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SECRET BALLOT AND ITS EFFECTS IN THE LATE ROMAN REPUBLIC¹

A series of ballot laws, passed in the second part of the second century, made the voting secret in all the Roman assemblies, starting with the electoral ones (*Lex Gabinia*, 139 BC). The ancient sources which refer to the introduction of the ballot are few; they describe it as a radical innovation. Modern scholars have long regarded the change as a democratic one, lessening the control of the upper classes over the electorate, and enhancing the voters' effective freedom of choice². In recent years, however, mainly in the context of the renewed controversy on the political character of the Republic, this view has been challenged or qualified by several scholars who treat the subject of secret voting in a manner more consistent with the widely shared oligarchic interpretation of the Roman political system³. In this article I shall argue that the traditional view on the ballot laws is correct, and discuss some of the wider political and social repercussions of the introduction of the ballot in the Roman voting assemblies.

¹ I wish to thank Dr. HANNAH COTTON and Prof. WERNER ECK for their helpful comments and criticisms.

² See, e.g., Ch. WIRSZUBSKI, *Libertas as a Political Idea at Rome in the Late Republic and the Early Principate*, Cambridge 1950, 20; J. A. O. LARSEN, *The judgment of antiquity on democracy*, *Cl.Ph.* 49, 1954, 10-11; H. H. SCULLARD, *Scipio Aemilianus and Roman politics*, *J.R.St.* 50, 1960, 70-71; L. R. TAYLOR, *Forerunners of the Gracchi*, *J.R.St.* 52, 1962, 26; T. P. WISEMAN, *New Men in the Roman Senate*, Oxford 1971, 4; P. A. BRUNT, *Social Conflicts in the Roman Republic*, London 1971, 65-66; C. NICOLET, *Le metier de citoyen dans la Rome republicaine*, Paris 1976, 361-365; F. MILLAR, *The political character of the classical Roman Republic, 200-151 BC*, *J.R.St.* 74, 1984, 18; J. LINDERSKI, *Buying the vote: electoral corruption in the late Republic*, *Ancient World* 11, 1988, 91; A. WALLACE-HADRILL, *Patronage in Roman society in: A. WALLACE-HADRILL (ed.), Patronage in Ancient Society*, London 1989, 70. See also other works cited by N. ROULAND, *Pouvoir politique et dependance personelle dans l'antiquité romaine*, Brussels 1979, 240 n. 66.

³ E. S. GRUEN, *The exercise of power in the Roman Republic, City-States in Classical Antiquity and Medieval Italy*, Stuttgart 1991, 257-261; W. V. HARRIS, *Ancient Literacy*, Cambridge Mass. 1989, 168-170; W. V. HARRIS, *On defining the political culture of the Roman Republic*, *Cl.Ph.* 85, 1990, 293; U. HALL, *Greeks and Romans and the secret ballot, "Owls to Athens"* – *Essays On Classical Subjects Presented to Sir Kenneth Dover*, Oxford 1990, 194-199. The political significance of the ballot laws is belittled – though not denied – by CH. MEIER, *Res Publica Amissa*, Wiesbaden 1966, 128-129.

1

The significance of the change can more easily be appreciated when one analyses the former system. U. HALL has rightly stressed the difference between the Roman method of oral and open voting and the system of open voting generally practised in the popular assembly of democratic Athens. Whereas the Athenian demos voted as a whole, by show of hands, the voting in all the Roman assemblies was by groups, and “it is certainly easier to influence and to monitor the vote of individuals segregated in groups, especially where ties of patronage are strong...” Moreover, “the individuals in each group announced their choice orally, one by one, to the teller, or *rogator*. How individuals voted was therefore a very public affair”; the combination of voting procedures and social realities ensured the upper classes a powerful influence over the voting assemblies⁴.

Although open threats against Roman voters seem to have been exceptional (only two such cases are mentioned in the sources, and in one of them the threat is said to have offended the *patres* no less than the people⁵), the necessity to vote openly, under the watchful eyes of their superiors, could not fail to hamper the voters’ freedom of choice. A voter might be reluctant to offend not just his patron (as if often emphasised), but his landlord, or his military commander – actual or prospective. It is perhaps significant that in both of the cases where open threats were used they were directed against soldiers or veterans. In a militaristic society like that of Rome, the hold of the ruling class on the military commands may explain its influence in the voting assemblies perhaps no less than the patronage system⁶.

The change brought about by the ballot laws must then have been quite significant. Modern scholars have stressed the popular and liberating nature of this legislation, and it has even been described as a manifestation of “a much more genuine popular movement than the Gracchan legislation itself”⁷. In recent years, however, several objections to this view have been raised.

E. GRUEN and W.V. HARRIS, who question the political significance of the ballot laws, have argued that there is no evidence that these laws were considered by the ruling class as a serious threat to its domination. The laws “gained passage with little resistance and remained in force without recorded efforts at repeal”;

⁴ HALL (n. 3), 193.

⁵ Liv. 4.49,11; 45.39,20 (cf. Plut. Aem. 31,7). No such threats are mentioned in Dionysius of Halicarnassus’ descriptions of the struggle between the orders.

⁶ Cf. Polyb. 6.17,9: the consuls’ power is said to be enhanced by the fact that “everyone is reluctant to oppose the projects of the consuls as all are generally and individually under their authority when in the field” (6.17,9). This remark is part of Polybius’ description of the balance between the different elements of the mixed constitution, written, as is widely accepted, in mid-second century when the voting was still open.

⁷ LARSEN (n. 2),10. This may well be an exaggeration.

they “gained approbation and acceptance”⁸; they were “not seen by contemporaries as revolutionary”; there was “little excitement”⁹ about them. But the period in question is not well-documented enough for us to be able to measure exactly the level of excitement generated by the ballot laws. What evidence we do have, however, clearly indicates that these laws were regarded as a radical popular innovation, and as such were opposed and resented by the defenders of senatorial supremacy.

The debate on the secret ballot in the third book of Cicero’s *De Legibus* (33 – 39) is the most detailed evidence that we have on the subject. Quintus Cicero, who is given here, as well as in the debate on the tribunate in *Leg. 3.19-26*, the role of the optimate spokesman, bitterly attacks the ballot laws as destructive to the power of the *boni*. To Marcus’ remark that oral voting is desirable but may be politically unattainable (33) Quintus objects that “it is better to be overpowered in defence of a good cause than to surrender to a bad one. Everyone knows that the ballot law has deprived the *optimates* of all their influence... The people should not have been provided with a hiding-place, where they could conceal a mischievous vote (*vitiosum suffragium*) by means of the ballot, and keep the *boni* in ignorance of their real opinions. For these reasons no good citizen (*bonus*) has ever proposed or supported a measure like yours.” (34) Quintus goes on to relate the history of the four ballot laws in a hostile manner, denouncing each of their proposers as demagogues who damaged the republic. He reminds Marcus that their grandfather had strongly opposed the passage of a ballot law in Arpinum and was told by the Roman consul that he should have dedicated his efforts to the welfare of the republic and not just to that of a small town (36). Marcus is warned that if he adopts the ballot in his laws he will be blamed for it, just as Scipio Aemilianus was blamed for supporting the Cassian law (which introduced the ballot into judicial *comitia*). Atticus expresses his agreement with Quintus’ view: “Certainly, no popular measure (*nihil populare*) has ever pleased me” (37).

The account of the ballot legislation ascribed to Quintus Cicero is of course retrospective and biased. But in trying to assess the political significance of the ballot laws it is safer, in my view, to rely on the general tenor of this account, and on the vehemence of Quintus’ denunciations, rather than on any attempt to reconstruct, from the meagre evidence that we have, the exact circumstances surrounding the adoption of *Lex Gabinia* or *Lex Cassia*¹⁰. On the passage of the Cassian law (37 BC) virtually all we have is a brief passage of Cicero: “[this law] was long opposed by the tribune of the plebs M. Antius Briso with the help of M. Lepidus the consul, and it became a matter of reproach to Publius Africanus that Briso was believed to have withdrawn his opposition to it through the influence of

⁸ GRUEN (n. 3), 261; 259.

⁹ HARRIS, *On defining the political culture of the Roman Republic*, *Cl.Ph.* 85, 1990, 293; HARRIS, *Ancient Literacy*, 1989, 169.

¹⁰ HARRIS, *Ancient Literacy*, 1989, 169 – 170; GRUEN (n. 3), 258 – 259.

Africanus" (Brut. 97; cf. Leg. 3.37). But the intensity of the political drama that lies behind this sentence must remain a matter of conjecture¹¹. It may well be true that Scipio Aemilianus, who gave his support to the measure, "made a point of cultivating his image as *popularis* but hardly qualifies as a genuine champion of popular interests"¹². This does not necessarily prove, however, that the law was not genuinely popular in its tendency. It may be seen as proof that the popular element in the Roman political system was, contrary to what is often assumed, strong enough for even a half-hearted democrat like Scipio to find it occasionally expedient to espouse a radical popular measure. In fact, why else would any serious Roman politician "cultivate his image as *popularis*"? For the same reason, the fact that the proposer of the law, L. Cassius Longinus Ravilla, went on to become consul in 127 and censor in 125 does not prove that his law had not "deeply offended the aristocracy"¹³, unless one assumes – wrongly, in my view – that the elections to higher offices were fully controlled by the ruling class (cf. note 23 below). That no attempt to repeal the ballot laws is recorded is again not necessarily proof that the ruling class did not seriously object to them. One may well join Cicero in doubting whether such a repeal would be politically feasible (Leg. 3.33). Sulla would probably have been the only serious candidate available to take such an action, and one can only guess why he did not do it. He may have felt that he had already taken the sting out of the legislative and judicial assemblies by curtailing the powers of the tribunate, and perhaps, as regards trials, by the system of senatorial standing courts¹⁴; the crippling of the tribunate would also make it less likely that dangerous demagogues would be able to procure election to higher magistracies.

Marcus Cicero's own view, as expressed in this debate, is highly instructive, and demonstrates the great importance which he attached to this question. Whereas in 3.19-26, having allowed Quintus to attack the tribunate, he proceeded to defend this institution quite forcefully as a relative good, he treats the voting by ballot as, at best, a necessary evil. His opinion is "that no method of voting could be better than that of open declaration; but we must consider whether or not this is feasible" (33). Whereas the tribunate is introduced by Cicero into his code exactly in its existing form (19), on the question of the ballot he suggests a compromise

¹¹ Cf. GRUEN (n. 3), 261 n. 56.

¹² GRUEN (n. 3), 258. On Scipio's image as *popularis* cf. Plut. Aem. 38.

¹³ HARRIS, *Ancient Literacy*, 1989, 170.

¹⁴ Cf. P. A. BRUNT, *Fall of the Roman Republic*, Oxford 1988, 423. Ch. MEIER finds Sulla's failure to repeal the ballot laws remarkable, and suggests that the strong optimate opposition to the ballot may not have fully developed until the last decades of the Republic – (n. 3), 129 n. 400. But if so, the evidence on the fierce senatorial opposition to the adoption of the ballot laws in the second century is hard to explain (as MEIER himself points out). While it might be argued that some of Cicero's accounts of this opposition could have been coloured by contemporary experiences and perceptions, the testimony of Plutarch on the optimate resistance to the Marian Law in 119 is quite specific and can hardly be doubted (*infra*).

which involves a far-reaching change in the existing legal situation (uncharacteristically for *De Legibus*; cf. 2.23; 3.12). “The voting shall be open to the optimates, free to the plebs (*ea [i.e. suffragia] optumatis nota, plebi libera sunt*)” (3.10). Cicero explains:

“Let the people have their ballot as a safeguard of their liberty (*quasi vindicem libertatis*), but with the provision that these ballots are to be shown and willingly [voluntarily?] exhibited to any of our best and most eminent citizens (*dum optimo cuique et gravissimo civi ostendatur utroque offeratur*), so that the people may enjoy liberty also in this very privilege of honourably winning the favour of the *boni*” (39)¹⁵.

This either means that the ballot *has* to be shown to “the best citizens” (i.e. no secrecy of all) or that it *may* be shown to them on request (i.e. optional, rather than compulsory, secrecy)¹⁶. The second possibility seems more likely, for if the showing of ballots were to be obligatory, Cicero’s suggestion would in fact be no compromise at all, and not even *species libertatis* (39) would be preserved. In this case, however, optional secrecy would hardly protect the voter, since Cicero’s proposal includes the repeal of the laws which forbade one to accost a voter and question him as to his vote (38). Refusing to show one’s ballot “*optimo cuique*” under such circumstances would not be easy, and might in fact constitute a tacit “admission of guilt”¹⁷. The fact that Cicero proposes to leave the powers of the tribunes intact, but severely restricts the secrecy of the voting, does not necessarily prove that secret voting was, in his opinion, of graver democratic significance than the tribunate: the tribunate was of course much more rooted in the system and would have been more difficult to tamper with. But it seems highly significant that in the case of the secret voting Cicero overcomes his reluctance, displayed throughout the *De Legibus*, to interfere with the constitutional *status quo*, even when it is favourable to the *populares*. He certainly does not appear to have thought that the ballot laws were politically harmless and insignificant.

Other evidence points in the same direction. In Cicero’s *De Amicitia* (dramatic date 129 BC) Laelius deprecates the strengthening of the popular tendency in Roman politics, denouncing the tribunate of Tiberius Gracchus and expressing concern over the expected tribunate of his younger brother. He proceeds to attack the ballot laws: “You see how much mischief has been caused already in the matter of the ballot, first by the Gabinian Law, and two years later by the Cassian

¹⁵ For a detailed discussion on this subject see C. NICOLET, *Cicero, Platon et le Vote Secret*, *Historia* 19, 1970, 39 – 66.

¹⁶ Cf. NICOLET (n. 15), 42 (accepting both possibilities). The word *utro* seems to point in the direction of optional secrecy.

¹⁷ Similarly, when the secret ballot was introduced in Britain in 1872, its Conservative opponents suggested, by way of compromise, giving every voter an option between secret and open voting. This was flatly rejected by the Liberal government, for which “the whole value of the Bill lay in the complete suppression of evidence as to how a voter had cast his vote.” – C. O’LEARY, *The Elimination of Corrupt Practices in British Elections*, Oxford 1962, 84.

Law. I seem now to see the people estranged from the Senate, and the weightiest affairs of state determined by the caprice of the mob (*multitudinis arbitrio*)” (42).

Gaius Marius carried, during his tribunate in 119, a law designed to protect the effective secrecy of the voting by narrowing the *pontes* which the voters had to cross on their way to the ballot-box (the *cista*), “presumably so that they could only be crossed in single file, with no room for the *primores viri* to stand there and exert moral influence before the voters dropped their ballots in the urn.”¹⁸ The law, according to Plutarch, tended to diminish the influence of the nobility; it was strongly resisted by the senate, which only gave way after Marius’ threat to arrest the consul Cotta who was leading the opposition.

In his speech *Pro Sestio*, Cicero refers to past contentions between the people and the *optimates*. He gives three examples of controversial popular legislation. The Cassian law on secret voting in judicial assemblies is the first of those examples (while the agrarian law of Tiberius and the corn law of Gaius Gracchus are the second and the third): “A ballot law was proposed by Lucius Cassius. The people thought that their liberty was at stake. The leaders of the State held a different opinion; in a matter that concerned the safety of the *optimates*, they dreaded the impetuosity of the masses and the licence afforded by the ballot” (103)¹⁹.

The struggles over the ballot laws would be recalled by Pliny the younger: “You remember, no doubt, having often read what commotions were occasioned by the ballot law (*lex tabellaria*), and how much the author of it was both approved and condemned” (*Epist.* 3.20,1). That this testimony “lacks specific reference”²⁰ does not in any way diminish its importance. On the contrary: although the context of this sentence (the introduction of the vote by ballot into the elections held in the senate) may be thought to indicate that Pliny has in mind specifically the *Lex Gabinia*, it is quite probable that he speaks of ballot legislation in general²¹. The passage shows that in Pliny’s time it was a matter of common knowledge that the issue of secret ballot was one of the great political controversies of the late Republic.

U. HALL accepts that the ballot laws would eventually come to be regarded by men like Cicero as a “triumph of democratic pressure”, which accounts for the way the subject is treated in *De Legibus*. But she argues that the first of those laws, the *Lex Gabinia* dealing with elections, was meant primarily to protect the

¹⁸ WISEMAN (n. 2), 5. See *Plut. Mar.* 4,2-4; *Cic. Leg.* 3.38.

¹⁹ Cf. *Cic. Leg. Agr.* 2.2,4: *tabellam vindicem tacitae libertatis*. Cicero speaks before the people in a *contio* and is posing as a *consul popularis* (*ibid.* 2.6). On secret ballot and *libertas* see also *Cic. Sest.* 103; *Planc.* 16; *Schol. Bob. 135 Stang*; cf. WIRSZUBSKI (n. 2), 50. The ballot is sometimes associated with the goddess *Libertas* on the coins that celebrate its institution, issued by two of the families associated with the ballot legislation – see on this L. R. TAYLOR, *Roman Voting Assemblies*, Ann Arbor 1966, 35 – 40; 126 – 127.

²⁰ GRUEN (n. 3), 261 n. 56.

²¹ The singular *tabellaria lex* is used in this general sense in *Leg.* 3.34.

electorate in the centuriate assembly – “the *equitum centuriae* and at most the two top classes” and must therefore have been inspired not by “theoretical idealism” and a wish to assert the principle of popular sovereignty, but by the “interests of a limited section of the Roman society, the relatively well-off.”²² Whether political actions can be so neatly classified as either inspired by “theoretical idealism” or meant to serve the practical needs of this or that section of society is, it seems to me, rather a moot point. But there is no reason to suppose that the sections of society whose interests the *Lex Gabinia* served were so limited. The law applied to tribal as well as to centuriate elections, and the electorate of the centuriate assembly itself was, as I have argued elsewhere, wider than U. HALL assumes here²³.

HARRIS holds that since literacy in Rome was confined to a small percentage of the population, the initiators of the ballot laws must have “[known] that voting would be restricted to a prosperous and literate minority”; the ballot laws could not then have intended to establish anything like a democracy, “notwithstanding Cicero’s later huffing and puffing against written ballots in general”²⁴. HARRIS’ thesis on the level of literacy in Rome, which cannot be discussed here at any length, is itself controversial²⁵ and does not necessarily outweigh Cicero’s “huffing and puffing” as well as the testimony of other sources which describe the ballot laws as an example of radical popular legislation. Nor can the popular character of the late-republican tribal assembly be doubted, whatever view one adopts as regards the centuriate assembly. Moreover, as HARRIS himself points out, the level of literacy that a voter would be required to possess was very modest²⁶. In elections it was enough for a voter to write the initials of the preferred candidate or candidates on the voting-tablet (Cic. Dom. 112); in legislative and judicial votes, official ballots were distributed, with every choice represented by one letter²⁷. The two debates – on the level of literacy in Rome and on the extent of popular participation in the Roman assemblies – are best allowed to go their separate ways.

It has been suggested that the ballot laws did not fully ensure the effective secrecy of the voting; the nobles found ways to circumvent the legislation and thus

²² HALL (n. 3), 194 – 197. Cf. MEIER (n. 3), 129.

²³ A. YAKOBSON, *Petitio et Largitio: popular participation in the centuriate assembly of the late Republic*, J.R.St. 82, 1992, 32 – 52. It is of course true that each ballot law had its own particular background, and speaking of “the ballot legislation” in general is inevitably schematic; cf. J. BLEICKEN, *Staatliche Ordnung und Freiheit in der römischen Republik*, Kallmünz 1972, 38ff.

²⁴ HARRIS, *Ancient Literacy*, 1989, 169.

²⁵ See M. BEARD [et al.], *Literacy in the Roman World*, Ann Arbor 1991. E. E. BEST regards the ballot laws as a proof that literacy was widespread in Roman society – *Literacy and Roman voting*, *Historia* 23, 1974, 428 – 438.

²⁶ See HARRIS, *Ancient Literacy*, 1989, 168 – 169.

²⁷ Cf. Cic. Att. 1.14,5.

protect their ascendancy²⁸. GRUEN suggests that Cicero's testimony in *De Legibus* 3.38 gives support to this theory. Cicero proposes, as part of his "compromise solution" to the question of secret voting, to abolish "all the laws, passed thereafter [i. e. after the ballot laws themselves], which ensure the secrecy of the ballot in every possible way, providing that no one shall look at a ballot, and that no one shall question or accost the voters. The Marian Law even made the passages (*pontes*) narrow." This passage, according to Gruen, "clearly implies that efforts were made to dilute the effectiveness of the secret ballot by exerting pressure at the ballot box. Hence Cicero's proposal intended only to restore in legitimate form that prior practice."²⁹ Certainly, this passage implies that such efforts *had been made* prior to the adoption of the additional measures designed to ensure the effectiveness of the secret ballot; but it also implies that those additional measures were quite effective, which is obviously why Cicero proposes to repeal them, and why the Marian Law met with such vigorous resistance in the senate. After the adoption of the Marian Law we do not hear of attempts to violate the secrecy of the voting. Admittedly, neither do we hear of the abuses in this field which must have led to the adoption of the additional legislation mentioned by Cicero; nor indeed is the adoption of those laws (except for the *Lex Maria*) described in the sources available to us. Arguing from silence is always unsafe, given the paucity of our sources. But this silence may be of some significance when it is maintained by the sources dealing with the last decades of the Republic – a relatively well-documented period, for which various malpractices connected with elections are amply attested. The ballots themselves could be tampered with (Cic. Att. 1.14,5), but no attempt to discover how a man was about to vote or had voted is reported. This does not of course mean that no such case ever occurred, but it seems unlikely that there was any widespread and systematic interference with the secrecy of the voting.

2

An individual's vote was thus effectively secret and free; moreover, the nature of the Roman voting units seems to have been conducive to ensuring what may be defined as the "collective secrecy" of the voting – in some ways more so than are the voting arrangements in a modern state which practises contested elections. The modern system of polling stations spread in great numbers throughout the territory of a country enables people to vote near their place of residence and facilitates massive participation in the voting. But, since the results of the vote in each polling station are known and published, it can often be possible to know how a particular neighbourhood or a particular village has voted. While the

²⁸ Thus ROULAND (n. 3), 312 – 317.

²⁹ GRUEN (n. 3), 260.

secrecy of each citizen's vote is protected, small communities can be exposed to considerable pressure, with the result that individual voters may feel that their freedom of choice is hampered³⁰. This pressure need not be overt and illegal, or even consciously applied by anyone. It may exist only in the minds of some cautious voters; nevertheless, it can be quite heavy and effective. Moreover, modern candidates represent political parties. In some countries with a dominant ruling party voters may be reluctant to vote against a candidate which represents it, even if they have nothing to fear from the candidate himself (unless they can confidently expect that the ruling party itself is about to be voted out of office). A modern government can certainly find ways to reward or penalise (at least indirectly, by withholding benefits) not just small communities, but whole districts or provinces, for their behaviour at the polls³¹.

In Rome, on the other hand, the results of a vote would only be known according to the voting units of the various assemblies. These units were relatively few in number and each of them comprised a relatively large section of the electorate. We do not know "how many Romans voted"³² in any assembly or in any particular voting unit, but assuming that McMULLEN's pessimistic theory is correct, even small groups of voters are less easily intimidated if they represent large sections of the electorate: it would not be easy, even for a powerful noble, to penalize a considerable part of the Roman people. No single noble, however powerful, nor yet a clique or a faction of nobles, competing with other cliques and factions, possessed in the Roman state a power equivalent to the power of a modern government or a modern ruling party.

Moreover, the voting units were heterogeneous in their composition, and this fact, even more than their size, reduced the possibilities for pressure and intimidation. Of the 35 tribes comprising the tribal assembly the four urban tribes were the

³⁰ Cf. A. REEVE and A. WARE, *Electoral Systems – a Comparative and Theoretical Introduction*, London 1992, 56; S. ROKKAN, *Citizens, Elections, Parties*, Oslo 1970, 173; J. CHUBB, *The social bases of an urban political machine: the Christian Democratic Party in Palermo*, in S. N. EISENSTADT and R. LEMARCHAND (eds.), *Political Clientelism, Patronage and Development*, Beverly Hills 1981, 80.

³¹ See, e.g., R. L. HARDGRAVE, *India: Government and Politics in a Developing Nation*, New York 1970, 185 – 186; R. H. McDONALD and J. M. RUHL, *Party Politics and Elections in Latin America*, Boulder 1989, 14. Cf. J.-F. MEDARD, *Political clientelism in France: the center-periphery nexus reexamined*, in EISENSTADT and LEMARCHAND (n. 30), 152 – 156 on the systematic manipulation of state power and resources in order to insure the republican electoral conquest of pro-monarchist constituencies in the Third Republic.

³² The title of R. McMULLEN's article in *Athenaeum* 58, 1980, 454 – 457. Cicero indicates that, in a legislative assembly, only a few voters might sometimes represent a tribe – *Sest.* 105. This does not, in all probability, apply to elections, "as the candidates would take good care to have as many supporters as possible" – *WISEMAN* (n. 2), 128 n. 2. *BRUNT* (n. 14), 25 holds that Cicero's remark applies only to cases when "legislation was a formality". It is natural to assume that assemblies dealing with controversial issues – or important elections – would be relatively better attended.

largest voting units in Rome: huge numbers of voters must have been registered in each of them, and for city residents it would be easier to come and take part in the voting. Geographically, each urban tribe must have covered a large part of the city. The 31 rural tribes included, in the late Republic, voters from several regions of Italy (without geographical continuity), some of them quite large, as well as city residents³³. When the result of a Roman tribe's vote on any question was announced, there was no telling how a particular neighbourhood in the city or a particular community in Italy had voted. The same applied to the centuriate assembly, at least as regards the first property-class, whose centuries were undoubtedly coordinated with tribes (each tribe being represented by one century of *iuniores* and one century of *seniores*). It is likely, in my view, that the lower classes were also coordinated with tribes³⁴, with the similar result that the vote of a century could not be "pinned down" to a particular small community. In any case, it is clear that the centuries of the lower classes were larger than those of the first class, and this, while reducing the value of each vote cast in them, protected the voters' anonymity. The smallest voting units in Rome must have been the centuries of knights, and these were the least likely to be susceptible to intimidation.

Furthermore, the Roman ban on re-election allowed the voter greater psychological freedom of choice between the different competing candidates. In modern political systems it is well known that an incumbent enjoys a considerable advantage over a challenger³⁵. This does not necessarily have anything to do with intimidation of any kind. Voters may tend to vote for an incumbent out of conservatism, fear of change, or respect for authority (especially in case of high office-holders), and of course political power provides great opportunities for publicity and self-advertisement. In the United States, for instance, a president

³³ The majority of rural tribes had had divided districts already before the Social War; thereafter, only three of the thirty-one tribes were continuous areas, and some of the others comprised five or six separated territorial units. See L. R. TAYLOR, *The Voting Districts of the Roman Republic*, Rome 1960, ch. 8.

³⁴ If the centuries of the lower classes were not coordinated with tribes, according to what criterion would a person be "allotted" to a particular century within his class? If the territorial principle was not used, then it would be even more difficult to trace the vote of a century to a particular community than that of a tribe. It seems more natural to assume that the territorial principle was used; but why would the censors invent a separate territorial division of the city and of Italy for this purpose rather than adopting the division provided by the system of tribes? Considerations of administrative convenience militate in favour of the view that the lower classes were coordinated with tribes – perhaps no less than any other argument. The question, however, is not settled; cf. L. G. GRIEVE, *The reform of the comitia centuriata*, *Historia* 34, 1985, 278 – 309, with a list of references in n. 1.

³⁵ See, e.g., J. HICKMAN, *The effect of open seats on challenger strength in Japanese lower house elections*, *Legislative Studies Quarterly* 17, 1992, 573 – 584; M. KRASHINSKY and W. J. MILNE, *The effects of incumbency in U.S. Congressional elections*, *Legislative Studies Quarterly* 18, 1993, 321 – 343.

seeking re-election is far more likely to succeed than to fail (despite recent examples to the contrary). In Rome, on the other hand, the different members of the elite competing for office were on an equal footing in this respect: none of them could claim the office by prescription. The psychological impact of this on the voters' effective freedom of choice can only be conjectured, but it may well have been considerable. No one, for example, will doubt that the Athenian demos was in general much more socially independent and politically powerful than the Roman plebs. Nevertheless, it seems to me quite likely that a Roman voter choosing, by secret ballot, between different upper-class candidates, felt freer to make his choice than a citizen of democratic Athens who had to decide, by open voting, whether or not to re-elect Pericles as *strategos*³⁶.

The Roman voter in the late Republic could thus feel secure to exercise his suffrage freely, without fear of offending his social superiors or the powers that be. This atmosphere of free voting shielded by secrecy is reflected in a passage in Cicero's *De Officiis*. Writing after, and clearly under the impression of, the experience of Caesar's dictatorship, Cicero says that in a free state, hostile public opinion can find ways to assert itself even against one who has come to possess autocratic power: "For let the laws be never so much overborne by some one individual's power, let the spirit of freedom be never so intimidated, still sooner or later they assert themselves either through unvoiced public sentiment, or through secret ballot disposing of some office of state" (2.24). In fact we hear of one such case, and Cicero may well have had it in mind. According to Suetonius, the deposition by Caesar of the two tribunes of the plebs who had removed the diadem from his statue was so unpopular that at the next consular elections a great many votes were cast in their favour (Jul. 80). The voters snubbed the dictator by inscribing the deposed tribunes' names – or initials – on the ballots. The voting was free.

3

What difference did this freedom actually make? It is reasonable to suppose that it further enhanced the independent and popular character of the legislative tribal assembly (or *concilium plebis*), though this assembly had been independent enough to carry, even under open voting, various popular measures including the agrarian law of Tiberius Gracchus (and, indeed, the first three ballot laws). This assembly was certainly a source of constant danger to optimate domination during the late Republic, and when Quintus Cicero speaks of the ballot allowing the

³⁶ On the other hand it is true that a Roman voter would feel less free to make his choice if one of the candidates was his patron. But the view that Roman elections were largely dominated by the patronage system is no longer tenable – see BRUNT (n. 14), ch. 8: "Clientela", esp. 424 – 431.

people to conceal *vitiosum suffragium* from the *boni* (Leg. 3.34), he is probably thinking chiefly of popular legislation.

As for elections, it is quite true that the ballot did not weaken the nobles' hold on the elected offices of state³⁷. This, however, does not at all prove that the ballot had no democratic impact, in the limited sense in which this term can be applied to Roman politics. The ballot served precisely its avowed purpose: it enhanced the *libertas* of the people, that is to say their ability to choose freely, without pressure, between the different upper-class candidates. Reading the consular *Fasti*, a modern scholar sees that the success of the nobility in those elections was almost inevitable; he naturally tends to question the free and popular character of the elections which produced such results. But however one accounts for the electoral successes of the Roman nobility as a whole³⁸, the Roman nobility did not contest elections – individual nobles did, competing mostly with each other. About an individual noble's victory in a particular election there was nothing inevitable, and it would scarcely console a defeated candidate, in his *dolor repulsae* (Caes. B.Civ. 1.4.), that the consular *Fasti* would not look any the less aristocratic for his defeat. A freer electorate, with no voter in any candidate's pocket (not even his clients)³⁹, meant a fiercer competition between the candidates for the citizens' votes. Greater efforts had to be made by candidates, actual and prospective – that is to say, by the Roman political class – to please the electorate.

Using the model of “electoral market” it can be said that the ballot, while leaving the identity of the buyers and the sellers unchanged, altered the balance between them by pushing up the price – in its various forms – that the members of the ruling class had to pay to the people for the offices that they sought. LINDERSKY describes the effect of the change: “If you do not immediately control the voters, you must pay for their support. This can be done in two ways: by means of legislation appealing to special interest groups or directly by handing out money and gifts... But perhaps the most important event in the spread of *ambitus* was the one that was hailed as the dawn of popular liberty: the introduction of written and

³⁷ Cf. MEIER (n. 3), 129. MEIER argues that the ballot was of little moment until it was applied to legislative *comitia*; as for elections, no one could have imagined that the ballot would lead to the people “choosing different masters”.

³⁸ This question cannot be discussed here at any length. But I believe that it is quite unnecessary to assume that the Roman electorate was both highly restricted and tightly controlled in order to account for the results of the elections which gave such a clear advantage to the nobility. Deference to nobility is widespread among the common people in many traditional societies (modern as well as ancient), and of course the Roman nobles had great wealth and were willing to invest it in gaining popularity and political advancement. Cf. WISEMAN (n. 2), 105 – 106 on the “conservatism and snobbery” of the Roman electorate (in the lower as well as in the upper strata); cf. K-J. HÖLKEKAMP, Conquest, competition and consensus, *Historia* 42, 1993, 33.

³⁹ Under the secret ballot, a candidate could no longer be assured of his own clients' votes; this must have had its impact on the nature of patron-client relations in this period. The Roman ruling class had social as well as political reasons to oppose the ballot.

hence secret ballot.”⁴⁰ The first method – that of popular legislation, regularly given the name of *largitio* by Cicero⁴¹ – was practised by the *populares* and opposed by most of the ruling class, which resented this unfair competition, injurious to the system as a whole⁴². But the ruling class was not, in the period under discussion, strong and united enough to prevent its individual members from using this method for their political advancement. The second one, widely practised by *populares* and *optimates* alike, was the bribing of the populace by actual or prospective candidates through private *largitiones*, with a view to gaining electoral advantage.

The change in the relations between the voters and the candidates brought by the secret ballot is reflected in an instructive passage by Cicero: “... the people cherishes its privileges of voting by ballot, which allows a man to wear a smooth brow while it cloaks the secrets of his heart, and leaves him free to act as he chooses, while he gives any promise he may be asked to give”. (Planc. 16)

The encounter between the voter and the candidate (or his agents) described here is certainly of a very different nature from that envisaged in Cicero’s proposal in the *De Legibus*, under which a voter could be asked to show his ballot “*optimo cuique*”. The secret ballot allowed the voter to take bribes from the different candidates and then be free to vote the way he liked⁴³. The voters would no doubt often reward “the highest bidder”, though it should not be assumed that this was the sole consideration that determined their choice (cf. *Com.Pet.* 56). The voter could not be held to his promise, or penalized for failure to keep it; nor could he be asked – or pressured – to vote for a candidate upon a promise (which might not eventually be kept⁴⁴) to pay him later, but he had to be paid, in advance, a sum large enough to compete with the bribes likely to be offered by the other candida-

⁴⁰ LINDERSKY (n. 2), 89–90; 91. See. *ibid.* 92 on the probable connection between the ballot laws and the establishment of the permanent *quaestio de ambitu*.

⁴¹ See, e.g. *Leg. Agr.* passim. The same applies, by extension, even to popular laws not conferring any material benefits: *Rep.* 4.2. Even Cicero’s willingness to concede the ballot to the people is a *largitio: libertatem istam largior populo* (*Leg.* 3.38). Such use of the term is not confined to Cicero – cf. *ORF* 144 n. 6; 145 n. 7; *Flor.* 2.17,6; *Sall. Cat.* 38,1,0; cf. *Liv.* 2.41,1–4.

⁴² Cf. A. LINTOTT, *Electoral bribery in the Roman Republic*, *J.R.St.* 80, 1990, 14 on the hostility of the ruling class to “the supreme and massive form of *largitio*, as judged by Roman optimate standards – legislation on behalf of the welfare of the plebs”.

⁴³ The 1872 Ballot Act in Britain is said to have produced similar results. In 1882 a Conservative M.P. complained that “the Ballot Act had promoted that most un-English practice of taking bribes from both sides, or voting against the side from which a bribe had been accepted” – O’LEARY (n. 17), 165.

⁴⁴ Breaking his promises in this matter would hardly be rational for someone who expected to face the electorate again, but some of those who had been elected to the highest office they could realistically expect to reach might be tempted to behave in this way. Whether he was trying to put pressure on the voters or to bribe them, the candidate was in a stronger position vis-a-vis the voters when the voting was open.

tes (cf. Suet. Jul. 19). Moreover, since the candidate had to pay potential voters rather than those who had actually voted for him, he might, if he did not wish to take chances, have to pay many of those who would not eventually turn up to cast their vote. Experienced bribery-agents might know their *tribules* well enough to channel the bribes to those most likely to vote, but there must have been many voters whose eventual attendance or failure to attend could not be predicted with certainty. We are told that Milo, in the course of his canvassing for the consulate in 52, openly presented each voter in the tribes with 1000 asses (Asc. 33 C). We cannot know how many people received Milo's bribes, and he certainly could not have bribed every single member of the tribes in question. But it is quite likely that this sum was received by many of those who would not eventually have taken part in the elections (or if they had, would not have voted for Milo). Quintus Cicero's complaint in *De Legibus* that the ballot laws had destroyed the influence of the *optimates* (3.34) is surely exaggerated, but they must have bankrupted a good many of them⁴⁵.

While the vote of an individual citizen who had received a bribe would remain protected by secrecy and could not be controlled, a candidate was in a stronger position vis-a-vis the voting units which had the results of their vote published, and which, in the late Republic, were regularly bribed with the help of the tribal bribery-agents, the *divisores*. He could promise to pay a tribe, or a century, only after they had voted for him; members of this unit would then have an incentive to vote in a way that would not deny them the promised bribe. Indeed we hear of a case when a huge sum – as much as ten million sesterces – was promised by two consular candidates for the vote of the *centuria praerogativa*⁴⁶. A law was proposed in 61 to the effect that “any person promising money in a tribe shall not be punishable provided he does not pay it; but if he does, he shall be liable for HS 3000 to every tribe for life” – Cic. Att.1.16,13⁴⁷. A total exemption from punishment for someone who did not live up to his promise to pay a bribe hardly makes sense if the aim is to suppress bribery, for the mere promise of a bribe could certainly influence the voters' choice. It may not be too far-fetched to suggest that this proposal was an attempt by members of the political class to protect their interests in cases of a “breach of promise” on the voters' part. If a voting unit, having been promised a bribe, were to fail a candidate, he could at least withhold his money from it, and the whole proceeding would not be punishable.

Nevertheless, the usual way to bribe voters was, clearly, to offer them money before the voting, rather than promise it to them “upon performance”. This is

⁴⁵ Cf. Cic. Off. 2.54; Plut. Cic. 10. On electoral bribery and the problem of debt see M.F. FREDERIKSEN, Caesar, Cicero and the problem of debt, J.R.St. 56, 1966, 128ff.

⁴⁶ Cic. Q.Fr. 2.14,4 (in 54 BC): *vel HS centiens constituunt in praerogativa pronuntiare*. Cic. Planc. 45 (*pronuntiasse, dividisse*) and perhaps Suet. Jul. 19 (*tantundem pollicendi*) probably refer to similar promises.

⁴⁷ For a somewhat different reading and interpretation of the passage, which does not affect the main point, see LINTOTT (n. 42), 8.

shown by Cicero's remark that the voters who are used to taking bribes are angry with the *candidates* whose money has not reached them (C*luent.* 75; see below). The non-monetary *largitiones* such as games and public feasts, which played such an important part in late-republican electioneering, were regularly given before the voting. I would suggest that the main reason for this was the fierceness of the competition between the different candidates, which led them to bid for the people's votes, offering both higher prices and better terms. Moreover, the size of the Roman voting units and especially their heterogeneous character, which severely limited the possibilities of intimidation, will also have made it more difficult for the candidates, or the *divisores* acting on their behalf, to control their vote by threats to withhold payment, since the results of the voting published by tribes or centuries would not reveal how a particular local community or a neighbourhood had voted.

Thus the candidates appear to have had little choice but to pump material resources into the electorate, both at large and tribe by tribe ("et passim et tributim" – Com.Pet. 44) before the voting, sometimes long before the elections, in the hope of earning genuine gratitude and popularity. There is no reason to assume that the voters would generally prove ungrateful, for this would tend to discourage the candidates' generosity. But the voters' freedom of choice could not, as a rule, be curtailed by bribery, especially since a voter could accept *largitiones* (whether legal or illegal) from different candidates and would thus owe gratitude to all of them⁴⁸. Moreover, the Roman voters got so used to being bribed that they apparently came to regard this as a right; they might wish to punish those who denied them their due rather than regard themselves as particularly indebted to those who did bribe them⁴⁹. "Those who make a practice of taking bribes at elections are usually the bitterest enemies of those candidates whose money they think has not been allowed to reach them" (Cic. Cluent. 75). The overall impact of the secret ballot, and of the fiercer competition between candidates for the people's votes engendered by it, on the bonds between upper-class candidates and their prospective voters was, clearly, that it made them less vertical and less exclusive. A passage in the *Commentariolum Petitionis* shows that prospective voters (*salutatores*, whom most descriptions of Roman society and politics would assume to have been the candidates' loyal clients) could openly "flirt" with different candidates during an electoral campaign (35).

⁴⁸ A similar liberating effect has been ascribed to the taking of bribes from the different candidates by voters in modern India: "Tempted by the cash offered by both sides... the voter often decided to accept money from whoever was willing to offer it. The acceptance of cash from both sides liberated the voter, as it were, from the obligation to vote for one or the other side because of money. The electorate had certainly come of age in the art of using the secret vote." – A. H. SOMJEE, *The democratic process in a developing society*, New York 1979, 118.

⁴⁹ "Bribery had become institutionalized, the money disbursed an expected pay-off rather than a piece of voluntary, if calculated, generosity" – LINTOTT (n. 42), 4. Cf. O'LEARY (n. 17), 166.

Modern scholars are apt to regard electoral bribery as inconsistent with true freedom of choice⁵⁰. But of course bribery was just as “competitive” as any other aspect of Roman (and particularly late-republican) electioneering. A voter, bribed twice or thrice over, would still retain his psychological freedom of choice, while the secret ballot shielded him from pressures and intimidation. How massive bribery could coexist with effective freedom of choice in late-republican elections is shown by a story told by Cicero in his first speech against Verres. Cicero claims that during his canvass for the aedileship of 71 “a great sum of money was fighting against” him (24); ten baskets of Sicilian money (22) were transferred by Verres to the *divisores* in an attempt to ensure Cicero’s defeat at the polls. Some of the *divisores* had, when approached by Verres, expressed their doubts as to the chances of success in this case (23). Cicero was in fact elected, despite the attempt to prevent his election by massive bribery. The ten Sicilian baskets were defeated; but there is no reason to assume that they were *rejected* by the voters. It is far more likely that many voters took the money and then voted for Cicero.

While increased electoral bribery was clearly the result of the introduction of the ballot, the avowed intention of those who had favoured this measure seems to have been exactly the opposite: they apparently claimed that it would help to suppress bribery. Thus Cicero comments on the measures designed to insure the effective secrecy of the voting: “if such provisions as these are made to interfere with the buying of votes (*quae si opposita sunt ambitiosis*), as they usually are, I do not criticize them; but if laws have never actually prevented bribery (*ne sit ambitus*), then let the people have their ballot... with the provision that these ballots are to be shown... to any of our best citizens...”(3.39). Indeed it could have been plausibly argued that secret ballot would defeat bribery by rendering it unprofitable: the candidates would be reluctant to pay for a product the eventual delivery of which was doubtful⁵¹. In fact there were two possible ways in which members of the Roman political class could react to the laws which deprived them of their ability to monitor and control the voting of those whom they had bribed: they could either abandon bribery altogether, or greatly increase it, in the hope of earning genuine gratitude. It is clear that they chose the second way. This choice was evidently imposed on them, to a large extent, by the competition within the ruling class. It would certainly have served the common interest of the ruling class to close ranks in a kind of “restraint of trade” and desist from bribery, or at least severely limit it. But this would have required a level of cohesion and internal discipline which was clearly lacking in the late-republican ruling class, and of

⁵⁰ See, e.g., HALL (n. 3), 199.

⁵¹ Cf. LINTOTT (n. 47), 7. Similarly, in Britain it was argued that electoral corruption would be curbed by secret voting, but the introduction of the ballot only increased bribery – O’LEARY (n. 17), 155ff. Later, with the advent of organised party politics, bribery decreased; “as traditionalists complained, it was replaced by buying votes with promises and programmes – the equivalent of Roman protests against the [legislative] largitiones by the populares” – LINTOTT *ibid.* 13; see on this O’LEARY, *ibid.* 183.

course elections had been a highly competitive business for a long time before that period. Some candidates were obviously rich and confident enough to brave the uncertainties of the secret ballot, and others had little choice but to follow suit.

Two other factors, favourable to electoral bribery, contributed to the final result – that bribery was increased rather than curbed by the introduction of the ballot. Firstly, the wealth of the empire was, in the period under discussion, available to members of the Roman ruling class and could be used to finance their political careers. Roman politicians could better afford the heavy and unsafe investment involved in trying to buy the votes, and had a greater incentive to do it, because these votes, once bought, would enable them, as pro-magistrates, to rob whole provinces in order to compensate themselves for previous expenses, mobilise money for future electoral campaigns and get still richer in the process⁵². Secondly, there was, in this period, a large section of the electorate which was both especially susceptible to bribery and situated conveniently at hand: these were the impoverished farmers who had come to the city in great numbers, with little property but their vote, which they were often ready to sell “to the highest bidder”⁵³. The votes of such people were especially valuable since, as is widely accepted, at least some of them were allowed to keep their registration in the rural tribes⁵⁴. Under such conditions electoral bribery was bound to flourish: it could neither be curbed by penalising it (through the laws against *ambitus*) nor discouraged by making it an unsafe investment.

Electoral bribery, although it was of course open to criticism on moral grounds, was, for the electorate, “not only profitable but liberating, as it created the assumption that their votes were on the open market”⁵⁵. By the same token, secret ballot was not only liberating but profitable. To a large extent, these are two sides of the same *denarius*.

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⁵² See on this FREDERIKSEN (n. 45), 129 with a list of sources in n. 6. The connection between electoral bribery and extortion in the provinces in the late Republic is perhaps most graphically illustrated in Asconius’ description of the prosecution of M. Scaurus for extortion in 54. As the consular elections approached, the prosecutors were afraid “that Scaurus might buy the consulship with the money that he had extorted from the province, and then enter office before the case could come to court (as his father had done); he might then rob other provinces before he could be made to account for his previous term of duty” – Asc. 19 C.

⁵³ See LINDERSKY (n. 2), 91, describing the whole process.

⁵⁴ See BRUNT (n. 14), 25 – 6.

⁵⁵ O’LEARY (n. 42), 15.