

PUBLIC OPINION, FOREIGN POLICY AND 'JUST WAR' IN THE LATE REPUBLIC

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I

Before discussing Roman public opinion and Rome's foreign policy, it is important to establish whether the former had a significant impact on the latter. Many accounts of the Roman Republic provide, at least by implication, a rather negative answer to this question—not only because the people's political role in general is often minimized, but more specifically since it is widely accepted that the foreign policy of the Republic was run largely by the Senate. It can be argued that in some ways in the late Republic, the power of the Senate, as opposed to that of the people, to shape the conduct of foreign policy was strengthened still further. The Senate, naturally, took most of the decisions on running the empire. At the same time, the people's traditional control over the decision to start a war disappeared, somewhat mysteriously, some time during the first half of the second century, and we no longer hear of the assemblies being asked to declare war. Moreover, trials before the people—which sometimes could operate as another traditional method, indirect but powerful, of public control over foreign and especially military affairs (through the prosecution of former magistrates and pro-magistrates) virtually disappeared in the last decades of the Republic.

But the people retained their power to legislate, and in the late Republic they were apt to use this power not in accordance with the wishes of the majority of the Senate—more so than in earlier, more 'harmonious', times. Laws passed by the assemblies repeatedly affected the running of the empire and foreign policy. While determining and guiding the policy of the state could always be claimed to be the proper function of the Senate, there was no easy way to delimitate between the senatorial control of '*consilium*' and the people's control of legislation. Moreover, popular legislation could go far beyond the establishment of general norms and rules (as was the case with *de repetundis* laws). This mechanism was repeatedly used in order to confer 'extraordinary

commands' on powerful and popular individuals—Pompey and Caesar are the most famous examples. Clodius, as tribune in 58, carried various laws dealing with imperial matters, including the annexation of Cyprus. This tool was flexible enough to enable the assemblies sometimes to make what we would normally define as policy decisions (that were usually the province of the Senate), rather than genuinely legislative ones. The 'Piracy law', dating perhaps from 101 BC, with its detailed instructions to magistrates and pro-magistrates on policy and administrative matters, is a case in point.¹

The political potential of the people's power of legislation in the sphere of foreign policy is demonstrated by a little noted case reported by Sallust. The radical tribune Memmius (111 BC), made a fiery speech before the people, attacking the Senate for mishandling the war with Jugurtha. So far from accepting any exclusive senatorial control of what we would define as foreign affairs, Memmius is presented as taking it upon himself, and calling on the people, to defend the authority of the Senate itself, allegedly betrayed by corrupt nobles: *Hosti acerrumo prodita senatus auctoritas, proditum imperium vestrum est* (*Jug.* 31.25). He induces the people to send the praetor Lucius Cassius to Numidia, charged with the commission of bringing Jugurtha to Rome, so that he might testify before the assembly and expose the corruption on the part of those who had accepted the king's (allegedly fraudulent) surrender. To the consternation of the entire nobility, the bill was passed (*perlata rogatione a C. Memmio ac percussa omni nobilitate*). Jugurtha was brought from Numidia and 'produced' before a *contio*, though in the end another tribune used his veto to prevent him from speaking (32).

Memmius' rogation looks more like an Athenian *psaphisma* than like a legislative act. It is true that the popular will was eventually frustrated in this case. But in 109 another tribune, Gaius Mamilius, would carry a law setting up the notorious Mamilian *quaestio*,² staffed by 'Gracchan jurors'. It sent a number of nobles into exile, acting, according to

¹ See M. Hassall, M. Crawford, and J. Reynolds, "Rome and the Eastern Provinces at the End of the Second Century B.C.: the so-called 'Piracy Law' and a New Inscription from Cnidos", *JRS* 64 (1974), 195–219. On the annexation of Cyprus, see E. Badian, "M. Porcius Cato and the Annexation and Early Administration of Cyprus", *JRS* 55 (1965), 110–121.

² The *quaestio* was empowered to deal not just with charges of bribery, but with various aspects of the (mis)conduct of the war: "quorum consilio Jugurtha senati decreta neglegisset, quique ab eo in legationibus aut imperiis pecunias accepissent, qui elephantos quique per fugas tradidissent; item qui de pace aut bello cum hostibus pactiones fecissent" (*Jug.* 40.1).

Sallust, in a grossly partisan spirit: *aspere violenterque ex rumore et lubidine plebis* (*Jug.* 40.4). In the following year, the centuriate assembly elected Gaius Marius for the consulship of 107. His campaign was heavily influenced by arguments about the conduct of the war, with 'seditious tribunes' haranguing the populace on behalf of Marius and attacking his optimate opponents (*Jug.* 73. 3–7). This is a rather rare case, in the late Republic, in which a 'foreign-policy' debate is known to have directly influenced the outcome of an election (perhaps because in the last decades of the Republic consuls were usually not expected to fight wars during their year in office).³ The tribal assembly then passed a law that gave Marius the command in Numidia, setting aside the decree of the Senate which had prolonged Metellus' command there (*Jug.* 40.7).

Throughout Sallust's entire account of the Jugurthine war, the people—the plebs, meaning principally the urban populace—are described as taking keen interest in what is happening in Numidia, and making full use of their powers in order to influence the course of events. Even before the direct interference of the assemblies is mentioned, the Senate is described as being moved by the fear of public opinion.⁴ Clearly, the Senate's alleged exclusive control of foreign policy was impossible to preserve once public opinion was sufficiently aroused. This case also shows how closely 'external' and 'internal' matters were interconnected. Memmius, after all, could not pursue his campaign against his 'domestic' rivals and opponents, and against senatorial corruption, without interfering in what we would define as foreign affairs. War and empire were central to the life of the Roman state. They influenced every aspect of Roman society and politics, and were in turn influenced by them. An exclusive control by the Senate over 'foreign policy' as a whole (it is perhaps not insignificant that the term does not exist in Latin) could hardly be maintained as long as the people had some power in the state.⁵ Indeed, the people's traditional control over the

³ But compare the irregular election of Scipio Aemilianus to the consulship of 147, obviously reflecting the people's discontent with the conduct of the war against Carthage, and the expectation that he would take charge of it; see A.E. Astin, *Scipio Aemilianus* (Oxford, 1967), 61–69.

⁴ See, e.g., *Jug.* 15.5; 25.5; 27.2–3; 30.1; 39.1–2; 39.4 (a consul is prevented by the tribunes of the plebs from leaving for Africa with the force he had raised); 40. See R. Morstein-Marx, *Mass Oratory and Political Power in the Late Roman Republic*, (Cambridge, 2004), 237 n. 146; on the impact of public opinion and popular agitation on the Jugurthine war, see Harris, *War and Imperialism*, 251–252; A. Lintott, "The Roman Empire and its Problems in the Late Second Century", ch. 2 in *CAH*² ix. 30.

⁵ This is to some extent a circular argument, given the ongoing controversy on the

decisions on war and peace, and over treaties with foreign states, certainly went to the heart of ‘foreign policy’.

In the late Republic, the people’s interference in what we would call ‘foreign affairs’ can in no way be described as exceptional. It is noteworthy that when Cicero, wearing his optimate hat, comes close to formulating a general doctrine that imperial affairs are the exclusive province of the Senate, his very words show that he is on rather shaky ground as far as historical precedents are concerned. Cicero is attacking Vatinius for his law *De Caesaris provincia* in 59, which, in addition to conferring on Caesar his extraordinary *imperium*, allowed him to appoint *legati* without consulting the Senate:

You have deprived the Senate of the right of assigning provinces, of appointing commanders, of administering the Treasury. These things the Roman People never desired for itself; it has never attempted to transfer to itself the control of high policy of state (*quae numquam sibi Populus Romanus appetivit, qui numquam ad se summi consilii gubernationem transferre [auferre, mss.] conatus est*). Granted that something of this kind has been done in other cases (*age, factum est horum aliquid in aliis*); rarely, but sometimes, the People has appointed a general (*deligeret imperatorem*); but who ever heard of the appointment of *legati* without a decree of the Senate? (*Vat. 36*).⁶

It was obviously the popular election of an *imperator* (pre-empting or setting aside the assignment of consular and praetorian provinces by the Senate) that entailed interference, on the part of the people, with matters of ‘high policy’⁷—to a much greater extent than allowing him to appoint his own legates without reference to the Senate (however much the latter was obnoxious from the senatorial point of view). But even in this highly polemical context Cicero cannot seriously insist that such interference was unprecedented. Indeed, respectable precedents for this could easily be found in the ‘good old days’ before the Gracchi. Listing some of these (from the known cases during the Second Punic War⁸ to the tribunician law which put Scipio Aemilianus in charge of

nature of the Republican political system, which is beyond the scope of this paper. But the case of the Jugurthine war and its political ramifications speaks largely for itself.

⁶ Cf. Cic. *Dom.* 24. Translations will usually follow the Loeb edition.

⁷ ‘Summum consilium’ does not refer specifically to foreign and imperial matters, though these come most naturally under this heading.

⁸ Cf. Livy 28.40.1–2: Scipio (future Africanus) consul 205, threatens to obtain from the people the authorization to take his army to Africa, if the Senate persists in its objections. This would certainly have involved the people in deciding an ‘external’ issue of the highest importance. A tribune’s threatened veto probably indicates that such a

the Third Punic War in 147),⁹ E. Gruen has argued that the notion, shared by many scholars, that the people's involvement in the bestowal of extraordinary commands in the late Republic 'entailed usurpation of senatorial prerogatives' is 'a red herring. Certainly the determination of provincial assignments and the general supervision of foreign policy belonged in the hands of the senate. It was a matter of convenience and expertise. But the Roman people never yielded up its sovereignty in this area or any other. The assemblies exercised jurisdiction in provincial affairs when they saw fit. And occasions of popular intervention long predate the late Republic.'¹⁰

From what we know about the debates which accompanied the passing of *Lex Gabinia* in 67 and *Lex Manilia* in 66,¹¹ it does not seem that the optimates opposing those laws based their case on the claim that the people should not interfere with the conduct of foreign policy—though they were certainly appealing to the *mos maiorum*. This seems significant, though we cannot be quite sure that this claim was not put forward on some other, unattested, occasion. According to Cicero (*Leg. Man.* 52), Quintus Hortensius' line of argument against the bill was: "if all things are to be handed over to one man, Pompey is the right man; but all things should not be handed over to one man". The argument is about excessive power being conferred on a single individual, not about the people's (lack of) competence to deal with such matters—though in the optimate thinking the two things were no doubt closely connected,

procedure was at least arguably untraditional. But the Senate eventually gave way. Any traditional norm that regulated those matters was evidently not iron-clad.

⁹ See on this Astin, *Scipio Aemilianus*, 67–68 (sources in note 2). The tribune proposed his bill after the second consul had asked that lots should be cast: "once again the accepted constitutional procedure was overridden in order to secure the appointment of the man who commanded popular favour".

¹⁰ E.S. Gruen, *The Last Generation of the Roman Republic* (Berkeley, Los Angeles, London, 1974; repr. 1995), 539–540. The fact we hear more about laws fixing promagisterial commands in the last decades of the Republic (although this still happened only in a small minority of cases) "may be a function of increased intensity in political contests—or simply a consequence of our more abundant information on the Ciceronian age" (540, with a list of known cases). Cf. R.T. Ridley, "The Extraordinary Commands of the Late Republic", *Historia* 80 (1981), 280, arguing that these commands were less extraordinary, in various ways, than is often supposed.

¹¹ For a survey of the two debates, see Morstein-Marx, *Mass Oratory*, 179–183; C.E.W. Steel, *Cicero, Rhetoric and Empire* (Oxford, 2001), 114–123. On tribunician legislation "used to shape military commands and the management of the empire" in the last two decades of the Republic, see F. Millar, *The Crowd in Rome in the Late Republic* (Ann Arbor, 1998), 77 ff.; 124 ff.

not without reason. Of course, Cicero is not necessarily giving a full and accurate account of his opponent's arguments. But if Hortensius had said anything that could be construed as diminishing, as it were, the majesty of the Roman People and its legislative sovereignty, we may safely assume that Cicero would have presented this argument to his popular audience in the most invidious light possible. In fact, Cicero does make the argument, eminently suited to a *contio*, that 'these *principes* should at last admit that they and all other men must bow to the authority of the Roman people' (*Leg. Man.* 64). But the *principes* are not accused of having dared to deny this principle explicitly. Cicero's point here is that, since everybody now agrees that the people made the right decision when they entrusted Pompey, over optimate objections, with the conduct of the war against pirates, the people should, with all due respect to Catulus and Hortensius, trust their own judgement in the present case as well. The issue is, clearly, how far the people should be guided by the *auctoritas* of eminent men in making their decision; their right to make the decision was evidently unquestioned.

Indeed, R. Morstein-Marx has convincingly shown that any argument which sounded obviously 'anti-popular'—in this case, denying the people's competence to make the decision—had, as a rule, no place in a late-Republican *contio*.¹² It is thus perhaps not really surprising that the opponents of the law did not attack it on such self-defeating grounds in speeches before the people. But had they raised this argument in opposing Pompey's command in the Senate, (in 67 or in 66) Cicero would presumably have 'exposed' them before the people (just as he would later tell the assembled people that the radical tribune Rullus had tried to defend his agrarian bill in the Senate by saying that the urban plebs should be 'drained off' like so much sewage: *Leg. Agr.* 2.70). The argument from silence seems not inappropriate in this case. On the assumption that there was a definite doctrine according to which the people had in principle no business interfering in what we would define as 'foreign affairs', it is on these two occasions, if ever, and in the Senate, if anywhere, that we would have expected it to be voiced clearly and forcefully.

Catulus' argument, according to Cicero, was that 'no innovation be made contrary to usage and the principles of our forefathers (*ne quid novi*

¹² Morstein-Marx, *Mass Oratory*, 204ff. This is likely to apply, in some measure, to earlier times as well—even if late-Republican *contiones* were particularly turbulent and intolerant of any open defiance of the people's will.

fiat contra exempla atque instituta maiorum)' (*Leg. Man.* 60). For the reasons just indicated, the 'innovation' probably had to do with the excessive power conferred on Pompey, rather than with the assembly making the decision. Cicero mentions the rhetorical question which Catulus had put to the people when he was opposing the *Lex Gabinia* in 67—'on whom would you set your hopes if anything should happen to Pompey, in the event of your staking everything on him' (*Leg. Man.* 59). For what it is worth, Dio's account of the speech (36. 31–36)¹³ presents his whole case as based on opposition to the excessive and untraditional concentration of power in the hands of a single individual. It is true that Catulus is also said to have remarked that annual magistrates elected by the people should not be replaced by extraordinary commands entrusted to private individuals (33). This would be the most 'popular' way possible to object to legislative interference with provincial commands. But Catulus' actual advice to the people in this case, according to Dio, was to elect several commanders for the conduct of the war against pirates, rather than one (36.1–4).¹⁴ This should perhaps be taken seriously: L. Roscius, an optimate tribune who also opposed the law—or rather tried to oppose it, faced with the crowd's loud hostility—is said to have indicated by a gesture that two commanders should be chosen, rather than one.¹⁵ If such a proposal was made, it must have been aimed at sabotaging Pompey's appointment; but it also entailed acknowledging the legitimacy of extraordinary commands conferred by the people.

The *optimates* of the late Republic—and, no doubt, most senators at all times—must have felt that decisions on such weighty and complicated matters as war and peace, negotiations with foreign rulers and the administration of the provinces, should be made by the Senate or at any rate on the basis of its *consilium*. This was part of their desire to guide and shape, as much as possible, Rome's public policy (not just 'foreign policy'). The traditional policy-guiding function of the Senate and the people's legislative power coexisted, overlapped and sometimes clashed; no precise border-line could be drawn between them. When laws dealing with such matters were submitted to the people without the Senate's

¹³ Cf. Plut. *Pomp.* 25.5.

¹⁴ This is followed by a lacuna in the manuscript. But Dio could hardly have made Catulus argue that the people have in any case no business electing *imperatores*, after suggesting that several ones be elected on that occasion.

¹⁵ Dio 36.30.3–4; Plut. *Pomp.* 25.6. Cf. Steel, *Cicero, Rhetoric and Empire*, 117 note 10.

prior approval, they were apt to be opposed (far from always effectively) as contrary to *mos maiorum*—chiefly, though not solely,¹⁶ on the grounds that they bestowed excessive powers on individuals. Closely connected with this objection, though not quite identical, was the opposition in principle to *imperia extraordinaria*. This, it should be stressed, was not simply another way of saying that the Senate, rather than the assembly, should make the decision. At least in theory, it applied to senatorial decrees no less than to laws. Pompey's command in Spain against Sertorius, conferred by the Senate, was opposed by many senators on those grounds (*non oportere mitti hominem privatum pro consule*: Cic. *Leg. Man.* 62). In 44 Cicero opposed a motion in the Senate bestowing on P. Servilius a special command against Dolabella (*Phil.* 11. 17–18). He objects to extraordinary commands in principle: *nam extraordinarium imperium populare atque ventosum est, minime nostrae gravitatis, minime huius ordinis*. Cicero claims (with little regard to historical veracity, but presumably in accordance with his true 'constitutional' instincts, at any rate at that stage) that he had always regarded such commands as dangerous—unless necessary (*nisi cum est necesse*). This qualification, as well as the historical survey which follows, including instances of such commands bestowed by the Senate as well as the people, make it clear that there was nothing iron-clad about this principle even in theory—much less in late-Republican practice.¹⁷

No doubt, many optimates were willing to be more flexible when it was the Senate, rather than the assembly, that was asked to determine that there was a 'necessity' that justified a departure from usual procedures. The traditional opposition to extraordinary commands was inevitably 'biased' against interventions by the assembly. But when modern scholars, relying largely on this opposition, describe the Senate's exclusive control of 'foreign policy' as one of the fundamental

¹⁶ In denouncing the 'confiscation' of Cyprus carried by Clodius, Cicero stresses the abuse of legislative procedure involved in imposing the harsh punishment on an 'innocent' king without a proper hearing: "lege nefaria... regem Cypri... causa incognita publicasse populumque Romanum scelere obligasse" (*Dom.* 20; cf. *Sest.* 57; 59). Since it was the Senate rather than the assemblies that received foreign ambassadors and rulers, it could be claimed that it was the proper forum for making such decisions if they were to be made 'causa cognita'.

¹⁷ Cicero argues at length that if the Senate is to choose the commander (rather than entrusting this function to the consuls), this would introduce the 'canvass' (*ambitio*) into the Senate, which he finds highly inappropriate (19). The power of the Senate versus that of the people was evidently not the only issue at stake in the arguments over extraordinary commands. See also Cic. *Dom.* 18–19.

principles of Rome's traditional constitution, they go too far. No such general rule was observed in practice, and it is doubtful whether such a doctrine (which would have had to go far beyond the question of provincial commands), openly and clearly articulated, could ever have commanded wide acceptance.

Thus, the repeated instances of the assemblies interfering in the conduct of Rome's foreign policy in the last century of the Republic need not be regarded as a late-Republican aberration testifying to the collapse of traditional constitutional norms.¹⁸ E. Badian has virtually equated Tiberius Gracchus' announced intention to settle the question of King Attalus' bequest of his kingdom to Rome through the tribal assembly with the 'Beginning of the Roman Revolution': once Tiberius took this step, 'he could no longer claim to be acting within the constitution. Foreign affairs as well as finance had always been left to the senate to deal with: that (and particularly finance) was recognised by Polybius, i.e., by his Roman friends.'¹⁹ Indeed, Polybius is more unambiguous on the question of finance. Describing the powers of the Senate, Polybius says that 'in the first place, it has the control of the treasury, all revenue and expenditure being regulated by it' (6.13.1); he later stresses that this is the most important power of the Senate (14.2). He makes no similar general statement about the control of 'foreign (or 'imperial') affairs'. The assignment of provinces by the Senate is not mentioned at all (possibly because governors were usually appointed by lot); though later on he does mention the Senate's power of prorogation (6.15.6). Polybius relates that the Senate is in charge of dispatching embassies to foreign countries and receiving embassies from them. This control of diplomacy naturally gave the Senate a vital role in the conduct of foreign and imperial affairs, and Polybius adds that 'many of the Greeks and many of the kings' are convinced that Rome is an aristocracy, 'since the Senate manages all business connected with them' (13.6-9).

As for the people, they 'have the power of approving or rejecting laws, and what is most important of all, they deliberate on the question

¹⁸ See, e.g., T.P. Wiseman, "Caesar, Pompey and Rome, 59-50 B.C.", *CAH*² ix. 379, on Clodius' legislation dealing with external matters in 58: "happy to usurp the Senate's traditional role in foreign policy, the assembly passed both laws".

¹⁹ E. Badian, "Tiberius Gracchus and the Beginning of the Roman Revolution", *ANRW* 1.1 (1972), 713. Badian regards this as Tiberius' first clear violation of the Republican 'constitution', which set in motion the chain of events leading to the final catastrophe.

of war and peace. Further in the case of alliances, terms of peace, and treaties, it is the people who ratify all these or the reverse' (14.10–12). It does not follow from this description that there was anything blatantly 'unconstitutional' about the people using their power of legislation in order to tackle issues of foreign policy. In fact, the people's very decisions on war and peace, as well as on treaties with foreign powers, were, technically, acts of legislation. Traditionally, the people's votes on those matters were preceded by senatorial decrees. But Polybius relates the people's vote, in 264, for the decision leading to the First Punic War which had not been sanctioned by the Senate (1.11.1). Had Polybius had a clear concept of 'foreign policy' as the exclusive province of the Senate, he might perhaps have found this procedure sufficiently 'unconstitutional' to comment upon. Polybius stresses the people's wide discretion in using their legislative power, even mentioning the possibility of laws specifically meant to deprive the Senate of some of its traditional authority (16.3). Moreover, a measure bestowing imperium on an individual by the vote of the assembly, while it was open to criticism as 'extraordinary' by its opponents, was apt to be regarded by its supporters as an exercise of the people's fundamental right, in Polybius' words, to 'bestow office on the deserving' (14. 9).²⁰

Thus when a Roman politician—whether Memmius in 111 or Cicero in the 60s—addressed the people on foreign policy issues, he could, if he so chose, treat them as any other political controversy, assuming as a matter of course (rather than having to defend explicitly) the Roman People's right to be the ultimate judge and arbiter. It has been suggested that Cicero, in his speech *De Lege Manilia*, sought to 'shift the audience's focus away from the difficult question of extraordinary commands' and avoided giving 'a serious and convincing refutation of the constitutional objections to the law', because this 'would have involved asserting the primacy of popular legislation in matters of foreign policy' (so as not to

²⁰ Cf., e.g., Cic. *Leg. Man.* 49–50. It has been argued that when a new function had to be created (such as Pompey's sea command in 67), a double vote by the assembly was considered necessary—creating the new function, and then selecting the man to perform it: see Ridley, "The extraordinary commands", 281. This is plainly indicated in Dio 36.23.4–5 (though Dio is not always reliable on such matters) and perhaps implied in *Leg. Man.* 52.5. Ridley compares the late-Republican bestowal of commands by *leges* to "[p]rorogatio [that] had originally been managed by the *comitia*, since it called for a reaffirmation of the people's choice in the election a year earlier. After more than a century, this reappointment came to be the senate's prerogative... The late Republic saw a return to a comitial *lex*" (Ridley, "The extraordinary commands", 294–295).

make his speech too provocatively *popularis*).²¹ Cicero's ability to dodge and misrepresent difficult issues should not of course be doubted. But in this case it does not seem that his audience needed to be persuaded that it had the right to decide the issue at hand; and had any objection to this right been raised by the opponents of the bill, it would probably have served Cicero's rhetorical purpose to overstate rather than to dodge it.

II

What, then, did the popular audience need to be persuaded of? It may be asked whether the assemblies' decisions affecting foreign policy reflected, in any real way, public opinion on matters of foreign policy as such, as opposed to popular support for the 'great men' who received their commands through legislation. Sallust's account of the Jugurthine war describes the populace as keenly interested in what was happening in Numidia. The Roman plebs in the late second century, could, according to this account, be swayed by arguments that dwelt on the honour and safety of the empire. But the 'mob' of the last decades of the Republic, as it is portrayed in the sources and described by many historians, might be thought to have known and cared little about empire and foreign policy—unless, of course, its own material interests were directly involved (an important qualification). The people's vote, when it was not merely a ratification of a decision taken by the Senate (as was surely often the case when treaties were approved), might be a reflection of popular support for Pompey, or Caesar, or Clodius (who arranged extraordinary commands for others). In such a case the decision would be overwhelmingly a matter of internal politics rather than foreign policy.

We shall try to catch a glimpse of the people's attitudes to questions of foreign policy, in so far as these can be gauged, indirectly and imperfectly, from the content of the speeches delivered by members of the elite who addressed the people and, presumably, tried to tap to prevailing public sentiment. The methodological pitfalls involved in such an attempt are obvious, especially because what we have are of course merely published versions. But we have no better way of trying

²¹ Steel, *Cicero, Rhetoric and Empire*, 126; 180.

to assess popular attitudes, and after all the published speeches, in P.A. Brunt's words, at least had to 'ring true.'²² Cicero's speeches *in contione* are sufficiently different in tone from senatorial and forensic ones to confirm that even in the published versions he took account of the presumed attitude of his audience—and Cicero is, unsurprisingly, our star witness. Moreover, since the published versions were addressed to the reading public—i.e., mainly to the upper classes—we can assume that they were at any rate no more 'popular' in tone than the speeches actually delivered before the people.

Addressing the Roman people in a *contio* in his speech against the agrarian bill of 63, Cicero attributes to the proposer of the bill, P. Servilius Rullus, dark schemes in the various parts of the Roman world covered by it. Among other things, says Cicero,

He [Rullus] often heard this matter discussed in the senate and sometimes from this place [*saepe in senatu, non numquam ex hoc loco*; i.e., from the Rostra]...that King Hiempsal [of Numidia] possessed some lands on the sea-coast, which Publius Africanus assigned to the Roman people: but that a guarantee was afterwards given to him concerning them by the consul Gaius Cotta. But because you [*i.e., the People*] did not order this treaty to be made, Hiempsal is afraid that it is not binding and ratified. However that may be, your judgement is done away with [*tollitur vestrum iudicium*], the entire treaty is accepted and approved [because the law recognized this piece of land as belonging to the King—in exchange for a bribe, according to Cicero] (*Leg. Agr.* 2.58).

The passage shows that the traditional power of the people to sanction treaties was far from being a mere formality in the late—very late—Republic. King Hiempsal is said to have felt insecure because the territorial concession that he had received from a Roman consul had not been ratified by the people, and Cicero expects that some *invidia* towards Rullus will result from presenting him as 'pre-judging', in his comprehensive agrarian measure, an issue that had to be decided by the *comitia*.

Moreover, and even more significantly, if this question—surely, a very minor point of foreign policy—was discussed not just in the Senate but,

²² Brunt, "Laus Imperii", 290. Cicero's speeches, according to Brunt, "surely reveal the popular sentiments on which Cicero found it expedient to play". Morstein-Marx, *Mass Oratory*, stresses the upper-class speakers' ability to shape (rather than their need to reflect) public opinion when addressing the people in *contiones*.

repeatedly—*non numquam*—before the people, this is a strong indication that the involvement of the general public in the conduct of foreign policy was not confined to ratifications (which might of course be purely formal) of decisions made by the Senate, but included regular public debates.

A much more important issue of foreign policy in the 60s and the 50s was of course Egypt: the debate about King Alexas' will by which the Roman People allegedly inherited the kingdom, and the struggle over the restoration of king Ptolemy Auletes to his throne. These questions were repeatedly made the subject of legislative proposals (and once, in 59, of a law—recognizing Ptolemy Auletes as 'friend and ally' of Rome) and debated before the people in *contiones*; numerous sources attest to that. In the same speech *De Lege Agraria* (2.41), Cicero refers to the controversy:

What about Alexandria and the whole of Egypt? ... Who among you is unaware that it is said that, by virtue of the will of King Alexas, this kingdom became the property of the Roman people? Here I, the consul of the Roman people, not only pronounce no judgement on this point, but I do not even say what I think; for the matter seems to me not only important to decide, but even difficult to discuss. I see someone who asserts that the will has been made; I am aware that a decree of the Senate exists stating that it entered upon the inheritance at the time when, after the death of Alexas, we sent envoys to Tyre to recover a sum of money deposited there for them. I remember that Lucius Philippus [consul 91] frequently attested these facts in the Senate, adding that nearly everyone agrees that he who occupies the throne today neither by birth nor in spirit is like a king. On the other hand it is said that there is no will, that the Roman people ought not to show itself so eager to seize all the kingdoms upon earth [*dicitur contra nullum esse testamentum, non oportere populum Romanum omnium regnorum appetentem videri*], that our citizens are likely to emigrate to that country, attracted by the fertility of the land and its abundant supplies of everything. Shall this important affair be decided by Rullus and his colleagues the decemvirs?

Not merely the general question of Egypt, but various details of the ongoing controversy are assumed by Cicero to be to be a matter of common knowledge. The prospect of this important issue of foreign policy being decided by the *decemviri* without reference to the people is expected to provoke popular resentment.

Morstein-Marx, in his recent book on the contional oratory in the late Republic, speaks of the 'remarkably elliptical way' in which Cicero refers to this controversy in his speech before the People. All the complicated details surrounding it, including the sending of Roman envoys

to Tyre, are assumed to be matters of common knowledge. Cicero assumes familiarity, on the part of his listeners, with events reaching back sixteen or twenty-three years (depending on which of the two homonymous kings are meant). “Such a presumption of knowledge clearly rests on the fact that the relevant questions received much public ventilation” in previously-held *contiones* (cf. 44).²³

Morstein-Marx rightly regards this passage as confirming his thesis, based on an analysis of contional rhetoric, that the Roman people addressed by orators was no ‘ignorant mob’: “[T]he acquaintance of the plebs with the traditions and workings of the Republic would probably compare favorably to that of the citizens of many a modern democratic state.”²⁴

This applies to foreign policy as well. Both *De Lege Agraria* and *De Lege Manilia* seem to assume a relatively high degree of ‘foreign-policy’ knowledge on the audience’s part. That Cicero should mention numerous major wars fought by Rome in the past, as well as the names of Rome’s famous adversaries in those wars, is only natural. More noteworthy are such details as the status of King Hiempsal’s lands on the sea-coast or the Roman envoys once sent to Tyre. Moreover, Cicero mentions an impressive number of foreign, sometimes relatively obscure, names of peoples and cities.²⁵ One wonders how many of such names would be mentioned in a major foreign policy speech addressed by a modern leader to the people (i.e., in a TV appearance).

A note of caution is perhaps called for: we cannot be quite sure that Cicero, if indeed he mentioned those details and names in the speeches actually delivered before the people, really assumed that his audience would know them all. Perhaps, at least in some cases, he merely assumed that the people wanted to be treated, by those who addressed them, as if they could be expected to know—and to care: i.e., as knowledgeable, respectable and responsible citizens and not as

²³ The tribunician bill of 65; Suet. *Iul.* 11; Plut. *Crass.* 13.2. On the ‘Egyptian question’ and Roman politics in the 50s, see Wiseman, “Caesar, Pompey and Rome”, 391–393. Millar, *The Crowd in Rome*, 159 comments on a fragment from Fenestella (frag. 21 Peter) describing ‘repeated *contiones*’ on the Egyptian question in 57, with attacks by a tribune against a consul and against the Egyptian king: “[the passage] perfectly captures the now established role a tribune could hope, by rousing popular feeling, to play in foreign policy”.

²⁴ Morstein-Marx, *Mass Oratory*, 113–114; 118.

²⁵ See, e.g., *Leg. Man.* 20–22; 33; 35; *Leg. Agr.* 2.39–40; 50–52; 57–58. Cf. *Leg. Agr.* 2.66; 71; 86; 96–97 (places in Italy).

an 'ignorant mob'. But even if we are dealing here with rhetorical conventions on how the Roman people should be addressed, rather than with any direct reflection of Cicero's audience's level of knowledge and its attitudes—this is nevertheless not insignificant: a truly 'ignorant mob', lacking all civic consciousness, would presumably have cared for none of these things.

Cicero's rhetoric gives the impression that the people expected to hear serious and detailed arguments pertaining to the conduct of Rome's foreign and imperial policy—not just an assurance, for example, that by sending Pompey to the East they would greatly enhance the power and prestige of a man considered as 'the people's friend'. So far from merely relying on Pompey's obvious popularity with his audience, Cicero goes to great lengths to assure it that the bill in question is necessary for the good of the state, for the defense of Rome's empire and her allies. A surprisingly large part of the speech on Pompey's command consists of Cicero assuring his hearers that Pompey, unlike other Roman generals, can be relied on not to oppress the allies:

Words cannot express, citizens, how bitterly we are hated among foreign nations owing to the wanton and outrageous conduct of those whom of late years we have sent to govern them... Wherefore, even if you possess a general who seems capable of vanquishing the royal army... still, unless he be also capable of withholding his hands, his eyes, his thoughts from the wealth of our allies, from their wives and children, from the adornments of temples and of cities, from the gold and treasure of kings, he will not be a suitable man to be sent to the war against an Asiatic monarch... Then hesitate no longer to entrust supreme command to this one man, the only general found in all these years whose allies rejoice to receive him and his army into their cities.²⁶

Cicero puts great rhetorical emphasis on this point, and dwells on it at greater length than on the danger of Rome losing her tax revenues from Asia, or on the need to protect the fortunes of Roman *publicani* and businessmen in that province.²⁷ The prominence accorded to this theme in the speech²⁸ may well reflect rhetorical conventions (as well as, conceivably, Cicero's own concerns), rather than be a direct reflection of what arguments, in the orator's estimation, would be most likely to

²⁶ *Leg. Man.* 65; 67–68. Cf. 13; 37–41; 64–66.

²⁷ *Leg. Man.* 3–4; 14–16, 17–19.

²⁸ Not always reflected in scholarly accounts of Cicero's argumentation: cf. Steel, *Cicero, Rhetoric and Empire*, 130–135; 148–154.

move his audience. But, again, the very existence of such rhetorical conventions is significant. That “the urban plebs... could apparently be moved by the glamour of imperial glory”²⁹ is hardly surprising; Cicero’s repeated appeals, throughout the speech, to his listeners’ sense of pride in the empire do not, in themselves, refute the ‘ignorant mob’ stereotype (except in its most extreme and unrealistic form). But it is less self-evident that the crowd assembled in the Roman Forum needed—or was conventionally assumed to need—emphatic assurances regarding the treatment of Rome’s allies. Brunt notes that Cicero dwelt on the need to treat Rome’s allies fairly not only when he was expressing his private views or addressing his friends, but also when he addressed both upper-class and popular audiences: “[he] surely supposed that denunciation of misrule [in the provinces] would evoke indignation—Pompey in 71, he tells us (I Verr.45) had actually roused the people in this way”, and stressed, in praising Pompey before the People, his fair treatment of Rome’s allies as strongly as his generalship. Moreover, Cicero “does not add in this encomium that [Pompey’s] behaviour would strengthen Roman rule”.³⁰ The demand that the allies be treated fairly is able to stand, rhetorically, on its own feet; it does not necessarily have to be justified by appeals to Rome’s (enlightened) self-interest.

Going back now to Cicero’s passage describing the ongoing debate on the future of Egypt (*Leg. Agr.* 2.41): the arguments of both sides enumerated by Cicero are surely not meant to tell the audience anything new. He is merely reminding the people of what they must have heard on numerous occasions. The arguments, then, are about whether or not the testament was indeed made (a point that was disputed despite a senatorial decree affirming this fact); the question of whether Ptolemy Auletes was worthy of his crown; the fear that a wealthy country like Egypt might attract Roman immigration if annexed; and, remarkably, the claim that “the Roman people ought not to show itself so eager to seize all the kingdoms upon earth”.

Money is not mentioned. Not that it could have been absent from the debates: in 65, in a speech apparently made in the Senate, Cicero asked, indignantly, whether Rome’s way to “regard as enemies those who give us money, and enemies of those who do not” (*Cic. Reg. Alex.*

²⁹ Brunt, “Laus Imperii”, 291 (commenting on *De Lege Manilia*).

³⁰ Brunt, “Laus Imperii”, 319.

fr.1-2). The greed of those who favoured the annexation,³¹ and, on the other hand, the prospect of greatly increasing the revenues for the Roman people—all this must have figured prominently in the debates both in the Senate and before the People. But Cicero, reviewing the debate in a non-partisan spirit, prefers to dwell on more edifying aspects of the controversy. This is no proof that they, rather than Egypt's riches, were really at the center of the debate; but they must have been an important part of it.

"The Roman people ought not to show itself so eager to seize all the kingdoms upon earth". Why not, actually? What is wrong with seizing all the kingdoms upon earth—at a time when it was well known, as Cicero did not shy away from asserting in public, that the gods have given universal rule to the Roman people?³² This, surely, bears on another controversy: whether the Roman concept of a 'just war' had an ethical content, prohibiting aggressive wars, or whether it was purely formalistic, not really involving any serious claim that the war in question is undertaken in defense of Rome or of her allies.

III

William Harris, in his *War and Imperialism in Republican Rome*, has argued that, contrary to what had often been claimed, "neither the fetial law nor the concept of the just war signifies... any resolve to fight only those wars which were felt necessary for the defence of Rome and its allies". "[A]ll that the Romans thought was required was proper procedure, the formally correct actions and words. This religious obligation was treated in the apparently pedantic and formalistic manner in which the Romans (among others) commonly treated such obligations... Naturally they had to decide on something to ask for if they were going to 'res repetere', but that is no evidence that they always or usually felt that they were being forced to defend themselves." In the second century, according to Harris, Roman propaganda claims portraying Rome's wars as 'just' in the sense of aiming at self-defense, or

³¹ If indeed outright annexation, rather than some other grab, was proposed: cf. A.N. Sherwin-White, "Lucullus, Pompey and the East", ch. 8a in *CAH*² ix. 271. Cicero's "non oportere populum Romanum omnium regnorum appetentem videri" seems to point in the direction of annexation.

³² E.g., *Phil.* 6.19. See Brunt, "Laus Imperii", 297-298 on the 'conception of world empire' in Cicero's time, with references to Cicero's pronouncements on the subject.

defense of allies, were meant to impress Greek public opinion. A ‘just war’ in a moral sense was, he claims, an invention of Cicero and some of his contemporaries, influenced by Greek philosophy.³³

Harris’ views are a reaction to a tendency, on the part of some historians, to idealize not just the content of Roman official ideology and propaganda, but, sometimes, Roman foreign policy itself—which is alleged to have been genuinely defensive, at least until a late stage. Whether or not one accepts, in full measure, Harris’ general picture of Roman imperialism—systematic aggression dictated largely by greed³⁴—it is obvious that there was plenty of aggression and rapacity in the history of Rome’s wars and imperial rule. The gap between rhetoric and reality, in any culture, may be wide indeed; but the exact content of the rhetoric, and its significance, still need to be analyzed. When Cicero, addressing the crowd assembled in the Forum, adduces the argument that the Roman people should not show itself so eager to seize all the kingdoms upon earth, he surely does not intend to startle his hearers with a Stoic paradox. A new, recently imported doctrine, imposing untraditional limitations on Rome’s aggrandizement, has no place in this context—only safe and widely approved platitudes. Cicero must be echoing precisely the traditional Roman notions of a just, as opposed to unjust, war.

The argument against aggressive, unprovoked conquest of a foreign country has, in this context, nothing to do with the fetial law and its

³³ Harris, *War and Imperialism*, 175; 170; 174. For a similar view, see Jörg Rüpke, *Domus Militiae: Die religiöse Konstruktion des Krieges in Rom* (Stuttgart, 1990), 121–122. Alan Watson, *International Law in Archaic Rome*, 57 suggests that the doctrine of just war (in the ethical sense), which had been part of the archaic *ius fetiale*, fell into desuetude together with it. Brunt notes that the Roman concept of just war meant “fighting for [Rome’s] own security or for the protection of the allies”, but also remarks that “for Romans a just war was one in which the gods were on their side. The very formalism of Roman religion made it possible to believe that this divine favour could be secured, provided only that all the necessary ceremonies and procedures had been duly followed”: Brunt, “*Laus Imperii*”, 290; 308. For a balanced treatment of the topic and a survey of the scholarly controversy see A.M. Eckstein, “Conceptualizing Roman Imperial Expansion under the Republic: An Introduction”, in N. Rosenstein and R. Morstein-Marx (eds.), *A Companion to the Roman Republic* (Oxford, 2006), 567–589.

³⁴ On the various aspects of Harris’ thesis, see A.N. Sherwin-White, “Rome the aggressor?” (review article), *JRS* 70 (1980), 177–181; J.A. North, “The Development of Roman Imperialism”, *JRS* 71 (1981), 1–9; W.V. Harris (ed.), *The Imperialism of Mid-Republican Rome* (Papers and Monographs of the American Academy in Rome, 29; Rome, 1984); J. Rich, “Fear, Greed and Glory: the Causes of Roman War-making in the Middle Republic”, in J. Rich and G. Shipley (eds.), *War and Society in the Roman World* (London and New York, 1993), 38–68.

rituals (long obsolete by the time in question). The term *bellum iustum* itself is not mentioned; the point is not strictly legalistic, since, after all, there was a senatorial decree asserting that the bequest had indeed been made. It implies that even if the formal pretext is, arguably, there, there is something unseemly about the very eagerness to take over a foreign country which has clearly not done Rome any wrong. This line of argument (presented by Cicero as at least possible and plausible) simply does not make sense unless one assumes that there existed a deeply rooted convention that Rome's wars had to be just—i.e., needed to be justified—in the ethical, rather than any technical, sense.

The ethics of the proposal to take over Egypt were certainly right at the centre of Cicero's speech *De Rege Alexandrino* (65 BC). Most of the surviving fragments describe the proposal as rapacious and dishonourable (fr. 1, 2, 7–8). The foreign policy decision facing Rome is described in quasi-judicial language: 'we' have to show great moderation, because *est hoc summi imperii nosmet ipsos de nostris rebus iudicare* (fr. 4). Crassus, on the other hand, is quoted as claiming that the (proposed) war had a just cause (*est iusta causa belli*) just like the war against Jugurtha (fr. 6). Crassus is not known to have been heavily influenced by Stoic philosophy. Harris suggests that the Roman rhetoric of just war in the second century was aimed at the Greek public opinion; but is not obvious that this consideration, which might have carried some weight before Roman rule had finally been imposed on the whole of Greece, could have significantly influenced the tenor of a senatorial debate in 65. Cicero's speech *De Rege Alexandrino* was most probably delivered in the Senate. There, too, there was probably little room for Greek-inspired innovations in moral philosophy; still less so in a speech before the People. In his speech in 63 Cicero pretends to 'suspend judgment' as to the merits of the case for Egypt's annexation (objecting only to their alleged intention to grab Egypt without further reference to the people). But the strong stance he had taken in 65 was probably known well enough, and the tone and context of his summary of the conflicting arguments are in fact far from unbiased. The prospect of the decemvirs taking over Egypt is presented in a highly invidious manner (*Leg. Agr.* 2.43–45).

Not only Egypt: claiming that the agrarian bill sought to bestow on the triumvirs unlimited and arbitrary powers throughout the Roman world, Cicero invites his audience to sympathize with all the foreign and subject peoples whose rights might be threatened with those powers: "The name of imperium is hateful [*grave*] and greatly feared [by

foreign peoples]... How then will it be, when these decemvirs roam about the world with imperium... What do you think will be the feelings, the apprehension, the danger threatening the unhappy nations... What a shock it will be, citizens, if a decemvir who has arrived in some city either expected as a guest or suddenly as a master should declare that the very place where he has arrived, the hospitable dwelling to which he has been escorted, is the public property of the Roman people! (2.45–46)”.

The fetial law has nothing to do with all this. Cicero and Crassus were not trying to satisfy the Roman gods that no ritualistic irregularity had been committed. They spoke to Roman senators and citizens in a way that reflected a conventional assumption that the rules governing Rome’s conduct towards foreign states were expected to conform to notions of equity analogous to those expressed in Roman law.

Cicero’s speech *De Lege Manilia* likewise assumes, throughout, that Rome’s wars are just in the sense of being defensive (mainly of Rome’s allies: e.g., 14; 32). This principle is not explicitly stated—it is assumed. The war against Mithridates is certainly described in this way, and so are wars waged by Rome in the past. There is a passage that seems to echo the criticisms of Lucullus, known from other sources.³⁵ That general had been repeatedly accused by his opponents in Rome, in speeches before the people, of needlessly prolonging and widening the war. Eventually the people would deprive him of his command by a series of laws; when he returned to Rome, the assembly would refuse to vote for his triumph. According to Cicero, who avoided any direct criticism of Lucullus,

On the arrival of Lucullus and his troops in Armenia, yet other nations rose against our general; for fear had fallen upon those peoples whom Rome had never intended to attack or even to disturb; besides which, a strong and vehement belief had become general among the barbarian nations that our army had been directed to those regions in order to loot a very wealthy and much-venerated temple (23).

Moreover, although Cicero could not of course know the extent of Pompey’s future conquests in the East, it is still remarkable that his speech contains no hint at all that any territorial expansion—and a corresponding increase in Rome’s revenues—was likely to result from the war (something that was surely not difficult to predict). The war,

³⁵ Cf. Plut. *Luc.* 24.3; 33.4; 37.1; Cic. *Sest.* 93; *Acad.* 2.3.

according to Cicero, is all about *defending* Rome's provinces, allies, and revenues.

According to Sherwin-White,

The Lex Manilia... was supported by the praetor M. Cicero in a speech of skilful misrepresentation... [The defensive nature of the war is stressed.] There is no hint of a war of expansion that would reduce the whole Armenian empire to subject status and lead to the annexation of Syria as a province. Not a word is said about the vast treasures that still awaited collection in the royal strongholds or the extension of the system of imperial taxation to great new provinces that would enrich the revenue of Rome. Instead the avarice of previous proconsuls is contrasted with the restraint of Pompey. Even Lucullus is not spared; though his successes against Mithridates are fairly summarized, his achievements in Armenia are minimized, with a dark reference to the plunder of a shrine of great wealth. Cicero, like Sulla, appears to lack interest in the expansion of the Roman Empire.³⁶

But it is the presumed attitude of his popular audience that is remarkable. Why should Cicero have felt the need to 'mislead' his audience in this strange way? If the 'rabble' was to be misled into supporting a major military campaign, shouldn't it have been by promising it even greater conquests, and even more fabulous riches, than could reasonably be expected? Whatever his personal views, Cicero speaks with the people's attitude in mind; nevertheless, he conspicuously fails to dangle the prospect of new conquests and increased revenues before their eyes. The war is justified wholly by a need to defend existing provinces, allies and revenues. Of course, one could, and often did, take pride in conquest after a victorious war; and at this stage in Roman history it had become a commonplace that the gods had given world empire to the Roman people. But a campaign about to be started had to be presented to the Roman people as just in the ethical, rather than some formalistic, sense. Or at least one might feel that this is how the war should be presented, as Cicero obviously did in this case.

This does not mean that a more robustly imperialistic tone could not be adopted on a suitable occasion. In his speech *De Provinciis Consularibus* delivered in the Senate in 56, Cicero praises Caesar for changing the traditional Roman policy towards Gaul, which, he claims, had always been defensive. Caesar 'did not think that he ought to fight only against those whom he saw already in arms against the Roman people, but

³⁶ Sherwin-White, "Lucullus, Pompey and the East", 251.

that the whole of Gaul should be brought under our sway' (32). This included subduing not just known enemies and rebels, but

men unknown to us or known only as wild, savage and warlike—nations which no one who ever lived would not wish to see crushed and subdued. From the very beginning of our empire, we have had no wise statesman who did not regard Gaul as the greatest danger to it. The Alps, not without the favour of heaven, were once raised high by nature as a rampart to Italy. For if that approach to our country had lain open to the savage hordes of Gauls, never would this city have provided a home and chosen seat for sovereign rule. Let the Alps now sink in the earth! For there is nothing beyond those mountain peaks as far as the Ocean, of which Italy need stand in dread (33–34).

Cicero openly ascribes to Caesar a 'grand strategy' of conquest. It is not, however, presented as aggressive conquest simply for the sake of imperial aggrandisement, but, very emphatically, as a 'pre-emptive war' in some larger strategic sense. If one accepts this line of argument, which Cicero obviously expected to get a favourable reception in the Senate, the question whether the rules of *bellum iustum* were observed by Caesar in each of his campaigns may seem rather beside the point. Nevertheless, some of Caesar's enemies still thought it worthwhile to attack him on this score—though with little success.³⁷ Cicero's case for the conquest of Gaul has little to do with religious or legalistic scruples, but it still hinges on creating the impression that the overall purpose is, strategically, defensive.

Admittedly, 'on this sort of principle no war that Rome could fight against foreign peoples who might some day be strong enough to attack her could be other than defensive'.³⁸ We may assume that Gaul, with all the traumatic memories associated with it, made it particularly easy to broaden the definition of defensive war in this way. On the other hand, we cannot be sure that on other occasions even more undisguised, aggressively imperialistic sentiments could not be voiced. In studying an ancient society, we should not be surprised to find what would not surprise us in any modern one: that there are often wide gaps not merely between reality and rhetoric, but between different kinds of rhetoric employed on different occasions—sometimes by the same people, and not necessarily with any deliberate dishonesty. But certainly

³⁷ Suet. *Caes.* 24; see on this Brunt, "Laus Imperii", 182, n. 81.

³⁸ Brunt, "Laus Imperii", 183.

the concept of defending Rome and her allies as the ultimate moral justification for war is very much in evidence—even though it might sometimes be stretched to cover highly aggressive policies.

If this concept could be assumed (rather than argued) in Cicero's speeches before the crowd assembled in the Forum, it could not have been, at that time, a recently introduced innovation taken over from foreign philosophical doctrines. It must have been a time-honoured Roman commonplace. This should never have been doubted, given Cato the Elder's speech, in the Senate, against a proposed war with Rhodes in 167.³⁹ One of Cato's main arguments is that even if the Rhodians had wished to assist Perseus in his war with Rome (something which he denies), this would not have provided Rome with a just cause for war against Rhodes. Merely wishing to make war against Rome is, according to Cato, no more punishable than merely wishing to commit a criminal offence: 'Is there a law so harsh as to say: ... if anyone should wish to own more than 500 iugera [of public land] he shall be punished' (6.3.37).

Gellius, defending Cato against the criticism of his speech by Tiro, Cicero's freedman, as unconvincing and counterproductive, notes that the examples of offenses cited by Cato are *mala prohibita* rather than *mala in se*; thus merely wishing to commit them is not in itself dishonourable. He believes that Cato served his 'clients' well by comparing their alleged intention to attack Rome with offenses of this kind (6.3.45–47). The quasi-judicial frame of this debate on a major issue of foreign policy is taken for granted throughout. As for the charge that the Rhodians are arrogant (*superbi*), stemming from their alleged display of ill-will towards Rome during the Macedonian War, Cato's answer is "Let us grant that they are arrogant. What is it to us? Should we be angry, if someone is more arrogant than us?" (6.3.50). Gellius, in his commentary, finds this remark particularly apt and convincing.

Though Cato claims that as a matter of fact the Rhodians never intended to join the war against Rome, he admits that, in his estimation, they did not wish Rome to be victorious and Perseus to be defeated. In this, he notes, they were no different from other peoples and nations which felt the same way during the war—not out of hostility to Rome but out of fear that, should Rome emerge victorious from that struggle, "they would have to be our slaves subjected to our

³⁹ Aul. Gell. 6.3 = *ORF*³ frs. 163–169.

sole rule. I believe they have adopted this view for the sake of liberty” (6.13.16).

According to Gellius, the argument that a mere wish to commit an offence does not merit punishment is singled out and overemphasized in Tiro’s critique, whereas Cato’s actual speech included many other points as well (such as the Rhodians’ past services to Rome—6.3.52–54).⁴⁰ The precise balance of arguments in the speech escapes reconstruction; we cannot know which arguments and considerations swayed the majority of the Senate.⁴¹ But it is obvious that this line of argument—other states have a perfect right to wish us ill, and to favour the enemy, as long as they have not actually attacked us—could never have been employed before an audience unfamiliar with the ethical concept of a just war (allegedly invented only in Cicero’s time). This was hardly a piece of propaganda directed at the Greek audience—still less a discussion of proper ritual and legal technicalities. Of course, it could also be argued that attacking Rhodes without sufficient justification would damage Rome’s reputation in the Greek world—but this is not what Cato is saying, in the surviving fragments. Moreover, the very importance sometimes attached to convincing the ‘international public opinion’ that Rome’s wars were just⁴² is much easier to understand on the assumption that the concept of just war (in the ethical sense) was an integral part of Rome’s own traditional system of values.

Gellius quotes Tiro’s criticism of Cato for offending his audience: instead of the usual *captatio benevolentiae* at the outset of a speech, his admission that the Rhodians had favoured Perseus during the war amounts, according to Tiro, to an admission of guilt: *confessionem faciunt, non defensionem [verba Catonis]:* 6.3.15. If Tiro’s criticism reflects, in some way, the spirit of his time rather than just his personal views, it may perhaps indicate that the moral threshold of a ‘just war’ was actually

⁴⁰ See A.E. Astin, *Cato the Censor* (Oxford, 1978), 273–283, which offers a detailed discussion of Cato’s speech and the implications of the ethical argument against the war. “The arguments advanced by Cato... were employed because he believed they would carry weight with many senators... From this point of view the striking feature of Cato’s arguments is that overwhelmingly they are moral in character—taking ‘moral’ in a broad sense” (279).

⁴¹ On the importance of Cato’s intervention to the final decision against the war, see Livy 45.25.2; cf. Polyb.30.4.9; see on this Astin, *Cato the Censor*, 274.

⁴² According to Polybius, this consideration came close to tipping Rome’s decision against the war with Carthage on the eve of the Third Punic War (36.2.4). On Rome’s declarations of war in this period, including the importance of the concept of *bellum iustum*, see Rich, *Declaring War*, 1976.

lower, in Cicero's time, than in the days of Cato the Elder—exactly the opposite of what happened, at least on the level of rhetoric, according to Harris. This would not be surprising: the empire had grown enormously in the meantime, and with it, no doubt, Roman arrogance.

This may possibly help explain the way Caesar treats the question of the justification of his wars in Gaul in *De Bello Gallico*. According to Brunt, “[Caesar]... undoubtedly intends his readers to think that it was not for personal greed or glory that he undertook his campaigns, but he has no need to insist on their justice”.⁴³ In fact, he does present his wars in Gaul as just—i.e., aimed at defending the Roman people's possessions and allies. In 1.33 he details the considerations which moved him to present his ultimatum to Ariovistus, paving the way to war: the ‘enslavement’ of Aedui, recognized as ‘brethren of the Roman people’, which could not be tolerated *in tanto imperii populi Romani*, as well as strategic considerations, all of them defensive (in a larger sense): the German invasions of Gaul were ‘dangerous to the Roman people’; the Germans might eventually follow the footsteps of the Cimbri and Teutoni and attack Italy. A long diplomatic prelude to war follows; Caesar is clearly concerned to convince his readers that his behaviour rose to the highest standards of justice traditionally required in Rome's dealings with foreign peoples. Ariovistus is allowed to present his case against Rome's interference with the way he treats the Gauls, allegedly his rightful subjects. It may well be true that Caesar expected his readers to take Ariovistus' very arguments, based on a notional equality between the two empires, his own and that of Rome, “as proof of what he calls the German's insolence”.⁴⁴ But he still finds it necessary to answer, as best he can, each of the German king's claims, rather than simply dismissing them (including the ‘right of the first conqueror’: 1.45; Caesar claims that as a matter of fact Rome had been the first to conquer Gaul). The justness and reasonableness of his demands is a point Caesar thinks worth making to his soldiers as well (1.40; cf. 1.46).

⁴³ Brunt, “*Laus Imperii*”, 313. “Though he never claims to have planned the conquest of Gaul, it is implicit in the *Commentaries*, from the very first sentence, that this was what he had achieved” (313). The second part of this sentence obviously doesn't balance the first one. For a different perspective see A. Riggsby, *Caesar in Gaul and Rome: War in Words* (Austin, 2006), Chapter 6 (“Empire and the ‘Just War’”), 157–190, with emphasis on Caesar's sensitivity, in his account of the Gallic war, to traditional Roman notions of *bellum iustum* (including the right of pre-emption in the face of a threat); cf. E.S. Ramage, “The *bellum iustum* in Caesar's *de Bello Gallico*”, *Athenaeum* 89 (2001), 145–171.

⁴⁴ Brunt, “*Laus Imperii*”, 311.

The notion of a just war is certainly there; but it is hard to imagine Caesar accepting (even for argument's sake, as did Cato in his speech) the right of a foreign state to favour Rome's enemies during a war, and to display arrogance towards the Roman people.

Of course, Cato was also a leading instigator of the blatantly unjust Third Punic War. A fragment of his speech on this subject asserts that preparing a war against Rome is tantamount to having started it.⁴⁵ A distinction can be drawn between merely 'wishing' to attack another country and actually 'preparing' for the attack (though it is obvious that in practice the former can easily be described as the latter). We can thus save Cato from formal contradiction and inconsistency—but there is no pressing need to do so. Politicians sometimes say contradictory things, on different occasions and in different political contexts. The normative public discourse in a society, and the popular attitudes reflected in this discourse and shaped by it, can include contradictory elements. This is what Harris apparently finds it hard to accept. He seems to feel—quite wrongly, in my view—that just because there were, undeniably, strong militaristic and expansionist elements in the Roman civic culture, *there could not have existed*, alongside them, a traditional doctrine of just war—except in a purely formalistic sense.

Harris attaches great importance to the fact that public prayers were sometimes offered in Rome for the increase of the empire. This was done by censors *ut populi Romani res meliores amplioresque facerent*—possibly changed by Scipio Aemilianus as censor in 142/1: *satis magnae sunt*. He rightly holds that the original formula must have been understood as referring, at least partially, to territorial expansion. A prayer for the increase of the empire offered by Augustus at the *ludi saeculares* must have been based on ancient precedents. The haruspices are known, on several occasions, to have predicted the extension of the borders of the empire on the eve of a war.⁴⁶ Astin doubts (without justification) the authenticity of the censors' prayer on the grounds that "it would have stood in conflict, at least in spirit, with fetial law".⁴⁷ There is no *formal* contradiction here, as Astin in fact concedes: the gods *can* be perceived as both favouring the growth of the empire and insisting that each war leading to this growth must be strictly just. But the question is psychological: those who heard such prayers, those who had been

⁴⁵ *ORF*³ fr. 195. A similar definition is accepted by Cicero *Off.* 2.18.

⁴⁶ Harris, *War and Imperialism*, 119; 122.

⁴⁷ Astin, *Scipio Aemilianus*, 329.

told that it was the will of the gods that the Roman people should rule the world, those who were exposed to the endless expressions of militarism in Roman public life—how likely is it that they really needed to be assured on each particular occasion, that the war about to be undertaken was just, and not dictated by an appetite for expansion?

But a contradiction is not an incompatibility. Those two attitudes, however contradictory in our view, co-existed in public discourse and, probably, in the minds of many people. We have to accept what is amply attested in the sources—both the obvious fact that Rome was a militaristic society with a militaristic culture and ethos, and the fact that there was a strong cultural and political norm that Rome's wars had to be just. Cato's case, as we have seen, shows that the same person could take the concept of just war seriously—or at any rate, and what is more important, *use* it seriously, in a serious political debate, on one occasion—and treat it in a highly formalistic way, on another. This should not surprise us: such things happen to cultural norms. But it would be rash to assume that this cultural norm—still reflected in Cicero's speeches before the late-Republican 'mob'—never influenced, in a significant way, the actual conduct of Rome's foreign policy. When we hear, on different occasions—including the Third Punic War—that Roman politicians were divided on the question whether a war about to be undertaken was just, we need not dismiss the possibility that this consideration, alongside others, was taken seriously by some of them.

Whatever the cultural and historical origins of this norm, it seems to have had an important function in the system. Precisely because Roman society was both strongly militaristic and characterised by strenuous competition (to a large extent, for popular favour) within the elite, some such device was needed in order to mitigate the potentially disastrous impact of this combination on the interests of the state and on the equilibrium within the governing class. The Roman elite was always sensitive to the danger that one of its members might grow too powerful—and, surely, the military sphere was the main source of this danger. When a Roman politician accused his rival of breaking the ethical rules that were supposed to govern Rome's conduct towards foreign and subject peoples, he was playing the normal game of aristocratic competition.⁴⁸ At the same time, these rules, including the theory

⁴⁸ On aristocratic jealousy and rivalry, sometimes involving moral and legal objections to rivals' behaviour, as a factor that could significantly hamper (and not only encourage, as Harris has suggested) Rome's aggression and expansion, see, e.g., Rich,

of just war, can be regarded as an important mechanism for asserting societal control over powerful and ambitious individuals who might endanger the state by unsuccessful military adventures; or, even worse, undermine the republican system of government by successful ones—something that eventually happened as a result of the great conquests of Pompey and Caesar.

The Roman voting populace listened to debates on foreign policy and could sometimes play an important part in the decisions. It was integrated into the system, functionally and ideologically, in this sphere, as well as in others, and seems to have shared with the senatorial elite the same broad traditional notions on the conduct of foreign and imperial policy. The popular audience appears to have been no less susceptible than the senatorial one to ethical arguments on the proper treatment of Rome's allies and foreign peoples. But, although the traditional rejection of *regnum* could never be disputed by anybody in a speech before the people, the late-Republican 'mob' proved to be willing to confer on popular individuals military powers that the senatorial elite regarded—not without reason—as excessive and dangerous.

“Fear, Greed and Glory”, 53ff.; Sherwin-White, “Rome the Aggressor?”, 178–179; Brunt, “Laus Imperii”, 304–305; E. Badian, *Roman Imperialism in the Late Republic* (2nd ed.; Oxford, 1968).