A COMPANION TO
THE ROMAN
REPUBLIC

Edited by
Nathan Rosenstein and
Robert Morstein-Marx

Blackwell
Publishing
CHAPTER 18

Popular Power in the Roman Republic

Alexander Yakobson

The Nature of the Debate

How real was the power of the People in the Roman Republic? The legal powers of the assemblies were wide-ranging. Throughout the history of the Republic, all laws and elections of magistrates depended on a popular vote in these assemblies. Major political (and some other) trials were regularly brought before the People down to the time of Sulla; popular votes often determined issues of war and peace, either directly or indirectly, through tribunicle bills conferring “extraordinary commands” (see also Chapter 12). But how real was all this? Wasn’t the Roman Republic, after all, an oligarchy run by a narrow ruling class? Were the various forms of popular participation in politics more than a charade, a smokescreen, mere lip service? And even if they were more than that – how much more? How free were the voters when they voted, and did the wishes of the populace, in the final analysis, really matter? How did the enormous economic and social disparities within the citizen body affect the balance of power within the Roman political system? Did this system include a significant democratic element – something that was claimed by Polybius in his famous account of Rome’s “mixed constitution” (6.11–18), but denied or doubted by many modern historians?

These questions have for some time been at the heart of a vigorous scholarly debate (see also Chapter 1). Anything approaching a consensus can hardly be expected. This, of course, is not unusual for debates touching on broad questions of interpretation. Perhaps, however, there is a deeper reason for the persistent and rather fierce disagreement in this case. Not uniquely, but still to a greater degree than in many other cases, the debate on the power of the People versus the power of the elite in Rome resounds with echoes of our own views, perceptions, assumptions, and prejudices on some of the most vital and controversial issues of modern society and
politics. This inevitable modern “contamination” of the scholarly controversy might as well be acknowledged, so that we may try to contain and control it.

We may, and should, remind ourselves that our business is to analyze Roman society, not to make value judgments about it; that, for the purposes of this analysis, our own views on democracy and oligarchy, populism and elitism are irrelevant; that, moreover, modern political terms sometimes have a very different meaning than ancient ones, even when the same words are employed. Nevertheless, we find it hard to operate with such terms as democracy, popular power, elite control and manipulation, as if these were purely analytical concepts. In our world, “dignifying” a political system with the name of democracy (or, in Rome’s case, conceding that it had a significant democratic aspect) amounts, almost inevitably, to a value judgment – sometimes highly controversial, often influenced by ideological preferences. Moreover, we are used to various modern regimes posing as democracies without justification, or pretending to be more democratic than they are; we will not always recognize as genuinely democratic even a political system which (unlike the Roman Republic) has all the trappings of a democracy and officially defines itself as such. Finally, a modern critical observer tends to look beyond constitutional and legal norms and examine whether a given social structure can be described as truly democratic. Do we then wish to use this term (even in a qualified way) when describing the Roman Republic with the immense wealth, power, influence and prestige of its elite, with its powerful Senate, with its proud nobles who, in Sallust’s famous metaphor (Iug. 63.6–7), passed the highest offices of state from hand to hand?

On the other hand, it may be objected that our reluctance to concede that there were genuinely democratic elements in the Roman political system (i.e., that the formal competence of the assemblies translated itself into real political power) stems largely from an unrealistic, idealized concept of democracy in general, and, in particular, of how a modern democracy actually works. Is not a modern democratic electorate sometimes influenced, manipulated, brainwashed, bribed by the political and social elite – occasionally into betraying what some consider to be its true interests? Do not huge disparities in wealth and social status often go hand in hand with a highly developed political democracy (and sometimes with an officially proclaimed social one)? Is a voter in a modern democracy always free from social and economic constraints? Is not he (or she; here, indeed, there is a radical difference between our world and the ancient one; see also Chapter 15) sometimes influenced by patronage, by deference to social superiors, by family and clan loyalties, by the prestige of a renowned family name, by the power of a dominant ideology? And when the People have voted – are all important questions of public policy invariably settled according to the outcome of their vote? Have modern social elites never monopolized (or nearly monopolized) the higher offices of state? And generally, how far is the life of a modern democratic society really shaped by the wishes of “the populace”?

It can thus be argued that many (though not all) of the “oligarchic” features of Roman society and politics are merely another example of the “iron law of oligarchy” in action. This modern maxim asserts that in every social system, including
formally democratic ones, a powerful ruling elite will inevitably emerge. Indeed, it has been argued that the People’s power was exercised in Rome (principally through legislation) more directly, and thus, in an important sense, more effectively, than in modern representative democracies.¹ In the Late Republic, the People’s power to legislate against the wishes of the majority of the elite was repeatedly exercised by tribunes of the plebs bringing highly controversial measures before the plebeian tribal assembly. From time to time this had also happened in earlier periods. Polybius, in his mid-second-century account, describes legislation against the wishes of the Senate, initiated by tribunes, as a realistic possibility – part of the balance on which the republican system rested (6.16.3). What, it may be asked, would modern democratic politics look like, if every law had to be passed by popular referendum, in a manner comparable to the Roman system allowing each of the ten tribunes to propose laws on issues of highest importance? What, indeed, would modern democracies look like if every year were to be an election year, as in Rome (with the campaign taking up a good part of it, as canvassing for the consulship often did in the Late Republic)? The relative importance of such considerations on the one hand, and of the undemocratic features of Roman politics (including the absence of universal and equal suffrage) on the other, is of course debatable. It is worth noting that in Athens, “one man, one vote” obtained since the days of Solon – long before the emergence of democracy. In a modern democracy, “one person, one vote” is such a fundamental principle that no polity can even pretend to be democratic without applying it. It is, then, highly significant that this principle did not apply in Rome – especially in the centuriate assembly (although the extent of the resulting inequality and disfranchisement is debatable). On the other hand, it is a historical fact that the representative system has been advocated, in preference to direct democracy – for example, by the authors of the “Federalist Papers” – precisely on the grounds that it made it possible to “tame” the dangerous power of the masses. The American “founding fathers” were willing to accept wide (though not universal) popular suffrage, but not a direct power of political decision-making by the People.

These observations may produce in some, instead of openness to the idea that certain features of Roman politics were genuinely democratic, a cynical dismissal of democracy in general. But this need not be so. What the “iron law of oligarchy” asserts is that there is always an oligarchy – not that all oligarchies are alike, that powerful elites are necessarily (or even typically) all-powerful and free to disregard the people’s wishes, that constitutional structures are merely a charade, or that public opinion doesn’t matter. Thus, while it is obvious that any account of the Roman assemblies’ legal powers cannot be regarded as “the whole story,” we should not therefore assume that it is not an important – perhaps very important, vitally important – part of it. Or should we? Given the well-known formal and informal constraints and limitations, how important, in the final analysis, could the power of the Roman People be? While I strongly incline to the view that the power accorded to the People was, so far from being mere charade, a vitally important part of the republican political system, it might as well be admitted that there can probably be no clear-cut, “scientifically objective” answer to such a question.
The Senatorial Perspective

How did the Romans themselves see it? The voices that our sources enable us to hear are mainly—almost exclusively—those belonging to the elite: the class of office holders and office seekers, coming chiefly from senatorial, but sometimes from other upper-class families. Did, then, Roman senators regard their class as (nearly) all-powerful, and the popular aspects of politics as merely a sham? When a senator faced, as he had to do quite often, a popular vote that affected him, his family and friends, or the interests of his class—could he usually await its outcome with equanimity? Did Roman aristocrats behave as if public opinion didn’t matter, or mattered little?

The answer provided by the sources to these questions is, it seems, generally negative. Indeed, as regards elections, even the most aristocratic reading of republican politics can hardly postulate equanimity on the part of the average aristocratic candidate, since one aristocratic candidate’s victory would typically mean another aristocratic candidate’s defeat. This gave the voting populace an important leverage in its relations with the elite. As for legislation, the history of the “Struggle of the Orders,” as told by our sources, abounds with instances of the assemblies legislating against the wishes of the patrician nobility. The Middle Republic appears to have been a period of relative “harmony” in this respect (not a complete one, as we shall see); in the Late Republic, notoriously, the more democratic tribal assembly was quite capable of legislating against the wishes of the majority of the Senate. Moreover, powerful nobles were certainly not immune to the danger of conviction, and sometimes severe punishment, by a popular assembly (tribal or centuriate)—from the early days of the Republic, according to traditional accounts. Plenty of such cases are attested for the “harmonious” Middle Republic.2 It is thus hardly surprising that senators did not, in general, speak—or behave—as if the assemblies did not matter.

This conclusion is of obvious significance. The senatorial elite consisted, by definition, of people who depended on repeated popular election to the magistracies; they knew well how the structures of power—formal and informal—operated in their society. Their assessment of the balance of power in it cannot be lightly dismissed. Of course, it might be colored by their own ideological perceptions. A Roman senator was perhaps even less able than a modern historian to assess the extent of the People’s power in the state without being influenced by his views on how much—or how little—power should, ideally, be entrusted to the People. So when we hear (as we shortly will) complaints that the power of the multitude is enormous, scandalous, that the good and the great—the boni—are left without any influence—all this should not of course be taken at face value.

More telling are the assessments manifested, indirectly but powerfully, in the actual political and social behavior of these people. The sources testify to the persistent efforts of Roman senators to gain and maintain popularity, to ingratiate themselves with the plebs, to outstrip their fellow-“oligarchs” in this respect. Much of Roman public life, and of senators’ social life, can be said to have consisted of those efforts. A member of the Roman elite was constantly engaged in a fiercely competitive race
with other members of his class (see also Chapters 14 and 17). The results of this race were determined to a large degree (though not exclusively) by popular support – principally through elections, but also in various other ways. Sometimes this quest for popularity, for the power based on popular support, and for the prizes that went with this power, led those people to espouse controversial popular causes. This might bring them into bitter conflict with the majority of the Senate.

In the turbulent last century of the Republic this was an important feature of Roman politics. The fundamental logic of the system – that of aristocratic competition – might tempt ambitious aristocrats, sometimes precisely the most self-confident and daringly ambitious, to act against the collective interests of the elite. This must account, to a large extent, for the phenomenon of “Popular” (popularis) politicians – although, of course, there is no need to dismiss the possibility that some of them were genuine reformers and “friends of the People.” At any rate, the late-republican populares – starting with Tiberius Gracchus and his agrarian law – were not typically enemies of the Senate deliberately seeking to destroy its authority (nor is there any reason to assume that such an objective would have enjoyed wide popular support). They were politicians pursuing a senatorial career and making use (sometimes only at a certain stage of it) of the popular element in the republican political system – above all, of the People’s powers of legislation. What set them apart was that – in the opinion of the majority of the Senate – they played this card excessively and irresponsibly. Popularis laws might confer material benefits on the plebs – as did the various agrarian laws, or the laws providing the city populace with grain at a lowered price (passed by Gaius Gracchus in 123) and eventually free of charge (passed by Clodius in 58). They might also effect changes (significant, but never truly revolutionary) in the Roman system of government itself – for example, when the senators’ control over standing courts was removed (Gaius Gracchus, in 123) or weakened, or when the election of priests was handed over to the People (Domitius Ahenobarbus, in 104), or when the use by the elite of procedural devices to obstruct undesirable popular legislation was curtailed (Clodius, in 58).³

Alongside this structural incentive for aristocratic radicalism there existed, naturally, strong disincentives. The resentment of one’s peers and seniors was not a thing to be lightly incurred. Most senators used more conventional – less controversial and dangerous – means of competing for the People’s favor. They won wars, celebrated triumphs, distributed booty, displayed the masks of their famous ancestors at funeral processions, constructed public buildings. They cultivated the reputation of generous patrons and benefactors; they provided the plebs with “bread and circuses,” staged games, spectacles, and gladiatorial contests, they pumped enormous sums of money into the electorate in order to improve, directly or indirectly, legally or illegally, their chances of climbing the ladder of magistracies (see also Chapter 16). Thus they manipulated and bribed the populace into accepting and maintaining the power of the elite; or, seen from another angle, they rendered unto the People that which, under the ground rules of republican politics, was due to the People. The elitist and popular aspects of republican politics are, to a large degree, precisely that – two aspects, two different ways to look at the same interaction between the populace and the elite. Of course, there is no true symmetry here: nobody will argue that the power of the elite
was merely an illusion, while many scholars do argue that the power of the common people was, if not wholly illusory, then certainly far too limited to be defined as a genuine and significant democratic element in the system. Which brings us back to the question of how these things looked from the viewpoint of the Roman elite.

Cicero’s *Laws* and the People’s Power

The third book of Cicero’s political dialogue *On the Laws* (*De Legibus*) provides an important testimony. In this sequel to his *On the Commonwealth* (*De re publica*), written in the late 50s and perhaps still under revision until his death, Cicero describes the laws of a well-governed commonwealth as nearly identical to those of the Roman Republic – which seemed to him, in its uncorrupted form, the nearest approximation possible to an ideal state. Cicero, who had adopted in the earlier work Polybius’ definition of Rome as a “mixed and balanced polity” combining the royal, aristocratic, and democratic elements (represented by the consuls, the Senate, and the assemblies), now introduces in his code of laws two of the most conspicuously popular features of republican politics: the powers of the tribunes of the plebs, and secret voting in the assemblies. On both these points he is vigorously opposed by his brother Quintus. In the two ensuing debates, Quintus represents an undiluted “optimate” point of view – (i.e., one that favored maintaining the authority of the Senate and the social influence of the elite). Marcus (who had started his career with some moderately “Popular” credentials but later adopted a pragmatic but distinctly optimate stance) defends his proposals and the need to concede those two rights to the People. The two debates touch, directly or indirectly, on almost every point of controversy in the modern argument about the political character of the Republic.

Quintus (*Leg.* 3.19–22) attacks the tribunate as “a pernicious thing, born in sedition [during the so-called Struggle of the Orders] and promoting sedition”:

> What damage it caused! First, true to its impious nature, it deprived the senators of every honor, made whatever was base equal to the best, upset and confused everything. Even after it had overthrown the authority of the leading men it never rested. For, to say nothing of Gaius Flaminius and the events of the distant past, what rights did Tiberius Gracchus’ tribunate leave good citizens? (*Leg.* 3.19–20)

But the troubles did not start in 133: Quintus relates that five years earlier a “mean and vile” tribune of the plebs had cast two eminent consuls into prison. He then marshals the turbulent “Popular” tribunes of the Late Republic: Gaius Gracchus, who “wholly subverted the constitution”; “Saturninus, Sulpicius and the rest whose assaults the Republic could not repel without resorting to arms” (*Leg.* 3.20); and finally, P. Clodius Pulcher, M. Cicero’s nemesis who briefly drove him into exile for unlawfully executing the Catilinarian conspirators, and who carried the law conferring on the Roman plebs a privilege it would retain for centuries – free grain. Concluding his speech, Quintus praises Sulla for curtailing the tribunes’ powers
during his dictatorship; on Pompey’s restoration of them in 70 he will say nothing, being unable to praise and unwilling to criticize.

Quintus’ claims that the tribunate robbed the Roman elite of all its influence should naturally be taken with a considerable amount of salt. Nevertheless, the passage clearly portrays the tribunate as more than a minor irritation from the senatorial point of view. Moreover, the tribunate of Tiberius Gracchus was not, according to Quintus, the first “modern” realization of this institution’s subversive potential. In his second speech, Quintus deals with the ballot laws. This, again, brings him to the good old days before the Gracchi. These days, it turns out, were not quite so good as to rule out mischievous popular legislation undermining the power of the elite. This time, Marcus Cicero himself professes to be uncertain on the “difficult and much debated question” whether votes should be recorded openly or secretly. In principle, of course, open voting is preferable, but “the question is whether or not this can be obtained” (Leg. 3.33). But Quintus refuses to accept his brother’s implied assumption that one cannot swim against the tide of public opinion:

This view…is very frequently injurious to the state: namely, when something that is thought to be right and proper is considered unattainable on the grounds that the people cannot be opposed. But firstly they can be opposed, if one acts with determination; moreover, it is better to be violently overthrown while defending a good cause than to yield to an evil one. For who is unaware that the ballot laws have deprived the champions of the senate of all their influence?…A hiding-place should not have been given to the people where the ballot can conceal a mischievous vote while keeping good citizens in ignorance of each voter’s opinions. (Leg. 3.34.)

He proceeds with a hostile account of the history of the four ballot laws (that incrementally introduced the secret ballot for all types of popular voting), assailing each of the tribunes who carried them. The first two – the Gabinian Law of 139 and the Cassian Law of 137, regarding electoral and judicial assemblies (except for cases of treason – perduellio), respectively – predate the tribunate of Tiberius Gracchus. It has often been claimed that Tiberius revived the long-dormant powers of the tribunate in order to carry his law in the teeth of senatorial opposition. But the possibility of such legislation, mentioned by Polybius (6.16.3), had not been merely theoretical before 133.

Nor was the figure of an aristocratic radical espousing highly controversial “Popular” causes, well known to the students of the Late Republic, wholly absent from Roman politics before 133. L. Cassius Longinus Ravilla, who, as tribune of the plebs, carried the ballot law in 137, was, according to Quintus, “a noble, but – I mean no offence to his family – he broke ranks with the good citizens, and was always hunting for approving chatter in popularis fashion” (Leg. 3.35). The passage of the Cassian Law appears to have been accompanied by a dramatic confrontation. According to Cicero’s testimony elsewhere, “the tribune of the plebs Marcus Antius Briso long resisted the ballot law [of Cassius], supported by the consul Marcus Lepidus, and this was a source of reproach to Publius [Scipio Aemilianus] Africanus because Briso was believed to have relented due to his influence” (Brut. 97). Quintus recalls this criticism and warns his brother that he will be similarly blamed for introducing the
ballot into his code of laws; Marcus refers to Scipio’s defense, which has not survived (Leg. 3.37–8). The matter was well remembered, almost a century after the event, as a classic example of a great political controversy.5 The prevailing senatorial opinion at the time, and the senatorial tradition thereafter, were clearly hostile to the reform and its supporters.

While the author of the Cassian law is described as an aristocrat who played the demagogue, the first ballot law, relating to elections, is said to have been carried by “an unknown man of lowly origin,” Aulus Gabinius. How “low” could the origin of a tribune of the plebs have been? An evidently hostile tradition calls him a slave’s grandson (Livy Oxy. Per. 54.193). Whether true or not, this was probably at least believable. Of course, a slave’s grandson could have been a wealthy man. But this example should remind us that when referring to the Roman elite, we are not talking about a few aristocratic clans. The class of office holders and office seekers was much wider. Many of those people, while certainly belonging to the “upper class” from the viewpoint of the poor, must have seemed “low” indeed to true aristocrats. The nobilitas itself – an elite within the elite – which maintained a strong hold on the consulship, was not a closed caste. From time to time its ranks were joined by “new men” who made their way to the top – with the help of the electorate of the centuriate assembly (see also Chapters 1 and 17).6 Aulus Gabinius, allegedly the grandson of a slave, made history as tribune of the plebs. He is not known to have held office thereafter; but it is possible that two of his sons rose to the praetorship, and Aulus Gabinius (the consul of 58) may have been his grandson.7

It has been argued that in 133, Marcus Octavius’ persistence in sticking to his veto against an obviously popular law was far more unconventional than Tiberius’ determination to pass his agrarian law without consultation with the Senate and contrary to its wishes (see Chapter 8).8 This is possible, though there is no certainty as to the conventions governing the use of the tribunes’ powers. In 137, in any case, a tribune acting in the interests of the Senate was persuaded to withdraw his veto (though the fact that Scipio was “blamed” for this implies that such a result was not a foregone conclusion). In this, to be sure, he deferred to the authority of a great noble; a mere M. Antius Briso might well defer to Scipio Aemilianus. We are not told whether considerations of his own popularity – or rather, fear of unpopularity, in case he insisted on obstructing the law – played a part in his decision. Possibly it did – after all, the tribune’s earlier stance had been supported by the consul and, presumably, by the majority of the Senate, which might be thought to outweigh the influence even of Scipio Aemilianus.

Marcus Octavius, at all events, does not appear to have held any magistracy after 133 – though the Senate and “the wealthy” in general might have been expected to wish to reward their loyal champion. This was, probably, the real price that Octavius had to pay for his opposition to the agrarian law. His wholly unprecedented and, surely, unexpected deposition by a popular vote could in itself, despite the humiliation involved, have only been considered as a long-term political boon – if not for the power of the People. A tribune wishing to continue his political career after the tribunate might think twice before standing in the way of a highly popular law. On the other hand, when a man had reached the pinnacle of his career and no longer
expected to need the People’s votes for himself, he might well be thinking about the political career of his son, or perhaps his younger brother; moreover, his power and prestige among his friends and fellow-‘‘oligarchs’’ depended to a large extent on the efficacy of his public support for other candidates. Family and faction are quite properly described as major sources of the Roman elite’s power; but here too, it would be wrong to analyze the elitist and popular aspects of Roman politics as a ‘‘zero-sum game.’’ Furthermore, unpopularity (however incurred) might spell disaster at a trial before the People. Whether one chooses to regard those trials primarily as inspired by personal and factional rivalry within the Senate (which engendered prosecutions), or as an exercise of popular control over the elite, in any case it is obvious that an unpopular aristocrat was easy prey for his aristocratic rivals – and a popular one, doubly formidable to them.

Moreover, facing an angry crowd is not a pleasant experience, whether or not it consists of potential voters. And a Roman senator constantly faced crowds (see also Chapter 20). He had to face them not just in the assemblies and in the mass meetings (contiones), not seldom unruly and tumultuous, where public affairs were debated but no voting took place.9 Trials before magistrates or standing courts were conducted not in some well-guarded ‘‘Palace of Justice’’ but in the Forum, with a large popular audience present, visible and often audible.10 And, of course, a senator met the Roman plebs in the theater and the Circus, not to mention the streets of the city. He did not have to face those crowds alone, to be sure, but accompanied by a respectable number of attendants. Still, it seems that a modern democracy often shields its senior politicians, the people’s representatives and servants, from day-to-day contact with the common people, far better than was the case in Rome with proud nobles pursuing a senatorial career. A Roman aristocratic politician was not sped through the city in a convoy of cars with closed curtains. Nor was the Roman elite protected by a police force. Unpopularity was not something that a Roman ‘‘oligarch’’ would incur lightly. It has been suggested that, owing to the various limitations and constraints imposed by the system, ‘‘the Roman populus exercised influence not through participation in the formal machinery of government . . . but by taking to the streets, by agitation, demonstrations and riots.’’11 But formal and informal expressions of popular will were in fact closely connected and largely complementary; the latter might greatly reinforce the efficacy of the former. Members of the elite who acted in flagrant defiance of public opinion might have to pay a heavy price – formally and informally. It is often said that Roman magistrates, though elected by the People, were not conceived of as ‘‘people’s representatives’’ and, once elected, were under no obligation to follow the People’s wishes. However, the system provided them with plenty of good egoistic reasons to seek popularity and to eschew unpopularity.

It is against this background that we should consider the political significance of the various procedural devices enabling members of the elite to prevent popular assemblies from expressing their will – the veto, the wide powers of the presiding magistrate, religious obstruction (see also Chapter 12). These were powerful weapons, and powerful incentives could exist for using them in the interests of the elite; but there might also be good reasons to refrain from using them. It was far from inevitable that a
friendly tribune would be available with his veto at the Senate’s call. Marcus Cicero, replying to his brother’s attack on the tribunate, and referring to Octavius’ veto, implies that at least one of the ten tribunes could always be counted on: “Has there ever been a college of tribunes so desperate that not one of the ten maintained his sanity?” (Leg. 3.24). When this is said in light of the experience of the Late Republic, it is, obviously, special pleading. This rhetorical exaggeration (on a par with Quintus’ claims that the power of the boni was wholly subverted by the tribunate and the ballot) has sometimes been echoed by modern historians who overstate the ease with which the Senate could, especially in the days of pre-Gracchan “harmony,” wield this weapon in defense of its interests. Roman assemblies have been described as legally “sovereign” on the grounds that they possessed unfettered powers of legislation. On the other hand, it can be argued that even in the strictly formal sense, these assemblies cannot be properly defined as sovereign, given the various legal possibilities that existed for obstructing their will before a decision could be voted on. But the argument over the precise meaning and applicability of this non-Roman term to Roman politics is somewhat beside the point. The real (as opposed to formal) power, and the real weaknesses, of the Roman assemblies depended, to a large degree, on whether those members of the elite who were in a position to obstruct the popular will thought it expedient (or even safe) to do so. This might depend on a delicate balance of incentives and disincentives – widely varying from occasion to occasion. A similar balance of considerations might encourage or deter an elected official (usually a tribune) to activate the People’s power of legislation by proposing a “Popular” bill, or to put his legal authority to other “Popular” uses (see also Chapter 20).

Playing the “Popular” Card

Going now back to the ballot law of 137 – even if we assume that, in withdrawing his veto, Briso simply deferred to Scipio Aemilianus, without being influenced by fear of unpopularity – the question still remains: why would Scipio use his influence to support the ballot law, and why, for that matter, would Cassius propose it? Why, indeed, would a Scipio and a Cassius repeatedly initiate and support highly controversial popular measures? We are often assured that these individuals were, typically, power-hungry aristocratic opportunists rather than genuine reformers who cared for the common People. But this, of course, is precisely what makes their behavior so telling. Why did members of the highest Roman nobility repeatedly choose to play the “Popular” card? Scipio Aemilianus was certainly not, either by conviction or out of opportunism, a rabid democrat. He would eventually justify in public the murder of Tiberius Gracchus, and Cicero would choose him, in his Republic, as the chief spokesman for the “balanced” Roman polity as it had supposedly existed before the Gracchi, when a free people voluntarily accepted the guidance of an enlightened aristocracy. And yet there was nothing extraordinary in the stance he took in 137: throughout his career he repeatedly displayed a marked “Popular” tendency – and enjoyed particularly strong popular support, which allowed him to outstrip his
aristocratic rivals. For this he was blamed and assailed – but not regarded by the majority of the Senate as an enemy of the established order. Of course, he was never a truly radical popularis. But it is also likely that many senators would have admitted, just as M. Cicero argued repeatedly, that a certain degree of pandering to the People’s wishes not merely made good political sense, but might sometimes be politically inevitable. It could thus be plausibly presented as a “safety valve” contributing to the overall stability of the system (as M. Cicero insists in the Laws), as well as serving the interests of individual members of the elite. Up to a certain point, the use of such tactics by ambitious politicians was part and parcel of the traditional game of republican politics.

The proposer of the law, L. Cassius Longinus Ravilla, went on to become consul in 127 and censor in 125. This, it has been argued, would hardly have happened if he had “deeply offended the aristocracy” by his ballot law; hence, contrary to Cicero’s testimony, the law itself need not be considered as truly “Popular” (and thus cannot testify to the power of the People in Roman politics). But this argument hinges on the assumption that the “aristocracy” controlled Roman elections (at least in the centuriate assembly which chose the higher magistrates) to the extent of being able to ensure a defeat of someone who had indeed “deeply offended” it. This alleged control has often been attributed to the power of aristocratic patronage, as well as to the complicated (and imperfectly understood) system of voting by property-classes, in descending order, in the centuriate assembly. But while this assembly certainly gave a weighted vote to the better off, the extent to which it disadvantaged or disfranchised the lower orders is debatable. At least the more extreme versions of the “oligarchic” theory of how this assembly worked cannot be sustained – if only because the powerful first property-class itself cannot be identified with any kind of “oligarchy.” Neither “the ruling class” nor “the wealthy” (who can be loosely identified with the Equites – a much narrower category than the first class) can be said to have controlled the centuriate assembly directly, even under the most “oligarchic” reconstruction of it. Sulla, at any rate, did not rely on the structure of the centuriate assembly to block the way to the top for those who, as tribunes, had “deeply offended the aristocracy.” He made ex-tribunes ineligible to hold further magistracies – obviously estimating that a radical tribunate might actually improve, and certainly could not be counted on to damage, one’s chances of being elected to higher office. If one assumes that the centuriate assembly was “oligarchic” enough to damage the chances of someone who had offended the elite to reach higher office, we must conclude that the popularis tribunes of the Late Republic systematically and deliberately undermined their chances of pursuing a successful political career after the tribunate. This is highly unlikely.

In fact, however, some of the most famous radical tribunes of the Late Republic would never reach higher office – not because the electorate of the centuriate assembly punished them for their radicalism, but, in Quintus’ words, because “the Republic could not protect itself [from them] without resorting to arms” (Leg. 3.20). The ability of the Roman ruling class to remove some of its worst enemies by force (and, in most cases, to get away with this) is impressive and telling. But the champions of the elite had no monopoly on violence. Both Saturninus and Sulpicius (Rufus),
mentioned by Quintus, as well as Clodius, had resorted to robust and effective violence against the interests of the majority of the Senate before violence was successfully employed against them. The same applies to politically inspired prosecutions that cut short many a promising career: populares as well as optimates might wield this weapon against their opponents, or fall victim to it.

As for the view that the Roman voter was, typically, an obedient client voting for his patron (or according to his instructions) – this view has been largely discredited. It is now widely accepted that modern accounts of patronage portraying it as “the key” to understanding Roman society and politics have been greatly exaggerated – far beyond anything that can be read in (or, reasonably, into) the sources (see also Chapters 1 and 19). At least in its more extreme version, this theory of patronage would make largely incomprehensible not just the political history of the Late Republic, when legislative assemblies repeatedly defied the majority of the Senate, but various mid-republican political events (including the adoption of the first two ballot laws). Indeed, the traditional history of the “Struggle of the Orders” (assuming that it is not wholly fictitious) contradicts this theory, although there are reasons for assuming that ties of patronage were stronger – perhaps much stronger – in these earlier times. This is not to deny the great social and political importance of various unequal personal and quasi-personal ties – whether or not these should be properly defined as patronage (a question to which great, sometimes perhaps excessive, importance has been attached). Moreover, money could buy votes. More or less crude electoral bribery could sometimes be disguised as traditional aristocratic patronage or munificence (while in fact, since it was offered on a competitive basis, it cut across the web of genuinely personal ties). The material resources at the disposal of Roman senators, especially once they could use the wealth of the Empire in order to finance their political careers, were truly enormous. Whether, or how far, genuinely free political choice can be exercised by voters under conditions of glaring economic and social inequality – to this question different people will offer very different answers. But it is obvious that the political and electoral needs of the “oligarchs” translated themselves into considerable material benefits for the Roman populace.

The vote of individuals, groups, and sometimes whole communities was indeed influenced “from above,” by powerful senators, patrons, benefactors, and bribery agents; from above, but often in different and conflicting directions. Especially at elections, when different members of the elite competed for the People’s votes, the Roman elite was, virtually by definition, divided against itself. It is in legislative assemblies, whenever a “Popular” measure was proposed, and at some politically significant popular trials, that one might expect the elite (and sometimes “the wealthy” in general) to close ranks, pooling their resources. It is all the more significant that such efforts were far from invariably successful – among other things, no doubt, because the need to curry favor with the People encouraged some senators to play the “Popular” card. And, of course, the first three ballot laws (until the introduction of the ballot into legislative assemblies), as well as the agrarian law of Tiberius Gracchus, were adopted by open voting, in defiance of any pressures “from above.” In order to define the Roman Republic as a democracy (even if a “flawed” one) it would have had to be shown that the assemblies (putting aside for a moment
the question of their composition) were always, or nearly always, capable of imposing their will on a (more or less united) Senate, in the face of determined resistance. This can hardly be demonstrated, for any period of republican history. But sometimes the popular will did prevail, on important and controversial issues, against senatorial opposition and obstruction. Sometimes this can be attributed to the support of wealthier non-senatorial elements – notably, when it came to laws benefiting the Equites (e.g., on the composition of the courts). But we also have examples of legislation specifically in favor of the lower (not necessarily the lowest) orders – such as the grain laws (or the agrarian reform of 133 – though not necessarily all agrarian laws). This seems to justify treating the popular aspect of republican politics seriously.

But the question of the Roman assemblies’ composition cannot of course be put aside. In the Late Republic, the tribal assembly was, as is widely accepted, largely controlled by the urban plebs (no longer confined, as it once had been, to the four urban tribes). Admittedly, the urban plebs itself was only a minority of the citizen body, now extending to the whole free population of Italy. For the great majority of citizens living far from Rome, their right of suffrage was purely theoretical. But the voting power of the urban plebs still made this assembly “popular” in an important sense – certainly more popular than the centuriate assembly and much too popular and independent from the viewpoint of the elite.

However, it has been rightly pointed out that the limited space available in the various voting locations meant that in practice, only a small minority of the city populace could participate in any given assembly. For the Roman Forum, where the legislative tribal assemblies took place after 145, the theoretical maximum has been assessed at 15,000–20,000 voters. Various technical considerations (weighty but less than iron-clad, given the paucity of the available evidence) suggest that the usual number of voters was much smaller.17 In a city whose free-citizen population numbered hundreds of thousands, such numbers may well seem unimpressive. The assumption that it was relatively easier to control and manipulate a smaller number of voters seems reasonable. Nevertheless, it is an undeniable fact, accepted by scholars with very divergent views of republican politics, that in the Late Republic several thousand men gathered in the Forum could quite realistically be expected to defy the power and influence of the Roman elite on issues of great importance.18

It has been suggested that “this cozy arrangement [whereby the elite had controlled the legislative assemblies] broke down in the later second century...[as] a consequence of members of the lower classes now turning up for assemblies they had not previously attended. That happened at the initiative of magistrates who sought popular support to press through legislation against the opposition of the Senate and the upper classes.”19 But it was the fundamental logic of Rome’s competitive politics, not confined to any particular period, which might sometimes impel a magistrate to seek popular support in order to press through legislation opposed by the Senate – or perhaps to oppose the Senate in order to gain popular support. From the time of the Gracchi on, this mechanism, indeed, worked more powerfully than before. The preceding decades are known as a period of “harmony” – basically, senatorial predominance with the People’s acquiescence; but they are also a poorly documented
period (with Livy’s narrative lost). The little that we hear about the first two ballot
laws may well be just a faint echo of a fierce political controversy (especially in the case
of the Cassian law). There may have been examples of this mechanism in action,
during this period, that left no traces in the surviving sources. Gaius Flaminius,
having carried his agrarian law as tribune in 232 against strong senatorial opposition,
going on to become consul and censor. In 218, according to Livy, he was the only
senator (though this has been doubted by some historians) who supported the
Claudian law forbidding senators and their sons to possess large seagoing ships.
“The law, which was vehemently opposed, was a cause of great resentment against
Flaminius on the part of the nobles, but brought him the favor of the plebs and hence
a second consulship” (Livy 21.63.3–4).

Popular Legitimacy and the Stability of the System

When, toward the end of his speech, Quintus urges Marcus Cicero to remove the ballot
laws from his code, it turns out that in practice, this staunch optimate was just as aware
as his “soft” brother that the elite was far from all-powerful in its dealings with the
People: “Therefore, since we are now not simply reviewing the laws of the Roman
people, but reviving old laws that have vanished, or else establishing new ones, I think
you should propose, not what can be obtained from the Roman People in its present
state, but what is best” (3.37). Quintus realizes that full-fledged senatorial domination
is unattainable in practice, but refuses to give it up, as a matter of principle, in a treatise
on the best laws. But Marcus Cicero the unabashed pragmatist had little time for purely
theoretical considerations divorced from political reality. The People’s power was, to
him, a “fact of life”; any head-on attack on it was futile. It had to be accepted,
integrated into the system, and manipulated, as far as possible, in the interests of the
system’s overall stability. The popular element of the constitution was there – it was a
wise statesman’s part to make it function as a safety valve. But there was no question of
removing it, no use to speculate about such things even theoretically. A form of
government aristocratic enough to allow the state to be governed rationally, but
popular enough to enjoy the necessary broad legitimacy, would preserve, as it did in
the good old days (at least as a rule – he was well aware of the exceptions), the Senate’s
leading role in shaping public policy. This, for Cicero, was the best of all possible
political worlds. When he insists, repeatedly, that the authority of the boni is best
preserved by conceding a moderate degree of political liberty (and hence, power) to
the plebs he is, to a large extent, making a virtue of necessity.

On the ballot, Cicero suggests a compromise: preserving the written ballot, but
allowing voters to show it to any of the “best citizens” upon request, repealing all the
laws that forbade one to accost a voter and question him as to his vote. This would
“give the appearance of liberty (libertatis species), preserve the authority of the good
citizens, and remove a cause of dissension” (Leg. 3.39). Libertatis species has been
taken to mean that for Cicero, “the liberty conceded to the people . . . was tolerable
only in so far as it was specious”; he “wish[ed it] to be a mere sham.” In and of
itself, this phrase does lend itself to such an interpretation – but it is dangerous to rely wholly on a single phrase from Cicero’s complicated and dialectical argument. In defending the tribunate, Cicero chooses to present the glass of popular liberty (and power) as half-full rather than half-empty: “Thus either the kings should never have been expelled, or else real liberty, not a nominal one, had to be given to the plebs” (*Leg. 3.25*).24

But the difference between the two passages is not just in rhetorical emphasis. As regards the ballot, Cicero proposes a change that would limit popular freedom by exposing voters to greater pressures from above – contrary to his usual policy of maintaining the broad lines of the constitutional status quo in his “code of laws.” This, while exposing him as a rather lukewarm defender of popular rights, also shows that in his estimation, the ballot, as it actually functioned in his time, gave the humbler sort of voters much more than just an “appearance of liberty.” The tribunate, on the other hand, was evidently too rooted in the system to be tampered with. Therefore it had to be adopted “as it is in our state” (*Leg. 3.19*) and eloquently defended:

You say that the tribunes of the plebs have excessive power. Who denies that? But the unrestrained force of the people is much more savage, much more violent; however, it is sometimes milder because it has a leader than if it did not . . . “But,” you say, “sometimes the tribunes inflame the people.” “Yes, but they often soothe them too.

This is followed by a piece of special pleading already mentioned – a misleading rhetorical question which implies that not a single college of tribunes is so “desperate” as to lack a “sane” tribune willing to defend the state against his colleagues.

In his concluding remarks Cicero defends the restoration of the tribunes’ powers by Pompey in 70:

You say you cannot praise Pompey in this one matter; but you do not seem to have sufficiently considered this point – that he had not only to look to what was best but also what was inevitable. He understood that this power could not be withheld from our state; for how could our people go without it once they had experienced it when they had demanded it so vehemently before they knew what it was? It was incumbent on a wise citizen not to leave to some dangerous demagogue a cause that was not vicious in itself and so popular that it could not be opposed. (*Leg. 3.26*)

At the outset of this chapter we asked how real was the people’s power in the Republic; this passage seems to indicate that it was real enough. The context does not suggest a rhetorical overstatement of the people’s power (such as might be advisable when addressing the People in a *contio*). The people’s role in Roman politics is often portrayed as essentially passive, on the grounds that any legislative initiative had to come from an office holder – a member of the elite, rather than from the “floor of the assembly” (as in Athens).25 This was, indeed, a significant limitation. But it was in the nature of things, as Cicero’s passage shows, that a sufficiently strong and persistent popular demand would eventually be taken up by an ambitious politician26 (not...
necessarily by a tribune – which is why Sulla’s emasculation of the tribunate could not stand). Of course, Cicero’s apologetic account ignores the part played in the events by Pompey’s own ambitions. Pompey did not just “rescue” the cause of restoring the tribune’s powers from being taken up by some reckless popularis. He greatly benefited from being identified with this cause – possibly already as candidate for the consulship of 70, and certainly in the 60s, when “Popular” tribunes carried the laws conferring on Pompey his extraordinary commands, with the enthusiastic support of the People (against strong senatorial opposition). Here again we see the interconnection and interplay between popular and aristocratic politics – or, to take a less sanguine view of things (since we are approaching the end of the Republic), between popular support and the rise of the “dynasts” who would pave the way to autocracy.

Even the most charitable modern reader will react to the idyllic picture drawn by Cicero – popular liberty in harmony with senatorial authority – with a fair dose of skepticism. The stability of the “balanced” constitution (as envisaged by Cicero and in actual practice, assuming that his vision is not wholly divorced from Roman, particularly mid-republican, realities) depended heavily on various forms of elite control and manipulation. In the final analysis, it depended on the People’s acquiescence. It appears to have been a widely shared feeling that the Roman state was, generally, in good hands when it was governed by scions of the noble families that had made it great, and guided by the collective wisdom and experience of the Senate. This basic acceptance of the aristocratic ethos did not rule out an occasional outburst of popular resentment and dissatisfaction with the elite – even in the most “harmonious” of times. On the other hand, it was far from wholly shattered even in the last century of the Republic. However achieved, popular legitimacy and acceptance of the system were its main bulwarks; though, of course, this “however” reintroduces, by the back door, some of the traditional explanations for the system’s stability and longevity having to do with the elite’s economic resources, social influence, prestige, and authority. Whether “consent of the governed” obtained under such conditions should count as genuinely “democratic” – on this question no general agreement should be expected. But, at any rate, this consent could not be taken for granted; the “oligarchs” had to work hard in order to obtain it.

“The ideology of the ruling class” was accepted by the People of Rome “to an extraordinary degree.”27 To be sure, the ruling class possessed powerful tools for shaping public opinion and fostering what some will define as “false consciousness” among the People. But it must always be borne in mind that this class lacked an effective mechanism of state coercion, and its individual members had to compete with each other for popular support. The People’s acquiescence and support could not be commanded – it had to be earned. A Roman senator was constantly concerned to gain and retain it; senatorial politics cannot be properly understood without taking this fact into consideration (see also Chapters 17, 19, and 20). In presenting a realistic picture of republican politics and society, it is necessary to go beyond the traditional dichotomy between “democracy” and “oligarchy,” between the power of the People and the power of the elite. The actual content of Roman public life was shaped by a complicated interplay between these powerful forces.
Guide to Further Reading


Notes

2 Cf. Cic. Leg. 3.34 (“most powerful men” condemned by open voting).
3 See Mouritsen 2001: 68–9 – a catalog of late-republican popularis laws.
4 It has been suggested that Cicero’s account exaggerates the “Popular” significance of the ballot laws. Nevertheless, all the evidence indicates that it was quite considerable. See on this Yakobson 1999: 126–33. See Morstein-Marx 2004: 84–9, on the early numismatic link between the Cassian Law and popular liberty (in a coin minted in 126).
5 See also Cic. Sest. 103; Amic. 41; Asc. 78 C; cf. Pliny Epist. 3.20.1.
6 See on this Hopkins and Burton 1983 (arguing against the more extreme view of the exclusive and closed nature of the nobility).
7 See Münzer 1910; von der Mühll 1910.
8 Badian 1972b.
9 For contiones and their importance see now Morstein-Marx 2004.
10 See Millar 1998: passim, stressing the “open-air” character of Roman public life.
12 See Astin 1967: esp. 26–34.
Popular Power in the Roman Republic

16 Cf. Millar 2002b: 112. According to North 1990b: 18, “the popular will of the Roman people found expression in the context, and only in the context, of divisions within the oligarchy.” Taking “oligarchy” in a broad and flexible (though still meaningful) sense, this definition can be accepted – but bearing in mind that “divisions within the oligarchy” were intrinsic to the system.
19 Mouritsen 2001: 79. Mouritsen mentions Flaminius’ agrarian law in 232 as “an early example of lower-class mobilization” (cf. Polyb. 2.21.7–8); the first two ballot laws “may be signs of the growing disunity within the elite, which fully erupted in 133.”
20 For several known examples, during the first decades of the second century, of legislation that “benefited the common people to some degree” (possibly, though not necessarily, implying that they were opposed by the Senate), see Vishnia 1996: 192–3. Cf. Badian 1996c: 187–8, 201, 211 (unattested legislation); 213 n.44 (tribunes representing the interests of the “People” in the Middle Republic).
22 In both the Laws and the Republic, see, e.g., Rep. 2.55.
23 Brunt 1988c: 325–6, 281 (referring to this and similar passages in both treatises).
24 He adds that it was granted “in such a manner that the plebs was induced by many excellent provisions to yield to the authority of the leading citizens.” This probably refers to senatorial authorization for laws passed by the plebeian assembly (thus Brunt 1988c: 324), required until the Hortensian law (c.287), but may have a wider application, as part of Cicero’s “safety valve” argument. In the Republic, Cicero similarly insists that it was essential to give the People not just a modicum of political liberty but sufficient liberty in order to ensure the proper balance and stability of the “mixed constitution” – as well as the salutary influence of the principes; see Rep. 2.55–9.
25 “[T]he assemblies were deprived of any independent political initiative” – Mouritsen 2001: 128.