was hardly feted as a hero in the aftermath: even though the *pontifex maximus* was supposed to remain in Italy, the death of Tiberius Gracchus made him so unpopular that he left the country and eventually died in Pergamum.<sup>819</sup>

Since Publius Mucius Scaevola, the consul of 133, had declined to sign up to Nasica’s call for all good men to preserve the *res publica* from harm, Nasica could claim no public backing for his lynching spree; it was unarguable that Tiberius Sempronius Gracchus was killed by a political *privatus* acting *privato consilio*, whatever Nasica’s religious office and for all that Nasica and his supporters (then and later) claimed action had been taken on the *res publica*’s behalf. A decade later, the resort to violence against Gaius Gracchus, Fulvius Flaccus and their supporters was not left to a *privatus* but was carried out by L. Opimius, one of the consuls of 121, and sanctioned by the senate through the *SCU*.<sup>820</sup> The distinction between *privatum consilium* and senatorially sanctioned homicide is clear from the different uses Cicero makes of these *exempla* from the very start of the *Catilinarians*, where Nasica is invoked as a negative foil (*Cat.* 1.3). For Cicero as consul, faced with an arch-nemesis in the form of Catiline and a handicap in the form of a reluctant

<sup>817</sup> *Rhet. Her.* 4.68; cf. also *Rhet. Her.* 4.48-9, von Ungern-Sternberg 1973: 158-162.

<sup>818</sup> *Cic. Font.* 39; cf. *Cic. Agr.* 2.10, 2.31, 2.81, *Rab. Perd.* 14-15. Other positive or neutral Ciceronian references to *popularis* figures: *Ver.* 2.4.108, *Clu.* 151; cf. Béranger 1972: 735, Tan 2008: 175-6, Tracy 2012: 85-7.

<sup>819</sup> *Plut. TG* 21.1-3; cf. Astin 1967: 229, Binot 2001: 195, Flower 2006: 72.

<sup>820</sup> Cf. section 3.1 above.

colleague and a doubting senate,<sup>821</sup> the *privatus* discourse was secondary at best. Consequently, the more significant historical touchstone of the *Catilinarians* is Lucius Opimius,<sup>822</sup> while the inbuilt contradictions of the *First Catilinarian*<sup>823</sup> allow Cicero to use the heroic *privatus* Nasica as a foil for the actions of such decisive consuls and so establish a sharp contrast:

*An vero vir amplissimus, P. Scipio, pontifex maximus, Ti. Gracchum mediocriter labefactantem statum rei publicae privatus interfecit: Catilinam orbem terrae caede atque incendiis vastare cupientem nos consules perferemus?*

Publius Scipio, a man of distinction and the pontifex maximus, was a private citizen when he killed Tiberius Gracchus even though he was not seriously undermining the condition of the *res publica*. Shall we, the consuls, then tolerate Catiline whose aim is to carry fire and the sword throughout the whole world? (Cic. *Cat.* 1.3.<sup>824</sup>)

Nasica killed Tiberius Gracchus, a minor nuisance, *even though* Nasica was only a private citizen and Tiberius a sacrosanct tribune. Cicero and Antonius Hybrida are in possession of consular office and the *SCU*, so how much more secure should they feel in acting against Catiline, who wants to destroy the world? This striking collection of contrasting pairs has drawn attention since Quintilian, who isolates the comparison of Catiline with Gracchus, the *res publica* with the *orbem terrae*, a slightly rocked boat with slaughter, fire and devastation, and finally a private citizen (Nasica) with the consuls (Cicero and Antonius Hybrida).<sup>825</sup> Opening with Nasica indicates Nasica's commanding position in the tradition of justifiable political murder (and Tiberius Gracchus's corresponding position in the victim stakes), but the stress is on the possession of office and *senatus consultum*, which Cicero goes on to claim gives the consuls everything they need to act except the will to do so.<sup>826</sup> Nasica the heroic *privatus* really serves as a backdrop for the heroic consuls who

<sup>821</sup> Cf. section 4.2 above.

<sup>822</sup> Cf. van der Blom 2010: 208-209, 213.

<sup>823</sup> Lintott 2008: 143; cf. also section 4.2 above.

<sup>824</sup> Cf. also Cic. *Cat.* 4.4.

<sup>825</sup> Quint. *Inst.* 8.4.13-14.

<sup>826</sup> Cic. *Cat.* 1.3.

followed him and who disposed of seditious citizens not on their private initiative, but (as Cicero and Antonius will do, if they will only take action) with the full support of the senate's *auctoritas*:

*Decrevit quondam senatus uti L. Opimius consul videret ne quid res publica detrimenti caperet: nox nulla intercessit: interfectus est propter quasdam seditionum suspiciones C. Gracchus, clarissimo patre, avo, maioribus, occisus est cum liberis M. Fulvius consularis. Simili senatus consulto C. Mario et L. Valerio consulibus est permissa res publica: num unum diem postea L. Saturninum tribunum plebis et C. Servilium praetorem mors ac rei publicae poena remorata est? At vero nos vicesimum iam diem patimur hebescere aciem horum auctoritatis. Habemus enim eius modi senatus consultum, verum inclusum in tabulis, tamquam in vagina reconditum, quo ex senatus consulto confestim te interfectum esse, Catilina, convenit.*

Once the senate passed a decree that the consul Lucius Opimius should see that the *res publica* came to no harm: not a single night intervened: Gaius Gracchus, for all the distinction of his father, grandfather and ancestors, was killed on vague suspicions of sedition; Marcus Fulvius, an ex-consul, was killed together with his children. A similar decree of the senate entrusted the *res publica* to the consuls, Gaius Marius and Lucius Valerius: did the tribune of the plebs, Lucius Saturninus, and the praetor, Gaius Servilius, have to wait a single day for the death penalty imposed by the senate? For twenty days now we have been allowing the edge of the senate's authority to grow blunt. We have a decree of the senate like theirs, but it is locked up with the records like a sword buried in its sheath; yet it is a decree under which you, Catiline, ought to have been executed immediately. (Cic. *Cat.* 1.4.)

When the senate had issued the *SCU* in the past, the incumbent consuls moved against the offending persons at once, no matter how eminent the victim. The consuls thereby executed the will of the senate. Cicero and his fellow consul have an *SCU* but have taken no action against Catiline; this inaction undermines the senate's *auctoritas* and should be remedied as soon as possible. Political assassination is justified on this account by *publicum consilium*, the possession of office and the

support of senatorial *auctoritas*, which must be upheld by treating and using the *SCU* as a weapon against a specific individual, in this case Catiline. This passage offers a convenient schematic for the relationship between private heroics (Nasica's murder of Tiberius Gracchus) and senatorially sanctioned homicide (L. Opimius, the *SCU* and Gaius Gracchus). Nasica is separated off from the list of heroic consuls, since as a *privatus* he stands in a different relationship to the sticky issue of political assassination, but he is nonetheless the first in the list of *exempla* relevant to Cicero's campaign against Catiline, since he is the first person in historical (rather than legendary, hence *illa nimis antiqua* examples Cicero passes over) Roman memory to have resorted to violence to suppress a turbulent citizen. And it is precisely because he is a *privatus* that he exemplifies how swiftly and decisively great men had acted in the past, compared to the hesitant consuls of the modern era.<sup>827</sup>

Cicero's citation of Scipio Nasica in the *Catilinarians* invokes the ideology of the *privatus* who steps forwards to safeguard the endangered state, as Béranger argues,<sup>828</sup> but it should be noted that this was not the point of the *Catilinarians* (Cicero was not a *privatus* and would not have thanked any *privatus* who stepped up at to steal his thunder), and moreover that Cicero's rhetorical aims changed over the course of the corpus. His point at *Cat.* 1.3 was to justify the hypothetical use of senatorially sanctioned violence against Catiline, which never happened, or at least never happened in quite this way, since Catiline was declared a *hostis* only after it became known he had joined Manlius and then fell in battle. The senatorially sanctioned suppression of citizens that *did* take place in 63 involved the 'Catilinarian Conspirators' arrested inside the city after Catiline's flight, who were cleanly and illegally strangled in the Tullianum rather than bludgeoned to death in the forum.<sup>829</sup> It was these deaths that Cicero eventually had to justify, and his defence rested on a much more straightforward claim than anything involving Nasica or heroic *privati*: his consular office and the collective responsibility of the senate, expressed in the form of the *senatus consultum ultimum*. As long as Cicero occupied a public office, the *privatus* Scipio Nasica's action against Tiberius Gracchus was not a directly relevant *exemplum* and therefore appears only as an *a fortiori* argument for Cicero's much stronger position during this much more terrifying time. The crisis was still

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<sup>827</sup> Cic. *Cat.* 1.28, 4.13.

<sup>828</sup> Béranger 1972: 741.

<sup>829</sup> Cf. section 4.2-3 above.

underway when Cicero declared in the *Pro Murena* that ‘if only the *res publica* is furnished with its proper means of defence, all these plans, so long contrived, will easily be crushed by the measures taken by the magistrates and the watchful care of private citizens (*et magistratuum consiliis et privatorum diligentia*)’.<sup>830</sup> Here *consilium* belongs to the magistrates; *privati* are required only to be *diligentes*. As long as Cicero was consul, in possession of legitimate *imperium* and also, thanks to the *SCU* and the senate’s vote for the execution of the conspirators, *publicum consilium*, there was no need to resort to the figure of the heroic *privatus* except in the general context of actions taken against dangerous (that is, *popularis*) figures. Cicero’s most important historical referents for his consular activities were those of his predecessors in the consulship who had broken the law backed by an *SCU*: Lucius Opimius and those who followed him.

The strength of the parallel with L. Opimius is clear from Cicero’s speeches of the 50s. Opimius, like Cicero, had eventually gone into exile, even though Opimius’s condemnation in 110 was unrelated to his action against Gaius Gracchus.<sup>831</sup> Scipio Nasica had died in Pergamum, despite the religious restrictions on the pontifex maximus that should have confined him to Italy,<sup>832</sup> but it is Opimius who features in the *Pro Sestio* as the sole example of a statesman who came to an unhappy end after earning general gratitude.<sup>833</sup> Elsewhere, although Nasica is referenced positively in passing at *Pro Plancio* 51, where Cicero holds that ‘the state has had no more gallant citizen’, overall he takes second place to Opimius and other such brave consuls. The prosecutor Cassius had raised the topic of Opimius,<sup>834</sup> perhaps unwisely, since this gave Cicero a chance to dwell at length on the very sad story of a man whose conviction should be considered a disgrace to *res publica*, *imperium* and the *populus Romanus* rather than *iudicium*:

*quam enim illi iudices, si iudices et non parricidae patriae nominandi sunt, graviolem potuerunt rei publicae infligere securim quam cum illum e civitate eiecerunt qui praetor finitimo, consul domestico bello rem publicam liberarat?*

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<sup>830</sup> Cic. *Mur.* 85.

<sup>831</sup> Stockton 1979: 200, Gruen 1968: 144.

<sup>832</sup> Stockton 1979: 88.

<sup>833</sup> Cic. *Sest.* 140; cf. van der Blom 2010: 210.

<sup>834</sup> Cic. *Planc.* 69; cf. van der Blom 2010: 211.

what deadlier blow could those judges, if judges they are to be called, and not rather unnatural children of their fatherland, have inflicted upon the *res publica*, than to eject from the citizen body the man who as praetor had liberated the *res publica* from war with a neighbouring people and as consul from civil war? (Cic. *Planc.* 70.)

There is an interesting elision here between Opimius's consulship and exile: even though Opimius earned his condemnation on an unrelated charge of *repetundae*, Cicero relates his exile to his services to the *res publica* during his troubled consulship.<sup>835</sup> His focus is on the unfairness of the *iudices* for condemning a *consularis* who had saved his country as a consul and praetor, even though Opimius's earlier actions were technically unrelated to the charge at hand. Opimius's consulship, it seems, was so glorious that it should have given him a blank cheque for the future – either that or someone so heroic could never have been guilty of any capital charge.<sup>836</sup>

Cicero, then, relied on the tradition of senatorially sanctioned homicide to justify his consular actions. The self-help tradition associated with Nasica, on the other hand, was not only little use to Cicero but seems to have been used *against* him during this period. A letter from Cicero to his brother Quintus, written at some point between 25 October and 10 December 59, survives in which Cicero anticipates problems with Clodius and expresses his willingness to use force. People have been offering their support and Cicero is confident that he will win:

*Sed tamen se res sic habet: si diem nobis dixerit, tota Italia concurret, ut multiplicata gloria discedamus; sin autem vi agere conabitur, spero fore studiis non solum amicorum sed etiam alienorum ut vi resistamus. Omnes et se et suos amicos, clientis, libertos, servos, pecunias denique suas pollicentur.*

Anyway, this is how things stand: if Clodius takes me to court, all Italy will rally and I shall come out of it with much additional glory; if he tries force, I trust to oppose him with force, supported not only by my friends but by

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<sup>835</sup> Cf. also Cic. *Pis.* 95.

<sup>836</sup> Cf. also Cicero's use at *De Orat.* 2.106, 2.132-4, 2.165, 2.169 of the speech Carbo gave in defence of Opimius when he was tried and acquitted for the murder of Gaius Gracchus in 120.

outsiders as well. Everyone is pledging himself and his friends, dependents, freedmen, slaves, even money. (Cic. *Q. fr.* 1.2.16.)

Whether the prospect of direct (violent) action against Clodius was realistic is not the point; rather, for all Cicero's claims, nothing came of it. The option of resistance was flagged up and then abandoned. Pompey's excuse for not acting, at least as reported after the event in Cicero's invective against L. Calpurnius Piso, is telling: Pompey himself said that he 'did not wish to match himself against an armed tribune of the people without *publicum consilium*; but should the consuls act upon a decree of the senate and defend the *res publica*, then he would take up arms'.<sup>837</sup> Cicero depicts Pompey as willing to follow a consul playing Opimius or Marius, but declining to play Nasica. Nasica's *exemplum* had been vital to the justification of political murder since Tiberius Gracchus's death, and he remained a powerful element of the discourse, but his successors did their best to keep within a legalised (if not exactly legal) framework by seeking senatorial approval of their actions. Cicero's Pompey refuses to step outside that framework and in the end Cicero himself was not willing (or lacked the support) to do so either. Nonetheless the model of Nasica remained as a counterfactual precedent: Cicero *might* have acted so, but did not. Cicero was left vulnerable to those of his supporters who felt betrayed (or just felt able to use the accusation of treachery against him) by his decision not to stand up to Clodius's turbulence, as his repeated and elaborate justifications in the following years show.

Cicero's most explicit explication of his flight into exile appears in the *Pro Sestio* of 56 and the *Pro Plancio* of 53. In 57, P. Sestius had been a tribune and one of Cicero's supporters; he was charged with *vis* in connection with the events of that year and Cicero volunteered to defend him out of gratitude for Sestius's efforts on his behalf. The *Pro Sestio* is based on a lengthy exhumation of recent political history and contemporary woes, since Cicero's strategy was to argue that everything Sestius did was done on his behalf and therefore on behalf of the *res publica*.<sup>838</sup> As part of this strategy involved the outright slandering of the consuls for that year, whom Cicero accused of having given way to Clodius and thereby permitted Cicero's exile, the year is depicted as one in which the elected magistrates (unworthy

<sup>837</sup> Cic. *Pis.* 77, *se contra armatum tribunum plebis sine publico consilio decertare nolle, consulibus ex senatus consulto rem publicam defendentibus se arma sumpturum.*

<sup>838</sup> Paterson 2004: 92-3, Kaster 2006: 26.

even to be called consuls<sup>839</sup>) had failed utterly to defend the public interest.<sup>840</sup> Cicero's recap of the events of his consulship lays stress on collective responsibility; in office, his measures had been

*quarum non unus auctor sed dux omnium voluntatis fuissem, quaeque non modo ad singularem meam gloriam sed ad communem salutem omnium civium et prope gentium pertinerent; ea condicione gesseram ut meum factum semper omnes praestare tuerique deberent.*

not grounded on my sole authority, but I had carried out the general will; they not only concerned my personal glory, but the general welfare of all citizens, I might say of all peoples; in carrying them out I fully expected that all men would make it a duty always to uphold and defend what I had done. (Cic. *Sest.* 38.<sup>841</sup>)

Cicero channelled the general will, *omnium voluntas*, in order to safeguard all (good) citizens. Because he did only what everyone wanted, he had expected everyone to support his actions. Unfortunately, the opposition of 58 was utterly barbarous: so what, Cicero asks, could he have done? 'Was I, a private individual, to contend with arms against a tribune of the plebs (*contenderem contra tribunum pl. privatus armis*)?'<sup>842</sup> That is, did people seriously think he should have followed the example of the *privatus* Scipio Nasica against the tribune Tiberius Gracchus? Granted, the right side would have won, but who would take responsibility for the aftermath? 'In short, who could doubt that the blood of a tribune, especially if shed without public authority (*nullo praesertim publico consilio profusus*), would find avengers and defenders in the consuls?'<sup>843</sup> Not only did a private citizen have no business taking up arms against a tribune of the plebs, but doing so could only have ended badly, lacking consular support. The consuls of 58 were scoundrels who would have rushed to arms to defend the tribune (or, indeed, public order and legal proprieties).<sup>844</sup> Even

<sup>839</sup> Cic. *Sest.* 17. On Cicero's carefully constructed relationship with the *res publica* cf. section 4.4 above.

<sup>840</sup> Cic. *Sest.* 26.

<sup>841</sup> The translation cited here is that of Kaster 2006, slightly amended. Cf. also Cic. *Sull.* 9.

<sup>842</sup> Cic. *Sest.* 43.

<sup>843</sup> Cic. *Sest.* 43.

<sup>844</sup> Cf. Kaster 2006: 219 on the likelihood of this actually happening (small).

victory would have been pitiful: ‘but they were citizens, but it would have been by that private citizen who even as consul had saved the *res publica* without arms!’<sup>845</sup> By emphasising that his consular salvation of the *res publica* had been carried out *sine armis*, Cicero rises above the standard consul’s claim to military *gloria* and makes this heroic pacifism a standard from which military action as a *privatus* (on the Nasican model) would only detract. For good measure, he lays stress on his opponents’ status as fellow citizens, something that had not deterred him from executing the Catilinarian conspirators. The counterpart to this depiction of a bitter victory is a defeat that would have left the *res publica* to be possessed by slaves.<sup>846</sup> This was unthinkable. Cicero had therefore gone into exile for the common good.<sup>847</sup>

There had been *privatum consilium* action going on that year, however:

*Hic subito cum incredibilis in Capitolium multitudo ex tota urbe cunctaque Italia convenisset, vestem mutandam omnes meque iam omni ratione, privato consilio, quoniam publicis ducibus res publica careret, defendendum putarunt.*

And then, straightaway, when an amazing throng had assembled on the Capitol from the whole city and from the whole of Italy, all deemed it their duty to put on mourning, and to defend me also in every possible way, by private initiative, since the *res publica* had lost its public leaders. (Cic. *Sest.* 26.)

That is, the consuls had refused to put the matter of Cicero’s recall before the senate.<sup>848</sup> This supports their characterisation as bad men unwilling to sign up to senatorial *auctoritas*, an emphasis that covers up both their limited options for dealing with a tribune and the inactivity of everyone else, especially Clodius’s nine allegedly pro-Ciceronian colleagues and Gabinius’s patron Pompey.<sup>849</sup> The action taken here is uncontroversial, especially compared with political murder or raising

<sup>845</sup> Cic. *Sest.* 47, *at cives, at ab eo privato qui sine armis etiam consul rem publicam conservarat*; cf. also the comparison between Cicero and his opponents at *Red. Sen.* 6: he resigned his own safety for the good of the state; *they* thought his return should be opposed with rivers of blood.

<sup>846</sup> Cic. *Sest.* 47.

<sup>847</sup> Cf. Dyck 2004 on how Cicero formulates his exile as a version of the *devotio ducis* rite.

<sup>848</sup> Cic. *Sest.* 25.

<sup>849</sup> Kaster 2006: 13.

private armies, and the point is to stress the unanimous, spontaneous support offered to Cicero by private individuals. This is picked up in the following section:

*Quid enim quisquam potest ex omni memoria sumere inlustrius quam pro uno civi et bonos omnis privato consensu et universum senatum publico consilio mutasse vestem?*

For what greater distinction can anyone choose out of all the history of the past than that, to save one citizen, all good men personally by common consent, and the whole senate by public resolution, put on mourning? (Cic. *Sest.* 27.)

The unofficial *privatum consilium* that mourning clothing should be donned mutates into official *publicum consilium*, once the senate has finally been able to meet.<sup>850</sup> While the *privatum consensum* of (*privati*) *boni omnes* is acknowledged, it is capped by the *publicum consilium* of the whole senate, against which the consuls are said to have reacted.<sup>851</sup> A similar account appears in the *In Pisonem*, where Cicero argues that it would have been unbearably cruel for Piso to have forbidden the senators to wear mourning *per interdicta potestatis* even if they had done so ‘not by official resolution but out of private duty or compassion (*non publico consilio... sed privato officio aut misericordia*)’.<sup>852</sup> Again, the stress lies on official public action. In the absence of a senatorial resolution, the changing of clothes would have been only a *privatum officium*; but since that resolution was passed, it was *publicum consilium*, so Piso’s attempt to thwart the general mourning is not just intolerable cruelty but something that no barbarian tyrant ever did.<sup>853</sup> Notably, *publicum consilium* is contrasted to *privatum officium*; *privatum consilium* has dropped out of the rhetoric, since in this speech Cicero elides the details set out in the *Pro Sestio*. The important point is that the senate issued *publicum consilium* to the effect that senators should don mourning clothes and that Piso intervened on the basis of his consular authority to prevent this. How this stand-off was reached is not particularly important to the

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<sup>850</sup> Cic. *Sest.* 26.

<sup>851</sup> Cic. *Sest.* 32.

<sup>852</sup> Cic. *Pis.* 18.

<sup>853</sup> Cic. *Pis.* 17.

point Cicero wants to make, which is that Piso was a bad and profoundly un-Roman consul.

After his exile, then, Cicero emphasises his lack of public office and the potentially terrible consequences of winning or losing in order to justify his failure to act on the will to violence expressed in *Q. fr.* 1.2, as he might have been expected to do had Clodius really been the horror and scourge of the *res publica* that Cicero describes. In effect, Cicero makes the legal and ethical argument against the *privatus* heroics of Scipio Nasica. This is explicit in *De Domo Sua*, where Cicero stresses that his failure to act does not reflect a negative opinion of Nasica's action:

*Sed publicam causam contra vim armatam sine populi praesidio suscipere nolui: non quo mihi P. Scipionis, fortissimi viri, vis in Ti. Graccho privati hominis displiceret, sed Scipionis factum statim P. Mucius consul, qui in gerenda putabatur fuisse segnior, gesta multis senatus consultis non modo defendit, sed etiam ornavit: mihi aut te interfecto cum consulibus aut te vivo et tecum et cum illis armis decertandum fuit.*

But without a bodyguard of the people I was reluctant to undertake the people's cause against armed lawlessness; not that I disapproved of the violence employed against Tiberius Gracchus by Publius Scipio, the bravest of men, when he acted in a private capacity; on that occasion Publius Mucius the consul, who was considered to have been somewhat lacking in energy when the deed was in contemplation, when it had been accomplished immediately defended Scipio's action by several decrees in the senate, and even complimented him upon it; but in my case I had the prospect of an armed struggle with the consuls had you been slain, or, had you survived, with you and them combined. (Cic. *Dom.* 91.)

A discussion of *vis* committed in the *publica causa* raised the spectre of Nasica; careful footwork on Cicero's part was therefore required to lay the ghost to rest. Cicero was obliged to justify his failure to follow Nasica's example without denigrating it, since Nasica was too important an *exemplum* to wipe out of the tradition and could not be made into the villain of the tale. The consuls again become Cicero's scapegoats. Nasica, in this iteration of the tale, had been energetically

supported after the event by Mucius Scaevola, the previously languid consul; Cicero, however, would have had to face up against the consuls in the event that Clodius had been slain, or against Clodius and the consuls together if Clodius had survived.

It is not clear whether Cicero had the option of avoiding Nasica or whether he was forced to engage with the *exemplum*, either because someone else had raised the parallel or because leaving it unspoken would have left it to be exploited by other people. Either way, Cicero uses the same themes in the *Pro Plancio* of 53. Once again, he makes heavy weather of his own career and his debts to his client, in court on a charge of *ambitus*: the prosecution, he says, claims (a) that Plancius's services were less significant than Cicero is making out and (b) that however important they were, they should not weigh with the jury.<sup>854</sup> Cicero has to defend both counts, hence the prominence of his exile; moreover his friend Laterensis, a disappointed candidate and one of the prosecutors, accuses him of having abandoned his supporters by going into exile, rather than standing his ground in Rome.<sup>855</sup> Another recap of the events that led to Cicero's exile therefore features at *Pro Plancio* 86–90. Cicero argues that Clodius had the (evil) consuls onside; that the (supportive) senate, equestrian order and all of Italy was cowed; and that standing up for himself would have meant a recourse to arms and civil war, which he would not allow. As glorious as a victory over Clodius would have been, it would only have been the precursor to a worse conflict, as long as the consuls supported Clodius:

*Ubi enim mihi praesto fuissent aut tam fortes consules quam L. Opimius, quam C. Marius, quam L. Flaccus, quibus ducibus improbos cives res publica vicit armatis, aut, si minus fortes, at tamen tam iusti quam P. Mucius, qui arma quae privatus P. Scipio ceperat, ea Ti. Graccho interempto iure optimo sumpta esse defendit?*

For where could I have found at hand to help me consuls as brave as Lucius Opimius, Gaius Marius, or Lucius Flaccus, under whose armed leadership the *res publica* quelled traitorous citizens, or, if brave men were lacking, consuls so upright as Publius Mucius, who proved that Publius Scipio, though a

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<sup>854</sup> Cic. *Planc.* 4.

<sup>855</sup> Cic. *Planc.* 86.

private citizen, was amply justified in his resort to arms by his destruction of Tiberius Gracchus? (Cic. *Planc.* 88.)

The line of the *Pro Sestio* is resumed, but now the various senatorial heroes of the past make an explicit appearance: Cicero could not count on consular backing, as could Nasica, and had no authority of his own, as had Opimius and Cicero himself during his own consulship; therefore, rather than resorting to civil war, he fled.<sup>856</sup> It is noticeable that the consul Scaevola's role in the Gracchan debacle and its aftermath inflates as the decade draws on, rather dubiously in the context of Scaevola's express refusal to take action, his previous Gracchan sympathies and Nasica's accusation (witty or not) that Scaevola was prejudiced against him at his trial.<sup>857</sup> Cicero's attempts to press Scaevola into service against Gabinius and Piso as a shining counter-example of a virtuous consul require a rather awkward historical distortion to cover the fact that Scaevola had not supported Nasica's initial call to arms. In general, in any case, resorting to arms in the absence of public authority is cast in a poor light whether the battle is won or lost.<sup>858</sup> For all Cicero's protestations, it seems his opponents on the senatorial end of the political spectrum were exploiting the charge of cowardice to which Cicero's preferred version of his exile made him vulnerable.<sup>859</sup>

## 6.2 LIVING WITH DEFEAT

The conversation of the 50s was very flexible, but it was also largely hypothetical (*if you had done this, why didn't you do this, I didn't do this because...*). Furthermore, although the *privatum consilium* tradition was eventually used to justify civil war activities, it originated as something rather different: a justification of political murder that developed as the result of and in order to legitimise an illegal act after the event, rather than as a way to lever *privati* into positions that they were not technically qualified to hold. Whatever significance was attached to Scipio Nasica's name, no one was at any time eager to elevate private persons to positions of public authority. Thus in November 51, Caelius Rufus reported to Cicero in Cilicia that

<sup>856</sup> Cf. also Cic. *Mil.* 36-7.

<sup>857</sup> Astin 1967: 228, Stockton 1979: 89; for Nasica's witticism cf. Cic. *De Orat.* 2.285.

<sup>858</sup> Cf. Lintott 1999a: 62, Goldenhard 2011: 178-9.

<sup>859</sup> Cf. also Cic. *Pis.* 18.

although there was general concern about the recent news of a Parthian crossing, no one was willing to see *privati* appointed by senatorial decree to deal with the problem.<sup>860</sup> Such elevations happened anyway, of course, and were usually justified by reference to the enormity of the situation and the relevant *privatus*'s unique qualities, such qualities usually belonging to Pompey to a positively astounding degree: so, notoriously, the panegyric embedded in Cicero's *Pro Lege Manilia* of 66, given to support the extraordinary command proposed for Pompey against Mithridates. Pompey deserved the command, according to Cicero, because he possessed the four qualities necessary for a successful general (and all in the superlative): knowledge of warfare (*Leg. Man.* 28), ability (*Leg. Man.* 29–42), prestige (*Leg. Man.* 43–6) and luck (*Leg. Man.* 47–9).<sup>861</sup> Concrete evidence for the first of these qualities is furnished by Pompey's early career, rendered elliptically: who knew more or had ever needed to know more about warfare than Pompey, who had gone from the games and lessons of childhood to his father's army in order to study military matters in a great war (*bellum maximum*) against the most savage enemies (*acerrimi hostes*)? who, as a mere boy, had served as soldier in a *summus imperator*'s army, and as an *adulescens* commanded a great army; who had 'more often with his country's enemies (*cum hoste conflixit*) than any other man has quarrelled with his own (*cum inimico concertavit*), fought more wars than others have read of, discharged more public offices (*provinciae*) than other men have coveted; who, in his youth (*adulescentia*), learned the lessons of warfare not from the instructions of others but under his own command (*suis imperiis*), not by reverses in war but by victories, not through campaigns but through triumphs'.<sup>862</sup> Pompey had engaged in all types of warfare and so gained universal competence: 'The civil war, the wars in Africa, Transalpine Gaul and Spain, the slave war and the naval war, wars different in type and locality and against foes as different, not only carried on by himself unaided but carried to a conclusion, make it manifest that there is no item within the sphere of military experience which can be beyond the knowledge of Pompeius'.<sup>863</sup>

This glorious account tarnishes when rephrased as what it was: a series of victories achieved against Roman citizens. Cicero disguises this by portraying the

<sup>860</sup> Cic. *Ad Fam.* 8.10; cf. Lintott 2008: 271.

<sup>861</sup> Cf. Steel 2001: 128–35.

<sup>862</sup> Cic. *Leg. Man.* 28.

<sup>863</sup> Cic. *Leg. Man.* 28.

wars waged outside Italy as foreign wars, rather than extensions of the initial civil war sparked by Sulla's return from the east.<sup>864</sup> Pompey's meteoric career had begun with the raising of a private army for use during the Sullan civil wars of 83; between 82–70 he went on to hold commands against the Marian remnants in Sicily and Africa, was involved in action against the proto-Catiline consul of 79, M. Aemilius Lepidus, and against Q. Sertorius in Spain, helped to mop up the remnants of Spartacus's revolt and celebrated *two* triumphs as an equestrian,<sup>865</sup> all before an exemption from the *lex annalis* enabled his election as consul.<sup>866</sup> Pompey was the prime example of a *privatus* occupying public positions he was not technically eligible to hold. Cicero emphasises the novelty of his career:

*Quid tam novum quam adolescentulum privatum exercitum difficili rei publicae tempore conficere? Confecit. Huic praeesse? Praefuit. Rem optime ductu suo gerere? Gessit.*

What is so novel as that a young *privatus* should raise an army at a time of crisis for the *res publica*? He raised it. Or that he should command it? He commanded it. Or that he should achieve a great success under his own leadership? He achieved it. (Cic. *Leg. Man.* 61.)

Young, a private citizen and in command of an army: Pompey was the very image of Octavian in 44–43. In 66, however, Pompey's early exploits were flagged up by Cicero as an aberration during crisis conditions, even if the nature of that crisis and its resolution are left carefully unstated. Earlier in the speech, while arguing that Pompey would have deserved command even if he *were* a *privatus*, Cicero stresses that in fact, thanks to the command against the pirates conferred by the *lex Gabinia* of 67, at that very moment Pompey was not.<sup>867</sup> Even for a man as remarkable as Pompey, such promotion was a tricky issue and Cicero makes no appeal to any existing tradition to justify Pompey's remarkable early career; rather, the point is explicitly that Pompey is his own precedent for novel commands. Moreover, Cicero is starry-eyed but not delusional; he portrays Pompey not as Athena, leaping into the

<sup>864</sup> Steel 2001: 145 (see further 140–47).

<sup>865</sup> Cf. Leach 1978: 24–59, Greenhalgh 1980: 13–67, Seager 2002: 26–36.

<sup>866</sup> Cic. *Leg. Man.* 61–2; cf. Sherwin-White 1956: 5–8.

<sup>867</sup> Cic. *Leg. Man.* 50.

world as a fully-fledged *imperator*, but as a student of war from an unusually early age who studied under a *summus imperator* (Sulla's name is delicately elided<sup>868</sup>) and learned *scientia rei militaris* through commanding his own men. It is conceded, at the very least, that Pompey's first *bellum* was *civile*, even if the civil nature of the wars that followed in Africa, Transalpine Gaul and Spain is carefully glossed over. This reflects the significant detail that Pompey began his career as a Sullan lieutenant. His army-raising might have been done as a *privatus*, but he fought first on Sulla's behalf and then at the behest of the Sullan senate. He commanded his father's veterans as a private citizen, but not on his private initiative, and there is no trace in Cicero that the *privatum consilium* discourse stemming from Nasicus's heroics in 133 was ever needed to justify Pompey's early career.

There was an excellent reason why action outside the *res publica*, whether demonstrably *pro re publica* or not, was rare and highly controversial, and that reason was eloquently demonstrated by Caesar when he crossed the Rubicon. It is worth reading Cicero's later rhetoric in the context of a letter he wrote to Atticus in January 49:

*Quaeso, quid est hoc? Aut quid est agitur? Mihi enim tenebrae sunt. 'Cingulum' inquit 'nos tenemus, Anconem amisimus; Labienus discessit a Caesare.' Utrum de imperatore populi Romani an de Hannibale loquimur? O hominem amentem et miserum, qui ne umbram quidem umquam τοῦ καλοῦ viderit! Atque haec ait omnia facere se dignitatis causa. Ubi est autem dignitas nisi ubi honestas? Honestum igitur habere exercitum nullo publico consilio, occupare urbis civium quo facilior sit aditus ad patriam, χρεῶν ἀποκοπὰς, φυγάδων καθόδους, sescenta alia scelera moliri, 'τὴν θεῶν μεγίστην ὥστ' ἔχειν Τυραννίδα'?*

Pray, what's all this? What is going on? I am in the dark. 'We hold Cingulum, we've lost Ancona, Labienus has deserted Caesar. Is it a Roman commander or Hannibal we are talking of? Deluded wretch, with never in his life a glimpse of even the shadow of Good! And he says he is doing all this for his honour's sake! Where is honour without moral good? And is it good to have

<sup>868</sup> But appears elsewhere in the speech: *Man.* 8, 30.

an army without public authority, to seize Roman towns by way of opening the road to the mother city, to plan debt cancellation, recall of exiles, and a hundred other villainies ‘all for the greatest of gods, Tyranny’? (Cic. *Att.* 7.11.1.)

Caesar, acting *nullo publico consilio* (or, in other words, *privato consilio*) had neither constitutional legitimacy nor *honestas* on his side; he provided a timely illustration of how, with positive law swept away, a free-for-all could result. Praise of *privatum consilium* in public affairs was therefore a dangerous rhetorical game to play, however much modifying factors such as *honestas* or *virtus* might be stressed. In the confused situation after Caesar’s death, however, Cicero spent a great deal of time playing catch-up; while his rhetoric impresses us as a record of events in which he played a major part and contributed significantly to how things unfolded, in reality he spent most of his time trying to justify the decisions of others.<sup>869</sup> It was the nature of the game that those decisions were increasingly taken without recourse to standard methods of confirmation and legitimation, in other words as *privatum consilium*. The rest of this chapter therefore examines Cicero’s attempt to fold not-at-all hypothetical and politically divisive *privatum consilium* into what had once been a *res publica* premised on consensus and concerted action.

### 6.3 A MAN OF VISION

Cicero’s rhetorical strategy in 44–3 both drew on and reinforced his efforts to reconstruct a *res publica* in which the *auctoritas* of the senate could curb the arbitrary action of magistrates generally. His insistence in the *Philippics* that the senate should reward the arbitrary action of specific magistrates and individuals by voting them honours and commands, and thereby confirming that their actions had been taken *pro re publica*, might seem counterproductive (and certainly had counterproductive implications) but it does foreground the senate as the source of political legitimacy. This is apparent from Augustus’s probable Ciceronian inspiration for *RG* 1.1, the *Third Philippic*, a speech given in the senate on 20 December 44. Manuwald, following Stroh, proposes this speech as the first of

<sup>869</sup> Stockton 1971: 287, Mitchell 1991: 305-23, Lintott 2008: 406-7.

Cicero's intended *Philippic* corpus.<sup>870</sup> Antony and Dolabella were still in office when the speech was given, but Antony had departed Rome on 28 November after learning that the *legio Martia* and *legio Quarta* had defected to Octavian. Cicero was impelled to deliver the *Third Philippic* by a dispatch from Decimus Brutus in which Decimus (appointed governor of Cisalpine Gaul by Julius Caesar and in occupation there since April) declared his intention of illegally defending 'his' province against Antony, who had reassigned it to himself during the distribution of the provinces at the beginning of June. Cicero was sufficiently heartened to discard his original plan of disavowing public activity until Antony's vacation of office in January. He therefore attended a meeting of the senate chaired by the new tribunes and hijacked the original discussion (which concerned security for inaugurating the new consuls) to propose the confirmation of Decimus Brutus's policy in Gaul, the maintenance in office of the present provincial governors and honours for Octavian, his veterans, and the legions who had mutinied against Antony.<sup>871</sup> It was in this context that Cicero declared Octavian's private initiative had saved the *res publica* from Antony, and his words are worth repeating:

*Qua peste privato consilio rem publicam – neque enim fieri potuit aliter – Caesar liberavit: qui nisi in hac re publica natus esset, rem publicam scelere Antoni nullam haberemus.*

From this plague, Caesar by his private initiative – there was no other way – delivered the *res publica*: had he not been born in this *res publica*, through the criminality of Antonius we would no longer have a *res publica*. (Cic. *Phil.* 3.5.)

Cicero praises young Octavian's illegal actions (the raising of the private army 'to liberate the *res publica*' from Antony) and argues that Octavian should be invested with *publica auctoritas* to back up his *privatum consilium*.<sup>872</sup> The similarity between this passage and *RG* 1.1 is indeed striking; Galinsky notes the parallels of private initiative and Antonian oppression (that is, the deliverance from), the similarity of

<sup>870</sup> Manuwald 2007a: 77-79.

<sup>871</sup> Manuwald 2007a: 22; cf. also Frisch 1946: 144-163.

<sup>872</sup> Manuwald 2007b: 327-8.

the clause endings (*comparavi/comparavit* to match *in libertatem vindicavi/liberavit*) and the emphasis on the *res publica*.<sup>873</sup> That said, however, Cicero's emphasis that there was no other way to save the *res publica* is important: certainly Octavian is praised for his actions *privato consilio*, but this is flagged up by Cicero as a necessary measure taken in desperate times, rather than the sort of behaviour that would necessarily be commendable in the world of everyday politics. At 3.3, Cicero had echoed the *quo usque tandem abutere* opening of his first consular speech against Catiline:

*Quo enim usque tantum bellum, tam crudele, tam nefarium privatis consiliis propulsabitur? Cur non quam primum publica accedit auctoritas?*

How long then is such a great war, such a cruel, such a wicked one, to be beaten back by private initiatives? Why is not public authority added as soon as possible? (Cic. *Phil.* 3.3.<sup>874</sup>)

The private initiatives are plural because this refers not only to Octavian but also to Decimus Brutus, whose activities in Gallia Citerior are central to the speech. Significantly, *privatum consilium* is paired with *publica auctoritas*: certainly those currently acting *privatis consiliis* are acting correctly but Cicero stresses the vital importance of confirming and backing up these private actions with public authority as soon as possible.<sup>875</sup> That the heroes of Cicero's speech are obliged to act *privato consilio* denotes their lack of *publicum consilium*, which damns the senate's inaction, rather than Decimus or Octavian's unscrupulous and illegal behaviour, and must be remedied as swiftly as possible. The rhetoric recalls the sheathed *SCU* of the first speech against Catiline that brings shame on the inactive consuls (*Cat.* 1.2–4). By rhetorically revisiting his own consulship, Cicero seeks to couch a rather different debate in the same terms, although rather than claiming the authority of an pre-existing *SCU* as legitimacy for dubiously legal consular actions, he calls here upon the senate to support the waging of (civil) war by private persons on a Roman

<sup>873</sup> Galinsky 1996: 45.

<sup>874</sup> On the echo cf. Manuwald 2007b: 326 (and see also Cic. *Planc.* 75, where the prosecutor had thrown the phrase back at Cicero himself).

<sup>875</sup> Braunert 1974: 347.

consul.<sup>876</sup> It is not now the consuls that are failing the *res publica* (in fact, there is a large, consul-shaped hole in the political equation), but rather the senate, which withholds its *consilium* and *auctoritas* from the *res publica* (or, more precisely, from the private initiatives of Decimus and Octavian) in this crisis.

At 3.12 the point is reiterated and elaborated. By barring Antony from Gaul (and that on his private initiative!), Decimus Brutus judges that Antony is not consul – correctly. The senate must therefore approve Decimus’s actions: ‘it is for us to see that we approve Decimus Brutus’ private initiative with our public authority (*ut D. Bruti privatum consilium auctoritate publica comprobemus*)’.<sup>877</sup> This is pointed. The important elaboration is the claim that Decimus’s judgment (that Antony is not consul) outweighs the legal reality (that Antony still is consul, actually). ‘Cicero asserted that not the official status, but the deeds of the consul determined his assessment; by this logical construction he justified Antonius’ opponents and proved unconstitutional actions to be constitutional ones’.<sup>878</sup> Since Decimus is correct (and apparently infallible), it follows that the senate must provide its stamp of approval to his judgement, a stamp that will thenceforth serve to confirm the correctness of Decimus’s judgement. The argument culminates at 3.14, where Cicero considers the consequences of a hypothetical and plainly ridiculous scenario in which Antony is legally the consul, in which case ‘the legions that deserted the consul deserve to be beaten to death, Caesar is a criminal and Brutus a villain for having raised armies against a consul by private initiative (*privato consilio*)’.<sup>879</sup> Hitherto the legal status of actions taken *privato consilio* has been elided; here Cicero contemplates the flagrant illegality of taking action against those in office in the absence of any form of public office or authority. *If* Antony is the consul, those acting against him *privatis consiliis* do so in defiance of law and *contra consulem*. But this is intended to be purely hypothetical within the context of the speech; and since Antony obviously cannot be considered a consul, given that honours are sought (by Cicero) for the soldiers who

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<sup>876</sup> Stevenson 2008: 103 argues for a ‘deliberate and programmatic’ contrast between Cicero’s and Antony’s consulships in the *Philippics* as a whole; he possibly overstates his case, but allusions to Cicero’s consulship are certainly never hard to find in any of Cicero’s post-consulship works. Cf. also Manuwald 2007b: 326.

<sup>877</sup> Cic. *Phil.* 3.12.

<sup>878</sup> Manuwald 2007a: 98; cf. also Manuwald 2007b: 372-3, Galinsky 1996: 45, 51, Arena 2007: 65-7, Gildenhard 2011: 156-8.

<sup>879</sup> Cic. *Phil.* 3.14.

deserted him and their commanders who oppose him, the private initiatives of Decimus Brutus and Octavian remain a force for good in troubled times.

What appears as an argument in the *Third Philippic* (that voting senatorial *auctoritas* and honours to the soldiers and their commanders will legalise their technically illegal actions) becomes a basic premise in the fifth and tenth *Philippics*, by which time Cicero can claim that said *auctoritas* and honours had indeed been voted; he therefore stresses that the actions of Octavian and Brutus taken *privato consilio* have received the stamp of *publica auctoritas* as proof for his argument that the war against Antony is not a civil war between *partes* but one against a public enemy (*hostis*).<sup>880</sup> The *Fifth Philippic* is situated at an important junction for Cicero; it was given on 1 January 43, when Antony and Dolabella vacated the consulship and were succeeded by A. Hirtius and C. Vibius Pansa.<sup>881</sup> This relieved Cicero of one of his most pressing political difficulties; with Antony out of office, Cicero was no longer championing a private war against a Roman consul, although war had not yet been officially declared and Antony now held proconsular status. (A letter written as late as mid-April 43 reports Cicero and Sestius being obliged to point out just how embarrassing it would be for all those who had taken up arms against Antony if it was admitted that Antony was a proconsul.<sup>882</sup>) However, the first *consularis* called upon to speak was Pansa's father-in-law, Q. Fufius Calenus, who proposed sending envoys to Antony, then besieging Decimus Brutus at Mutina. Cicero opposed this, arguing instead for the declaration of a *tumultus*<sup>883</sup> and pushing for a war against Antony. Part of his strategy was to claim that earlier senatorial commendations for military actions meant a war was already in progress. At 5.3 he reminds the senate of the commendations given to 'those commanders who had taken up arms against him [Antony] on their private initiative (*qui contra illum bellum privato consilio suscepissent*)' and the veterans who had 'preferred the freedom of the Roman People to his benefaction (*illius beneficio libertatem populi Romani anteposuerunt*)'. Why had the mutinying legions been commended, unless Antony was a *hostis* rather than a consul?<sup>884</sup> This is spelled out in greater detail further in the speech:

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<sup>880</sup> Cf. also Cic. *Phil.* 4.1-8.

<sup>881</sup> Cf. Frisch 1946: 165-85.

<sup>882</sup> Cic. *ad Brut.* 2.5.3-4.

<sup>883</sup> Cic. *Phil.* 5.31; cf. Nicolet 1980: 130 on the *tumultus*.

<sup>884</sup> Cic. *Phil.* 5.4.

*Constituistis ut haec ad vos Kalendis Ianuariis referrentur quae referri videtis, de honoribus et praemiis bene de re publica meritorum et merentium. Quorum principem iudicastis eum qui fuit, C. Caesarem, qui M. Antoni impetus nefarios ab urbe in Galliam avertit, deinde milites veteranos qui primi Caesarem secuti sunt, tum illas caelestis divinasque legiones, Martiam et quartam comprobastis quibus, cum consulem suum non modo reliquissent, sed bello etiam persequerentur, honores et praemia spoondistis; eodemque die D. Bruti, praestantissimi civis, edicto adlato atque proposito factum eius conlaudastis, quodque ille bellum privato consilio susceperat, id vos auctoritate publica comprobastis.*

You determined that on the Kalends of January a discussion be initiated in the House (as you see, it is done) concerning honours and rewards for those who have deserved and are deserving well of the *res publica*. First among those you judged to be (and first he was) Gaius Caesar, who turned Marcus Antonius's wicked onset away from the city to Gallia; next you gave your approval to the veteran soldiers who were the first to follow Caesar and after them to those wonderful and god-inspired legions, the Martian and the Fourth, to whom you pledged honours and rewards after they had not only abandoned their consul but were actually making war on him. And on the same day the edict of Decimus Brutus, a great citizen, arrived and was published; you praised what he had done and you endorsed by public authority his venturing upon war on his private initiative. (Cic. *Phil.* 5.28.)

Whereas 5.3 merely points out that the senate had praised the actions *privato consilio* of Brutus, Octavian and their soldiers against Antony and on behalf of the *libertas* of the Roman people, 5.28 separates off Decimus Brutus for special mention, so that Cicero can make the strongest case possible out of this conferral of *auctoritas publica* on a war waged *privato consilio*: it becomes 'a full authorization of the private initiatives against Antonius' and 'implies that the Senate has committed itself to a certain policy and is required to follow that consistently'.<sup>885</sup> It is noteworthy that

<sup>885</sup> Manuwald 2007b: 656; cf. also *Phil.* 5.36-7.

Cicero here admits the legions were making war on their consul, given his previous efforts to argue that Antony was not a consul at all; this makes more damning the judgement of his own legions against Antony. The theme is resumed in the *Tenth Philippic*, where the subject shifts to the other Brutus, then squatting with his and several other people's armies in Macedonia (originally allotted to Antony's brother Gaius), Illyricum and Greece.<sup>886</sup> The speech deals with the issue of whether Marcus Brutus should be given formal command in these provinces. Pansa, the consul in residence at Rome, had summoned the senate and again called on Calenus to speak first; Calenus then spoke against bestowing *imperium* on Marcus Brutus. Cicero disagreed with the *Tenth Philippic*, in which the example of commendations for Decimus and Octavian serves as a significant precedent: the senators were now obliged to do the same for Marcus Brutus as they had already done at Cicero's instigation for Decimus and Octavian, 'whose private undertaking and action for the *res publica* was by your authority approved and commended'.<sup>887</sup> Since the action *privato consilio* of Decimus Brutus and Octavian had been commended by the senate, it followed that the senate should commend the *privatum consilium* of Marcus Brutus likewise.

Throughout Cicero's public speeches during this extremely confused period, then, praise of actions taken *privato consilio* is consistently paired with a stress on the need to confirm such actions with *publica auctoritas*. Victory is optimistically declared in the *Fourteenth Philippic*: Octavian's activities had justified the hopefulness with which the senate had bestowed *imperium* upon him.<sup>888</sup> Cicero's claim in its barest form was that actions taken *privato consilio* were justified on a level superior to strict legality, as long as they benefited the *res publica*. Because they were actions that benefited the *res publica*, they should be confirmed by *publica auctoritas*, i.e. by senatorial decree. Such decrees would thereafter show that the actions (and actors) had been beneficial to the *res publica*. This establishes a convenient self-reinforcing circle that enables Cicero to further his hawkish policy by brandishing such decrees as proof of his claims as soon as the senate has been persuaded to grant them. The repeated stress on the evils of the times results in rhetorical nuances quite unlike Augustus's self-aggrandising proclamation of his

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<sup>886</sup> Cf. Frisch 1946: 212-22.

<sup>887</sup> Cic. *Phil.* 10.23, *quorum privatum de re publica consilium et factum auctoritate vestra est comprobatum atque laudatum.*

<sup>888</sup> Cic. *Phil.* 14.28.

youthful *privatum consilium* at *RG* 1.1, which is not surprising, given the implications of Cicero's rhetorical moves. Cicero's delegitimation of a sitting consul and championing of action *privato consilio* 'is not just a slight adaptation for immediate purposes, but attacks the basis of political life', since 'positive law is not replaced by hallowed and perpetual divine law, but by an arbitrarily defined law of nature according to the beliefs of individuals'.<sup>889</sup>

The general line of the speeches can be supplemented by Cicero's more theoretical works, especially at *De Officiis* 1.74–78, cited above,<sup>890</sup> where Cicero illustrates the superiority of domestic politics to military glory through a selection of such contrasting *exempla* as Themistocles versus Solon, Pausanias and Lysander versus Lycurgus, Marius versus Marcus Scaurus and Pompey versus Quintus Catulus. The section culminates in a far from subtle comparison of Cicero's own consulship with Pompey's concurrent military campaigns.<sup>891</sup> Other than Cicero's year in office, the *exemplum* that receives the most lavish discussion and which immediately precedes the inevitable climax is the comparison of Scipio Aemilianus Africanus to his contemporary Scipio Nasica, whose murder of Tiberius Gracchus was admittedly not just a domestic affair (*ex domestica ratione*), but one that 'partakes of the nature of war also, since it was effected by violence; but it was, for all that, executed as a political measure without the help of an army (*attingit etiam bellicam, quoniam vi manuque confecta est – sed tamen id ipsum est gestum consilio urbano sine exercitu*)'.<sup>892</sup> The point of the passage overall is to push the supremacy of domestic political action over even a legally glorious war. Nasica therefore features as a politician engaging in domestic politics to remove an unlovable citizen from the *res publica*, in contrast to the *imperator* Scipio Aemilianus Africanus's contemporaneous military campaign against Numantia. This requires a certain amount of careful semantic manoeuvring, given that what Nasica in fact did was to lead a mob on a lynching spree on no authority other than (at most) whatever he could claim as *pontifex maximus*. Thus Cicero is obliged to note that bellicosity *was* involved, but all the same he claims Nasica as a suitable precedent by virtue of the absence of an army. The death of Tiberius Gracchus may therefore be described as

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<sup>889</sup> Manuwald 2007a: 99.

<sup>890</sup> At p.203; cf. Long 1995, Arena 2007 on the close relationship between the *De Officiis* and the *Philippics*.

<sup>891</sup> Cic. *Off.* 1.77–8.

<sup>892</sup> Cic. *Off.* 1.76; cf. Dyck 1996: 208.

having been accomplished *consilio urbano* – as, perhaps, an urban initiative. Cicero’s odd phrase looks like a somewhat forced attempt to get around two problems posed by Scipio Nasica for the scheme of this passage: (1) that in Nasica’s case arms did *not* yield to the toga; after all, Tiberius and some three hundred followers were brutally and illegally done to death; and (2) that Nasica was not a magistrate in possession of office; rather, he was a *privatus*, a detail somewhat defensively conceded.

Nasica’s action is not described as *privatum consilium* in *De Officiis*, but the phrase lurks behind his regular identification as a *privatus* in the 40s, a detail that Cicero had formerly included to highlight the dilatory conduct of those in office, especially his colleague Antonius, and which now stands as virtually a Homeric epithet. So in the *Brutus* Nasica is cited twice as the *privatus* (or *dux privatus*) who took action against Tiberius Gracchus<sup>893</sup> and in the *Tusculan Disputations* he becomes a living example of the principle outlined in the *De Republica* that no one is only a *privatus* when it comes to preserving the *salus* of the *res publica*.<sup>894</sup>

*Mihi ne Scipio quidem ille pontifex maxumus, qui hoc Stoicorum verum esse declaravit, numquam privatum esse sapientem, iratus videtur Ti. Graccho tum, cum consulem languentem reliquit atque ipse privatus, ut si consul esset, qui rem publicam salvam esse vellent se sequi iussit.*

To my mind even that Scipio, the *pontifex maximus*, who verified the truth of the Stoic maxim that the wise man is never a *privatus*, does not seem to have been angry with Tiberius Gracchus when he left the spiritless consul and, though he himself was a *privatus*, called, as though he were consul, upon all who desired the safety of the *res publica* to follow him. (Cic. *Tusc. Disp.* 4.51.)

There is no discussion here of the awkward legality of Nasica’s action, nor of any unpleasant fallout from Tiberius Gracchus’s death: it is taken as given that the introduction of death-by-senatorial-lynch-mob into the political sphere was a positive benefit for the *res publica*. Nor is there any hint of the *popularis* tradition

<sup>893</sup> Cic. *Brut.* 107, 212.

<sup>894</sup> Galinsky 1996: 50.

concerning the deaths of Tiberius and his younger brother. Given the date of the *Tusculan Disputations* and the focus of this particular section, it might be thought that Cicero hoped to encourage some modern *privati* to get on with dispatching Caesar.<sup>895</sup> It is also worth noting that the Gracchi become decidedly less nuanced in Cicero's treatment of them from this period. Tiberius in particular becomes a *dominus*<sup>896</sup> who sought (and briefly achieved) *regnum*, and who was rightfully slain by Nasica, the *dux privatus*.<sup>897</sup> In any case, the principle that murder by private citizens *pro re publica* may be justified is put into practice in the *Philippics* to justify the flagrantly illegal actions of *privati* and stretched to its limits to make waging war *privato consilio* on a Roman consul not only permissible but praiseworthy. The justification of murder became a justification of civil war.

#### 6.4 THE FREEDOM TO REFUSE

The political debate during 44–43 was heated. Cicero's voice (as usual) is the loudest to have survived, but something of the broader conversation may be recovered from his speeches. Opposition from fellow senators pushed Cicero's rhetorical exploitation of Scipio Nasica and the *privatum consilium* discourse in two opposing directions. This appears in the *Eighth Philippic*, where Cicero resorts to Nasica to argue the hawkish line against his dovelike fellow *consularis* Q. Fufius Calenus, and in the *Eleventh Philippic*, where Cicero is forced to disagree with a motion his own pro-*privatum consilium* stance might seem to justify. In the *Eighth Philippic*, Cicero cites Scipio Nasica explicitly in order to disagree with the more temperate proposals of a fellow senator. On 2 February 43, two of the three ambassadors sent to Antony returned (the third, Servius Sulpicius Rufus, having died on the way) and reported that Antony was disinclined to accept the senate's conditions and had proposed some conditions of his own. During the following debate, Calenus seems to have proposed a second embassy and a push for peace, whereas Cicero wanted an official declaration of *bellum* against a *hostis* (Antony) and a moratorium on any further talk of embassies. The position eventually taken by the senate was that of Antony's uncle, L. Julius Caesar, supported by the consul Pansa, who suggested the substitution of

<sup>895</sup> Gildenhard 2007: 94-5.

<sup>896</sup> Cic. *Brut.* 212.

<sup>897</sup> Cf. also Cic. *Brut.* 103-4, 125-6, *Fin.* 4.65-6, *Amic.* 33, 41, *Off.* 2.43; for a positive treatment of Nasica *et al.*: Cic. *Brut.* 95, 107, 212, 128, *Off.* 1.109, 2.72.

*tumultus* for Cicero's *bellum*. Shortly afterwards a report from Hirtius arrived; this was read out in a meeting of the senate called by Pansa on 3 February, when Cicero delivered the *Eighth Philippic* in which he criticised the *tumultus* decision and claimed that Hirtius's despatch amounted to a state of war.<sup>898</sup>

A substantial amount of the speech is directed at Calenus. Calenus, according to Cicero at 8.13, proclaims his peaceful intent and desire to preserve all citizens, but this desire is problematic because it lacks discrimination; the sentiment is honourable only if Calenus means *good* citizens (that is to say those useful and for the *res publica*). Wanting to preserve citizens whose actions make them *hostes* dissolves the difference between Calenus and such men: by arguing for peace on the wicked Antony's behalf, Calenus too acts as a *hostis*. Calenus's wise old father, Cicero continues, always used to give pride of place to Scipio Nasica, 'holding that his courage (*virtus*), judgement (*consilium*) and greatness of spirit (*magnitudo animi*) had brought freedom to the *res publica*'.<sup>899</sup> Judging by his current position, Calenus would not have approved of the great man as a citizen; Nasica, after all, had not wanted every citizen to be *salvus*.<sup>900</sup> Ditto Opimius and those who took action against Gaius Gracchus; ditto Marius, Valerius and those who took action against Saturninus and Glaucia; and ditto Cicero as consul taking action against Catiline, none of whom wished to preserve all citizens.<sup>901</sup> In short,

*Hoc interest, Calene, inter meam sententiam et tuam: ego nolo quemquam civem committere ut morte multandus sit; tu, etiam si commiserit, conservandum putas.*

The difference between my view and yours, Calenus, is this: I wish that no citizen should act so that he must be punished with death; you think a citizen should be preserved even if he did so act. (Cic. *Phil.* 8.15.)

Cicero positions himself as a realist and successor to a long line of realists: a citizen who acts as a *hostis* should be treated as one, as such citizens had been treated since the supreme *exemplum* of Scipio Nasica against Tiberius Gracchus, whom everyone

<sup>898</sup> Cf. Frisch 1946: 194-207.

<sup>899</sup> Cic. *Phil.* 8.13.

<sup>900</sup> Cic. *Phil.* 8.14.

<sup>901</sup> Cic. *Phil.* 8.14-15.

(except Calenus) agrees saved the *res publica*. Furthermore, to protect and enable bad citizens is to be a bad citizen oneself. The only thing one can do (says Cicero) with such bad citizens is to remove them from the body politic, as one removes noxious elements from the body.<sup>902</sup> This is a smokescreen: enabling X (whether the senate or an individual magistrate or politician) to distinguish between good and bad citizens, and to say that bad citizens have forfeited their civic rights – ‘badness’ being defined not by recourse to law-courts and legal judgements, but through the application of lurid rhetoric – makes a mockery of citizenship, which was a matter of law rather than morals. All Roman citizens, whatever their morals, were theoretically subject to the same laws and in possession of the same basic rights; just as the Catilinarian ‘conspirators’ had not become *hostes* simply on Cicero’s say-so (and just as Catiline himself had not become a *hostis* until the senate, having confirmed that he had joined Manlius’s army, formally declared him so),<sup>903</sup> Antony and his followers remained *cives* until formal processes were enacted against them. Cicero’s accusation, however, is that Calenus, by arguing for peace, enables bad citizens and therefore is one himself, which is tantamount to declaring that everyone who takes issue with Cicero’s hawkishness is a *hostis*. This is more than creative rhetoric; it reflects Cicero’s consistent refusal ‘to recognize the positions of his adversaries as genuine *political* positions’.<sup>904</sup> Taken seriously, it implies a wish to curtail free senatorial debate (what debate can there be over the treatment of *hostes*?) and may also be considered a threat: if bad citizens can be considered *hostes* and eradicated without repercussion, what can anyone labelled a ‘bad citizen’ by Cicero expect?

Shutting down opposing viewpoints was one obvious way to exploit Nasica’s *exemplum* in a senatorial context, but not the only one; the discourse carried other implications and the risk of losing control of the debate was high. In the *Eleventh Philippic*, Cicero was obliged to challenge a motion for which his own arguments helped prepare the way. In 51, everyone had been nervous about Parthians but no one had wanted to see *privati* appointed by senatorial decree; the general consensus then had been against the appointment of a new Nasica to deal with an external enemy.<sup>905</sup> By late February 43, however, things had changed: news had arrived of

<sup>902</sup> Cic. *Phil.* 8.15; cf. Goldenhard 2011: 127-132 for a discussion of Cicero’s use of the metaphor of the body politic.

<sup>903</sup> Habicht 1990: 37.

<sup>904</sup> Goldenhard 2011: 390.

<sup>905</sup> Cic. *Fam.* 8.10.

Dolabella's seizure of Smyrna and execution of Gaius Trebonius, for which the senate (this time on Calenus's motion) voted Dolabella a *hostis*. This required the prosecution of a war and the issue then became who should command it. Lucius Julius Caesar proposed an extraordinary command for Publius Servilius Isauricus, who had preceded Trebonius as governor of Asia (46–44), while someone else (probably Calenus) moved that the sitting consuls should draw lots for Asia and Syria, relieve Decimus Brutus at Mutina, and then head out east against Dolabella.<sup>906</sup> Cicero disagreed with both proposals in the *Eleventh Philippic* and found himself obliged to argue against command being handed to a *privatus*, P. Servilius. In this speech, the prospect of military commands for private citizens therefore becomes a problem. At *Phil.* 11.17–18, Cicero lists particularly dangerous wars in which *privati* were almost, but not quite, granted extraordinary *imperium*. Such commands had been given before, in particular to Pompey; but those (says Cicero, temporarily forgetting the *Pro Lege Manilia*) were proposed by turbulent tribunes, apart from the one against Sertorius, which Pompey was assigned because the consuls refused it.<sup>907</sup> Lucius Caesar's proposal that the command against Dolabella should be assigned to the *privatus* P. Servilius might seem the logical extension of Cicero's argument (once the rules are broken, why not break them again?) and certainly put Cicero in an awkward position, since he had proposed young Octavian's extraordinary command.<sup>908</sup> His method of escape is laudatory:

*Ille enim mihi praesidium extraordinarium dederat: cum dico mihi, senatui dico populoque Romano. A quo praesidium res publica, ne cogitatum quidem, tantum haberet ut sine eo salva esse non posset, huic extraordinarium imperium non darem? Aut exercitus adimendus aut imperium dandum fuit. Quae est enim ratio aut qui potest fieri ut sine imperio teneatur exercitus? Non igitur, quod ereptum non est, id existimandum est datum. Eripuissetis C. Caesari, patres conscripti, imperium, nisi dedissetis. Milites veterani qui illius auctoritatem, imperium, nomen secuti pro re publica arma ceperant volebant sibi ab illo imperari; legio Martia et legio quarta ita se contulerant ad auctoritatem senatus et rei publicae dignitatem ut deposcerent*

<sup>906</sup> Cf. Frisch 1946: 223–34.

<sup>907</sup> Cic. *Phil.* 11.18.

<sup>908</sup> Cic. *Phil.* 11.19

*imperatorem et ducem C. Caesarem. Imperium C. Caesari belli necessitas, fascis senatus dedit. Otioso vero et nihil agenti privato, obsecro te, L. Caesar – cum peritissimo homine mihi res est – quando imperium senatus dedit?*

Yes, for he had given me extraordinary protection; and when I say “me”, I mean the senate and the Roman people. When the *res publica* had received from a man such protection as had been not even imagined, such that without it there could be no safety, was I not to give him an extraordinary command? I had either to take away his army, or to give him the command; for what method is there, or can be, of holding an army together without a command? What is not wrested away should not therefore be regarded as given: you would have wrested from Gaius Caesar his command, Conscript Fathers, if you had not given it. The veteran soldiers who, attaching themselves to his authority, his command, and his name, had taken up arms on behalf of the State, wished to be commanded by him; the Martian legion and the fourth upheld the authority of the State only to demand as their general and leader Gaius Caesar. His command the necessities of war gave Gaius Caesar, the Senate its fasces. But to a private person, unoccupied and doing nothing – I beg you to tell me, Lucius Caesar, for I have to deal with a man well-versed in precedents – when has the Senate ever given command? (Cic. *Phil.* 11.20.)

Cicero was obliged to impose limits on the discourse of *privatum consilium* in order to prevent it from validating unwelcome motions. He had to dispose of the awkward precedent set by his own promotion of Decimus Brutus and Octavian, who becomes a very special case indeed. Because of his extraordinary services to the *res publica*, the senate bestowed the symbol of *imperium* on Octavian (that is, the *fasces*), but its reality had already been granted by *necessitas belli*, the necessity of war: all the senate did was to confirm this.<sup>909</sup> For Cicero, this is a completely different case from arbitrarily bestowing *imperium* on a *privatus* who is at leisure and doing nothing. It bypasses the complicated matter of precisely what *imperium* entails (not just command, but *legitimate* command) and the constitutional mechanisms in place for assigning it to legitimately appointed commanders. Traditionally, military *imperium*

<sup>909</sup> A similar defence is given to M. Brutus at Cic. *ad Brut.* 1.15.7: *quid enim est sine imperio exercitus?*

seems to have required the ratification of a special *lex curiata*,<sup>910</sup> which was passed by the *comitia centuriata*, by the late Republic an archaic remnant represented by thirty lictors;<sup>911</sup> it seems to have been connected with *auspicia publica*, the right to consult the gods on behalf of the *res publica*, although the details are debated.<sup>912</sup> Richardson argues that these *leges curiatae* were what conferred *imperium*, rather than mere election to the magistracy,<sup>913</sup> although Appius Claudius in 54 claimed not to require a *lex curiata* to hold *imperium* in his Cilician province,<sup>914</sup> so if Richardson is correct this point was rather losing force by the late Republic.<sup>915</sup> Appius's claim may have been tendentious, however, since the response to Cicero's survey of opinions on the matter was that without a *lex curiata* Appius had no right to the province and the incumbent promagistrate need not give way.<sup>916</sup> In any case, Cicero's argument in the *Philippics* stands in striking contrast to his contribution to the former debate. By separating military command from its constitutional embroidery (*fascēs*, senatorial decree, *lex curiata*), it becomes possible to possess *imperium* even in the absence of what was traditionally required for a military command to be legitimate. Cicero now takes the strong line of Appius and sweeps any nuances under the carpet. Indeed, he goes further: if the senate had not confirmed Octavian in his illegal command, according to Cicero, it would have removed from him *imperium* that he already possessed, despite his lack of office, despite his lack of *publica auctoritas*, despite his technical ineligibility for either of these. There is no middle ground between possessed *imperium* and its removal by senatorial non-confirmation in which Cicero's young hero might stand revealed as an opportunistic warlord with an army of Caesar's veterans illegally at his disposal.

Having disposed of the argument that the consuls should draw lots (11.21–25), the point about private action is picked up again at 11.26–7, where Cicero argues that the war should be given to a man already engaged, with full resources and a legitimate command, *imperium legitimum*, which is presumably to be distinguished from the mere *imperium* possessed by Octavian prior to his

<sup>910</sup> Lintott 1999b: 96, Richardson 1991: 2.

<sup>911</sup> Lintott 1999b: 49.

<sup>912</sup> Cf. Nicholls 1967, Develin 1977, Richardson 1991.

<sup>913</sup> Richardson 1991: 2.

<sup>914</sup> Cic. *Fam.* 1.9.25, *Q. fr.* 3.2.3.

<sup>915</sup> Cf. Nicholls 1967: 277, who argues that the *lex curiata* was by this time a bizarre and improperly understood relict, and that *potestas* was held to stem from popular election.

<sup>916</sup> Cic. 1.9.25; cf. Develin 1977: 63.

confirmatory senatorial decree. (One consequence of redefining *imperium* as synonymous with merely ordering soldiers around is that a new qualification is required to distinguish *our* warlords from *their* warlords, i.e. to specify a command's legitimacy, a quality originally explicit in *imperium* alone.<sup>917</sup>) He proposes M. Brutus and/or C. Cassius Longinus as fulfilling these criteria. This is interesting because not only were Brutus and Cassius not meant to be occupying Macedonia, Greece and Asia (it seems likely that Brutus was assigned Crete and Cassius Cyrene<sup>918</sup>), but in general their actions in the East were taken *privato consilio*, a phrase that does not appear in this section of the speech, even though Cicero notes approvingly that Brutus will take action without waiting for senatorial authorisation if he believes that pursuing Dolabella will serve the *res publica*.<sup>919</sup> Cicero provides evidence for this assertion by pointing out that 'both Brutus and Cassius have been already their own senate in many things',<sup>920</sup> which is a commendation rather than a criticism. Given the careful limitations Cicero now wishes to place on the *privatum consilium* discourse in order to argue against a command for the *privatus* Servilius Isauricus, he seems to be treading rather carefully around admitting that Brutus and Cassius have been doing just that in building up their forces in the east and dealing with Antony's brother Gaius. Certainly their actions lack the stamp of positive law:

*Necesse est enim in tanta conversione et perturbatione omnium rerum temporibus potius parere quam moribus. Nec enim nunc primum aut Brutus aut Cassius salutem libertatemque patriae legem sanctissimam et morem optimum iudicavit.*

In such great and complete upheaval and confusion one must be guided by the circumstances, not by standard procedures. This will not be the first time that either Brutus or Cassius has judged the safety and freedom of the fatherland as the most sacred law and the best possible procedure. (Cic. *Phil.* 11.27.)

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<sup>917</sup> Cf. Goldenhard 2011: 159-167 on Cicero's use of *verus* as a way to rewrite traditional Roman values such as *gloria* into more politically congenial concepts.

<sup>918</sup> Manuwald 2007a: 12.

<sup>919</sup> Cic. *Phil.* 11.26.

<sup>920</sup> Cic. *Phil.* 11.27.

Brutus went to someone else's province, rather than Crete; once in residence in Macedonia, he raised new legions, seduced Dolabella's cavalry and judged Dolabella a *hostis* by his personal decision, *sua sententia*, even before Trebonius had reached his sticky end – for otherwise, 'what right had he to draw cavalry away from a consul?'<sup>921</sup> The case is put even more starkly for Cassius, who had set out from Italy intending to keep Dolabella out of Syria:

*Qua lege, quo iure? Eo quod Iuppiter ipse sanxit, ut omnia quae rei publicae salutaria essent legitima et iusta haberentur. Est enim lex nihil aliud nisi recta et a numine deorum tracta ratio, imperans honesta, prohibens contraria. Huic igitur legi paruit Cassius, cum est in Syriam profectus, alienum provinciam, si homines legibus scriptis uterentur, eis vero oppressis suam lege naturae.*

Under what law, by what right? By the right which Jupiter himself established, that all things beneficial to the *res publica* be held lawful and proper. Law is nothing but a code of right conduct and derived from the will of the gods, ordaining what is good, forbidding the contrary. This law, then, Cassius obeyed when he went to Syria; another man's province, if people were following written laws, but such laws having been overthrown, his by the law of nature. (Cic. *Phil.* 11.28.)

Cassius's actions against Dolabella on behalf of the *res publica*, Cicero concludes, should be strengthened by the senate's *auctoritas*.<sup>922</sup> It would be inconvenient to admit now that his heroes acted *privato consilio* (although they did); he appeals instead to the *lex naturae* that stands higher in the grand scheme of things than plain old *lex*.<sup>923</sup> Among other things, this saves him the embarrassment of arguing for the promotion of one or more *privati* at the expense of another. His point is practical: at this point a Nasica without a loyal mob is no use at all.<sup>924</sup>

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<sup>921</sup> Cic. *Phil.* 11.27.

<sup>922</sup> Cic. *Phil.* 11.29.

<sup>923</sup> Gildenhard 2011: 194 (and 191-5 more generally); cf. also Bleicken 1975: 503-7, Girardet 1993, Gotter 1996: 282-4.

<sup>924</sup> Compare Cic. *ad Brut.* 1.9.3 and 1.15.12, stressing the importance of M. Brutus's return to Italy – with an army.

When Cicero cheers on the spontaneous action of his various *privati* heroes, this means only that they are acting without the senate's approval, since behind the scenes he was encouraging them to break the law at every step of the way. Consider *Fam.* 11.7.2, a letter written by Cicero to Decimus Brutus in mid-December 44 and virtually contemporaneous with *Phil.* 3:

*Caput autem est hoc, quod te diligentissime percipere et meminisse volumus, ut ne in libertate et salute populi Romani conservanda auctoritatem senatus exspectes nondum liberi, ne et tuum factum condemnes (nullo enim publico consilio rem publicam liberavisti, quo etiam est res illa maior et clarior) et adolescentem, vel puerum potius, Caesarem iudices temere fecisse qui tantam causam publicam privato consilio suscepit, denique homines rusticos sed fortissimos viros civisque optimos dementis fuisse iudices, primum milites veteranos, commilitones tuos, deinde legionem Martiam, legionem quartam, quae suum consulem hostem iudicaverunt seque ad salutem rei publicae defendendam contulerunt.*

The main point, which we want you thoroughly to grasp and remember in the future, is that in safeguarding the liberty and welfare of the Roman people you must not wait to be authorised by a senate which is not yet free. If you did, you would be condemning your own act, for you did not liberate the commonwealth by any public authority – a fact which makes the exploit all the greater and more glorious. You would also be implying that the young man, or rather boy, Caesar had acted inconsiderately in taking upon himself so weighty a public cause at his private initiative. Further, you would be implying that the soldiers, country folk but brave men and loyal citizens, had taken leave of their senses – that is to say firstly, the veterans, your own comrades in arms, and secondly the Martian and Fourth Legions, which branded their consul as a public enemy and rallied to the defence of the commonwealth. (Cic. *Fam.* 11.7.2.)

While arguing in the senate that the *privatum consilium* of Decimus Brutus and Octavian should be formally approved, Cicero advises in a semi-private letter that Brutus need not wait for his *privatum consilium* to be authorised by the senate. In

fact, that is the last thing he should do, since the senate is not yet *liber* and to wait would be to highlight the weakness of his own case: the illegality of the assassination of Caesar, the equally *privatum consilium* of the young Caesar Octavianus and the soldiers whose desertion, according to Cicero's tendentious logic, branded Antony as a *hostis*. Decimus should do anything necessary to preserve the *res publica* regardless of legality; approval can be gained once the senate and *res publica* are again free to bestow it appropriately. After all, as Cicero goes on to say, 'the will of the senate should be accepted in lieu of authority when its authority is trammelled by fear (*voluntas senatus pro auctoritate haberi debet, cum auctoritas impeditur metu*)'.

Cicero's advice offers a template for any politician who wishes to ignore anything the senate says: it was not the true will of the senate, which was not free to express its own opinions. Further, he undermines his own model of what the *res publica* should be by effectively removing the senate as a source of *auctoritas* or public legitimacy independent of the incumbent magistrates.<sup>925</sup> Instead, he puts himself forward as the mouthpiece, if not ventriloquist, of the *voluntas senatus*. Decimus should listen not to what the senate decrees but rather to what Cicero believes the senate *would* decree, if only it dared. Such behaviour is highhanded enough to illuminate why people might talk of Cicero as a potential tyrant.<sup>926</sup> Moreover, the fact that Decimus was acting *privato consilio* is flagged up in the letter as something that makes his preservation of the *res publica* more illustrious, rather than a necessary evil in troubled times. Decimus Brutus, remarkably, is commended for acting without the backing of a senatorial decree (*publicum consilium*), presumably because in doing so he bucked the general and deplorable trend towards dilatoriness. Shackleton Bailey remarks on the parallels between this passage and *RG* 1.1 without suggesting any significance;<sup>927</sup> the precedent might be considered to have relevance for Octavian, however, given the importance placed on the 'restoration' of the *res publica* and the senatorial settlements after Antony's eventual defeat. Nor was Decimus the only person to receive such encouragement. At *Fam.* 12.7.2 Cicero reports to Cassius that he had been telling the senate and *contiones* that Cassius would not delay after receiving authorisation; he hopes

<sup>925</sup> Compare Caes. *BC* 1.3 and the depiction of the senatorial majority as cowed by the Pompeian faction; cf. Raaflaub 2003b: 52.

<sup>926</sup> Cic. *Phil.* 14.14-18.

<sup>927</sup> Shackleton Bailey 1977: 495.

Cassius will go right ahead. Similarly at *Fam.* 10.16.2 Plancus is exhorted to be his own senate. Cicero was doing his bit to make sure that all this action *privato consilio* went ahead: at *ad Brut.* 1.15.6, he claims that the young Caesar's actions (thanks to which everyone is still alive, if they care to admit it) were taken not *privato consilio* but rather *ex fonte consiliorum meorum*. Cicero himself is (or claims to be) the ultimate source of this private war.

The constitutional danger of such an approach is highlighted by Marcus Brutus in a letter written ca. 7 May 43 from Dyrrachium. Brutus takes issue with Cicero declaring Antony and friends *hostes*:

*statuo nihil nisi hoc, senatus aut populi Romani iudicium esse de iis civibus qui pugnantes non interierint. 'At hoc ipsum' inquires 'inique facis qui hostilis animi in rem publicam homines civis appelles.' Immo iustissime; quod enim nondum senatus censuit nec populus Romanus iussit, id adroganter non praeiudico neque revoco ad arbitrium meum.*

my only conclusion is that the senate or the people of Rome must pass judgement on those citizens who have not died fighting. You will say that my calling men hostile to the *res publica* 'citizens' is an impropriety in itself. On the contrary, it is quite proper. What the senate has not yet decreed, nor the Roman people ordered, I do not take it upon myself to prejudge, I do not make myself the arbiter. (Cic. *ad Brut.* 1.4.2.)

Brutus pinpoints and implicitly critiques Cicero's underlying philosophy. By transplanting the term *hostis* from the legal realm into the moral one through the claim that bad citizens are *hostes* and no citizens at all, Cicero removes the judgement from the traditional sources of authority and legality (the senate and people) and takes it upon himself to decide who may and who may not be called a citizen. Brutus's criticism holds up a similar mirror to the *privatum consilium* argument, through which actions are justified not by legality (strict or otherwise) but instead by appeal to the *virtus* of the agent as judged against the needs of the *res publica*.<sup>928</sup> It is the *virtus* of Decimus Brutus, Caesar Octavianus, Marcus Brutus,

<sup>928</sup> Galinsky 1996: 51, Arena 2007: 52-3.

Gaius Cassius and their armies that justifies their illegal *privatum consilium* on behalf of the *res publica*; and it is Cicero who takes it upon himself, as an infallible arbiter of morals and the morality of actions, to proclaim their all-important *virtus*. Although Cicero proposed to (re)construct a *res publica* founded on senatorial *auctoritas*, he had few qualms about subverting his own ideals when the senate as it actually existed proved slow or unwilling to see things his way. It is reasonable to excuse this, and perhaps not very hard: ‘extenuating circumstances are easy to find; the situation was extreme and required extreme measures; success or failure would, in the end, determine right and wrong’.<sup>929</sup> The eventual appropriation of Cicero’s rhetoric by Augustus at *RG* 1.1, however, indicates how such subversion and innovation in extreme situations might be used to justify very different political philosophies once the dust had settled.

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<sup>929</sup> Habicht 1990: 98; cf. also Mitchell 1991: 310-11.

## 7. CONCLUSION

Let me now draw some broad conclusions about the uses and abuses of the concept of *res publica* during the Roman Republic. I began by establishing the principle that in this period, *res publica* referred neither to a system of political organisation ('a republic') nor to the specific political superstructure that existed between the Roman monarchy and the principate ('The Republic'), but rather has the literal meaning of 'the public property/business', which takes on the extended meaning of 'the public space within which those involved in managing the public property/affairs move'. This carries the important implication that *res publica* could mean different things to different people, which makes the ways in which speakers and writers positioned themselves in relation to the *res publica* (and how such positioning affected *res publica* as a concept) an interesting topic for study.

My first chapter discussed *res publica* as public business, which forms a conceptual nexus centred on the magistrates and the need to manage this public business. The magistrates themselves had a particularly intimate relationship with the *res publica*, especially when responsible for administering it in the field and therefore at a distance from the rest of Rome's political world. The testimony of Caesar's *Bellum Gallicum* and Cicero's letters from Cilicia suggests that such magistrates were entitled to depict themselves essentially *as* the *res publica*. This is understandable (after all, the success of their operations abroad *did* impact on the *res publica* as a whole), but should not be taken as an indication that the individual magistrate is subsumed into his office; in particular, the extensive use that former magistrates made of achievements carried out while in office suggest otherwise. Since an individual's *dignitas* rested on his public office and achievements, however, ways naturally developed in which such *dignitas* could be challenged. In general, people were less likely to challenge the principle (from which everyone could hope to benefit) than the achievement on which an individual's claim to *dignitas* rested. All the same, there *were* ways to subvert the principle: firstly the elder Cato's, which shifted attention from great achievements to impeccable behaviour, and secondly the *popularis* paradigm shift that *did* try to subsume the magistrate to his office by

assigning responsibility and credit for the administration of the *res publica* to the electing body, the *populus*.

From *res publica* as public business, I moved to various concerns about the long-term wellbeing of the *res publica* as the structured political sphere, from the general fear of moral decline expressed by people like Cato to the specific fear that the *res publica* was endangered by the specific activities of specific individuals. The first clearly historical such incident seems to be P. Scipio Nasica's murder of Tiberius Gracchus in the interests of maintaining the *res publica salva*, which was followed a decade later by the formalisation of this concern in the *senatus ultimum consultum* first issued against Tiberius's brother Gaius. A more generalised concern in the interim may be traced in the fragments of the annalist historians and the sole surviving relict of the *laudatio* for Scipio Aemilianus. Sulla's *res publica constituta* shows what happens when sporadic violence is not sufficient to prevent outright civil war: having contributed to the implosion of the traditional *res publica*, he used his victory to rebuild a political system that had a superficial resemblance to the previous version, even if, as Flower argues,<sup>930</sup> it should really be read as a sharp break with the past. In any case, this was an uneasy situation, as Cicero's rhetorical *res publica*, which was compelled to surrender itself to Sulla, indicates.

The complete spectrum of meanings can be found in Cicero's speeches, treatises and letters. Over the course of one particularly eventful year, as I outlined in Chapter 4, he used the pivot of consular responsibility for managing the *res publica* to shut down disagreeable legislation and a politicised trial; defined *res publica* in terms of political structures to an audience that was probably more inclined to think of it as the public business; gave *res publica* a firm and explicit geographical location within the public and political spaces of Rome itself; spearheaded a sporadic outbreak of violence intended to prevent (what he claimed was) an imminent danger; constructed the optimistic rhetorical fiction of a unified *res publica* that expelled Catiline from the city; and ended on an uneasy note that looked forward to the problems he was going to face after his consulship. When these problems became insurmountable, the triumphalism of *Pro Sulla* transmuted into the elaborate and unconvincing rhetorical fiction of the *Post Reditum* and *De Domo Sua* speeches, which threw the *res publica* into exile along with Cicero and brought it back with

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<sup>930</sup> Flower 2010: 29; cf. further 121-34 *ibid*.

him as well. Amid all this rhetorical flannel, however, the relationship Cicero constructs more or less in passing between Pompey and the *res publica* provides an interesting foreshadow of the Augustan principate.

Chapter 4 is essentially concerned with rhetorical positioning. What took place during the Caesarian civil wars also involved positioning, but a less rhetorical sort: whereas the ‘Republicans’ positioned themselves explicitly as defending the *res publica* even after their flight from Rome and Italy, which involved a geographical dislocation that Cicero, for one, found extremely upsetting, Caesar downplayed *res publica* on his own behalf, implied heavily (without actually coming out and saying as much) that the opposition’s claim was illegitimate and cynical, and restricted himself to administering a *res publica* that remained firmly in Rome. The disjunction between these two versions left those uncommitted to either side, such as Cicero and his correspondent Sulpicius, in a state of despair, especially after the ‘Republican’ armies were progressively defeated and it became increasingly obvious that Caesar was not going to imitate Sulla by producing a new *res publica constituta* out of his rather tatty hat. In response to Caesar’s unfree *res publica*, the ‘Liberators’ referred pointedly to the *libera res publica*, a phrase that expresses a specific (political) condition for the public sphere they wanted to recover from the wreckage: freedom. Cicero, meanwhile, provided more detailed recommendations for rearranging the deckchairs on the public sphere in the *First Philippic*. (His recommendations were somewhat undermined, however, by his attempts to get around the misbehaviour of his preferred champions by resorting to the fictional *res publica* in later speeches.)

Finally, I looked at *privatum consilium* on behalf of the *res publica*, which was one of Cicero’s euphemisms for the grossly illegal behaviour of his preferred champions during the post-Caesar phase and was later expropriated by Augustus for the *Res Gestae*, his end-of-life review. Cicero wrenched what was originally an uneasy justification of political homicide (thanks to P. Scipio Nasica, whose example was generally commended but not imitated) into a justification of civil war activities. This was not wholly straightforward, since Caesar had acted on his *privatum consilium* when he crossed the Rubicon, and it is clear both that Cicero faced opposition and that he risked this particular argument rushing off in unwelcome directions. Cicero was playing catch-up with events during a confused and difficult period; although it may be unfair to blame him too much for the things he said, *RG*

1.1 shows how Cicero's claims *were* later picked up by Augustus in a very different climate that Cicero would not have approved at all.

To wrap up, then, this thesis is not an exhaustive account of the ways in which people understood and related to *res publica* in the Roman Republic. It would take more space and time than I possess to produce such an account, which would explore several issues I have treated lightly or passed over altogether, such as religion and *res publica*, how non-Romans related to the *res publica*, the defence of the *res publica* from external threats, the fear of political monopoly within the *res publica* (*regnum, dominatio*), and the rhetorical transfiguration of Pompey and various people Cicero claimed had been born 'for the *res publica*', such as Decimus and Marcus Brutus and Octavian. Cicero in particular drew the short straw for this study. He is by far the most important source for the study of *res publica* (or indeed any other aspect of political life in the late Republic) and taking a thematic approach meant treating his vast corpus brutally, which is perhaps not just a pity but also a pitfall. I have been systematic where possible, but the inevitable cherry-picking of arguments and episodes is a poor way to handle Cicero, who reflects and reinvents the political world he inhabits. A thorough analysis of how Cicero engaged with *res publica* throughout his career, especially in his theoretical works, would repay anyone who wanted to make the effort, if not for the greater understanding of *res publica* then at least for the greater understanding of Cicero himself.

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