

## AEQUABILITAS IN CICERO'S POLITICAL THEORY, AND THE GREEK TRADITION OF PROPORTIONAL JUSTICE

THIS inquiry starts from two passages in book 1 of Cicero's *de Re Publica*, both concerned with the failings of democracy as a political form. The first occurs in Scipio Aemilianus' opening criticism of the three unmixed constitutions. The weakness of democracy is that (1. 43)

cum omnia per populum geruntur quamvis iustum atque moderatum,  
tamen *ipsa aequabilitas est iniqua, cum habet nullos gradus dignitatis*:

'when all political action is controlled by the people, however just and restrained they may be, this very equality of rights is unequal and unjust in having no recognition of degrees of merit.'

The second passage is more complex, offering two apparently conflicting arguments against democracy, returning in connection with the second argument to the assertion of 1. 43, but modifying it. In a democracy, (1. 53)

aequabilitas quidem iuris quam amplexantur liberi populi neque servari potest (ipsi enim populi quamvis soluti ecfrenatique sint, praecipue multis multa tribuunt et est in ipsis magnus dilectus hominum et dignitatum), *eaque quae appellatur aequabilitas iniquissima est. cum enim par habetur honos summis et infimis, qui sint in omni populo necesse est, ipsa aequitas iniquissima est*:

'(1) the equality of political rights which free peoples cherish cannot be maintained (for the democracies themselves, however undisciplined and unrestrained, are prone to give many special powers to many individuals, and there is great discrimination both among men and of privileged status), and (2) this so-called equality of political rights is most unequal and unjust. For when equal honour is paid to the highest and lowest classes who are bound to be included in every society, that very equality is most unequal and unjust.'

1. 53 echoes 1. 43 with a difference; the word *aequabilitas* which Cicero has used for equality of political rights in 43 is first applied to the democratic ideal by the speaker, who doubts only whether this can be maintained in typical democracies; then the application is questioned, *ea quae appellatur aequabilitas*, and finally the simpler form *aequitas* (etymological opposite of *iniquitas*, injustice) is substituted as a more appropriate name. The meaning of *aequitas* in the passage is defined in advance by the use of *par . . . honos*, as being political equality: *aequabilitas*, then, must be reserved for something different and more subtle.

Before examining the philosophical issues here of Cicero's principles and his sources, I will outline briefly the usage of *aequabilitas* in Latin and its relation to *aequitas*, the word substituted for it here. The evidence of *Thesaurus Linguae Latinae*, vol. i, pp. 991-2 on *aequabilis* and 992-3 on *aequabilitas*, suggests that Cicero inherited the adjective *aequabilis*<sup>1</sup> and the noun *aequitas*, both strongly

<sup>1</sup> *Aequabilis* occurs once in Plautus, at *Capit.* 302, 'vis hostilis cum istoc fecit meas *opis aequabiles*'. Here the adjective retains the passive force of the suffix—'levelled

associated with social justice, and himself invented *aequabilitas*, adapting it to provide a refinement of meaning over *aequitas*. Thus, both the *de Inventione* and *Rhetorica ad Herennium*, written in the Eighties,<sup>1</sup> praise *ius* as *aequabile*, but the latter, when it has to define justice, proposes the noun *aequitas*, *ius unicuique rei tribuens pro dignitate cuiusque*.<sup>2</sup> In less formal situations, *aequitas* denotes either the spirit of the law, as opposed to *scriptum* or *litterae*, or fair treatment, and the first recorded use of *aequabilitas* in *pro Murena* 41, follows closely after *aequitas*:

in qua gloriam conciliat magnitudo negoti, gratiam *aequitatis largitio*; qua in sorte sapiens praetor qualis hic fuit offensionem vitat *aequabilitate decernendi*,<sup>3</sup> benevolentiam adiungit lenitate audiendi.

The precise meaning of the noun here is brought out by Cicero's use of the adjective *aequabilis* in *Q. fr.* 1. 1. 2, *dummodo ne varietur gratia, sed conservetur aequabilis*. This is impartial, unvarying, consistent, evenly distributed. So Cicero sets up *aequabilitas* as the aim of *Ius Civile* in *de Oratore*,<sup>4</sup> and in *de Re P.* 2. 43 it is one of the benefits which the state is to provide for its citizens:

ut unius perpetua potestate et iustitia omnique sapientia regatur salus et *aequabilitas* et otium civium.

For the magistrate it is consistency and impartiality spread over many acts of jurisdiction; for the citizens of *de Oratore* 1. 188, 2. 209 it is passive equality before the law; in the ideal monarchical constitution of *de Re Publica*, 2. 43, again, it can hardly include any active political rights: in these passages *aequabilitas* does not go beyond *aequitas iuris* or Wirszubski's *aequa libertas*.<sup>5</sup> But in the context of 1. 43 *aequabilitas* is equality of active political power and represents

down', 'reduced to equality'. It is probably coined for its metrical convenience since with their cretic endings *-abilis* forms are well-fitted to occupy the verse-ends of both *senarii* and *Trochaic septenarii*. Cf. from *Captivi* alone the following verse-ends: 56, *immemorabiles*; 402, *discordabili*; 518, *sperrabilest*, and 684, *memorable*.

<sup>1</sup> For the dating of *Ad Herennium* see Caplan, (*Cicero ad Herennium*, Introduction, p. xxvi: he assigns it on internal evidence to 86–82 B.C. The passages are: *Inv.* 1. 2: non *ius aequabile* quid utilitatis haberet acceperat; *Rhet. Her.* 3. 3. 4: Iustitiae partibus utemur . . . si docemus in omnibus *aequabile ius* statui convenire.

<sup>2</sup> *Rhet. Her.* 3. 2. 3. It will be noticed that this is clearly related to Aristotelian 'proportional justice'; cf. *E.N.* 5. 9. 1133<sup>b</sup>.

<sup>3</sup> *Aequabilitas* here is not merely a device for *variatio*: whereas the preceding *aequitas* denotes equal rights or shares received, *aequabilitas* is the virtue of impartiality which distributes them.

<sup>4</sup> 1. 188: sit ergo in iure civili finis hic,

*legitimae atque usitatae in rebus causisque civium aequabilitatis conservatio*; 2. 209: si . . . *aequabilitatem communis iuris* praestantia dignitatis aut fortunae suae transeunt.

<sup>5</sup> See C. Wirszubski, *Libertas as a Political Ideal at Rome during the late Republic and Early Principate* (Cambridge, 1950), pp. 9 ff. Wirszubski shows that in the argument of the democrats at *de Re P.* 1. 47, *aequa libertas* is given a more positive sense, comparable to the use of *aequabilitas* in 1. 43 and 53. He is, however, unintentionally misleading when (p. 12) he identifies complete equalitarianism with *aequabilitas* without comment on Cicero's earlier usage of the noun. Both *aequa libertas* and *aequabilitas* are given wider reference in *de Re P.* 1. 43 and 47 than their previous usage in Cicero.

Wirszubski's identification of *aequabilitas* in 1. 43. 2 with Greek *ισονομία* is taken up by E. Lepore, *Il Principe Ciceroniano e gli Ideali Politici della Tarda Repubblica* (Naples, 1952) pp. 258–65, who discusses also the Ciceronian demand for *gradus dignitatis* and his varying attitudes to and interpretations of these *gradus* in the public statements of the speeches.

Greek *Isonomia* and *Isegoria*. This is the goal of democracy which Aemilianus rejects as neither just nor fair. His recommended constitution, the mixed constitution of 1. 69, provides only the compromise *aequabilitatem quandam qua carere diutius vix possunt liberi*.

1. 53 goes further than either passage in claiming that political equality for high and low is not real *aequabilitas* but mere *aequitas*, falling short of a higher concept of fairness, for which the speaker reserves *aequabilitas*.<sup>1</sup>

C. Nicolet, in a paper<sup>2</sup> concerned with the influence of Plato's *Laws* upon Cicero's political writings, has noticed this refinement, and related this 'higher concept' to the treatment of *ισότης* in Plato, *Laws* 744 b ff., and the Greek tradition of proportional justice. While I accept Nicolet's rapprochement of Cicero and the *Laws* here and elsewhere<sup>3</sup> in *de Re Publica*, there are difficulties in 1. 53 which he seems to have overlooked. Why, for instance does the speaker not develop his reservations into a positive account of the higher *aequabilitas*? We are in a context free of lacunas. And why is this sense of the word suggested only here, in conflict with the usage of 1. 43, and 1. 69? There are two artistic reasons for lack of development; the inappropriateness of Greek-style mathematical argument to Roman aristocratic conversation, and, more important, the necessary brevity of a *reported* argument; for the words of 1. 53 are clearly identified by Aemilianus as the pleading of those who support one political form—government by the few. Yet we saw that in 1. 43, Scipio used the same criticism of democracy in *propria persona* when he was preparing to argue for the mixed constitution. This is the point of view which triumphs and has Cicero's personal backing in the dialogue; there is no need, then, for caution in accepting proportional political rights as Cicero's own recommendation. Indeed, as Nicolet argues, he endorses the practical application of graded political rights in Book 2, when he considers Rome itself, Scipio's actualized ideal-state. In his account of the Servian *comitia centuriata*, Cicero is aware of its military origin, but emphasizes its political function, praising the timocratic organization because of two complementary features:

(1) 2. 39; Servius did well to arrange it 'ne plurimum valeant plurimi'.

(2) 2. 40: As a result 'is valebat in suffragio plurimum cuius plurimum intererat esse in optimo statu civitatem,

<sup>1</sup> Compare for *aequitas* here, Lactantius *Inst. Div.* 5. 14. 19–20: 'quare neque Romani neque Graeci iustitiam tenere potuerunt, quia *disparēs multis gradibus* homines habuerunt (20). Ubi enim non sunt universi *pares*, *aequitas* non est, et excludit inaequalitas ipsa iustitiam.' Lactantius is arguing directly against the Ciceronian rejection of democratic equality, which he calls *aequitas*: Earlier, in 5. 14. 5, where he defines *aequitas* in terms of political equality, he refers to 'aequitatem . . . se cum ceteris coaequandi quam Cicero aequabilitatem vocat'. This is referred by Mai to *de Re P.* 1. 43, and is, I argue, Cicero's regular use of *aequabilitas* in the *de Re Publica*, except for the correction implied in 1. 53 where he attempts to detach the concept from literal *aequitas*.

<sup>2</sup> 'Cicéron, Platon, et le Vote Secret', *Historia* xix. 1, pp. 39–66. He only discusses the theme of this paper briefly on pp. 64–5, but has established the vital connection between proportional justice and timocratic election procedure, which is found in both Plato and Cicero, and is the basis for the further arguments of my paper.

<sup>3</sup> For Cicero's use of the *Laws* in *de Re Publica* compare Sabine and Smith, *Cicero on the Commonwealth*, p. 156 n. 10: *de Re P.* 2. 3 ff. = *Laws* 704 b ff. Boyancé in *Homages à M. Renard*, i (*Latomus* ci) 129 sees *Laws* 711 b ff. as source of Cicero's portrait of the Princeps in *de Re P.* Book 5 (now fragmentary). There is no doubt that Plato's *Laws* were the inspiration for the *Prooemia* and legislation of Cicero's *de Legibus*.

that is

- (1) the negative modification of numerical equality to reduce the power of the *plurimi*, and
- (2) the positive modification to upgrade those 'who had the most interest in the state's remaining in the best condition'.

This moralistic language only thinly veils the fact that Cicero is approving a constitutional device to give political power to the wealthy in proportion to their wealth—no surprise perhaps in view of his respect for property and those dignified by its ownership in actual political life. Since he approves privilege for merit in the dubious form of wealth, we have no reason to doubt his own approval of graded privilege in the more abstract terms of the theory in Book 1, both at 1. 43, and in the reported views of 1. 53. I would argue that the more tentative form of these arguments in Book 1 reflects their derivation, not direct from the more oligarchic treatment of *ισότης* in Plato's *Laws*, but from reports in the Peripatetic, Aristotelian tradition of the mixed constitution, which shows more reserve towards gradations of equality. This provides a third, literary-historical, reason for the underemphasis in 1. 53, which is reporting the oligarchic rejection of democratic *aequalitas* in favour of a new definition: it is not so much Cicero, as his source, who is unwilling to accept the oligarchic values implicit in 1. 53.

Now when Aristotle introduces his discussion of proportional *ισότης* or justice in *Politics* 3. 5. 1280<sup>a</sup>12, he proceeds from the claim that equality is only just for the equal, and inequality for the unequal, to attempt an assessment of a man's value to the state. He naturally rejects an estimate in terms of wealth (*Pol.* 1280<sup>a</sup>26): *εἰ μὲν γὰρ τῶν κτημάτων χάριν ἐκοινώνησαν καὶ συνήλθον, τοσοῦτον μετέχουσιν τῆς πόλεως ὅσον περ καὶ τῆς κτήσεως, ὥσθ' ὁ τῶν ὀλιγαρχικῶν λόγος δόξειεν ἂν ἰσχύειν.*

The proportioning of political power to wealth which Cicero approves in the Roman timocratic assembly is identified as *ὁ τῶν ὀλιγαρχικῶν λόγος* by Aristotle, and by Cicero in *de Re P.* 1. 53, but while Cicero approves it in practice, Aristotle rejects it both here in theory, arguing for civic virtue, *πολιτικὴ ἀρετή*, as the only teleological criterion of political rights, and later (*Pol.* 5. 1. 1301<sup>a</sup> ff.) in practical application: since civic virtue is rare and civic value disputed in practice, he resorts to a mixed constitution (1302<sup>a</sup>8–9) blending political elements of arithmetic equality with others of proportional equality based on wealth. Even then he concludes that the constitution will be safer if it steers closer to the arithmetic principle of democracy than to the graded equality of oligarchy. In this way it will best avoid class discontent and *stasis*, destroyer of constitutions. Such conclusions are not reconcilable with Cicero's values, and Book 1 of the *Republic*, despite the Peripatetic arguments, could not have made use of Aristotle's discussion and application of proportional justice.

It is when we move back to Plato's *Laws*, as Nicolet has shown, that we recognize the model of Cicero's oligarchic approach to the two equalities. The issue arises in *Laws* 5, 744 a ff. when the Stranger assumes as a necessary handicap that colonists of the new community will arrive with different amounts of personal assets, which, furthermore, will increase or decrease after they become citizens. It follows that (744 b 5–c 4):

δεῖ δὴ πολλῶν ἕνεκα τῶν τε κατὰ πόλιν καιρῶν ἰσότητος ἕνεκα τιμήματα

ἀνισα γενέσθαι, ἵνα ἀρχαί τε καὶ εἰσφοραὶ διανεμῶνται κατὰ<sup>1</sup> τὴν τῆς ἀξίας ἐκάστοις τιμὴν μὴ κατ' ἀρετὴν μόνον τὴν τε προγόνων καὶ τὴν αὐτοῦ . . . ἀλλὰ καὶ κατὰ πλοῦτος χρήσιν καὶ πενίας τὰς τιμὰς τε καὶ ἀρχὰς ὡς ἰσαίτατα τῷ ἀνίσῳ συμμέτρῳ δὲ ἀπολαμβάνοντες μὴ διαφέρωνται.

'It is necessary for many reasons, and for the sake of equalizing chances in public life, that there should be unequal class-qualifications, in order that offices and contributions may be assigned in accordance with the assessed valuation of each man, not in proportion only to the moral excellence of a man's ancestors or himself . . . but in proportion also to his wealth and poverty, so that receiving privileges and offices as equally as possible according to this rule of proportionate inequality, they will not fall into conflict.'

Arguing that timocratic classes are necessary as criteria for offices (and taxes) to avoid internal conflict, Plato immediately establishes the four property classes, *τέτταρα μεγέθει τῆς οὐσίας τιμήματα* which will permit promotion and demotion of the individual with the fluctuations of his wealth. Leaving the topic to outline land distribution and allocation on the new site (calculated not according to the strict equality of historical colonies,<sup>2</sup> but 745 d 2 *ἐπανισοῦ-μένους τῷ πλήθει καὶ ὀλιγότητι*, adjusting the *proportions* of good or poor land), he proceeds to the election of magistrates. In Book 6, 756 the election of the *Boule* (council) employs the property classes to define the roles of both electorate and candidates, by a complex system of nomination and lot. The councillors are elected according to the class from which they are drawn in descending sequence, with a compulsion on the members of the first two classes to vote for all candidates, combined with permitted absenteeism of the third and fourth classes for the election of their own third- and fourth-class representatives only. Plato's motive may be economic kindness, to permit the poor to return earlier to work, as Morrow suggests (p. 134): the mechanism, however, favours the members of the higher classes as electors, and it is singled out by Aristotle in his brief criticism of the *Laws* at *Pol.* 1266<sup>a</sup>14 f. as a particularly oligarchic feature, along with the compulsion on the upper classes only, to attend the assembly.

Plato follows this proposal with his justification (756 e 7-10). This selection procedure will hold the mean between a monarchic and a democratic form of constitution, as our ideal state should. For men of unequal merit cannot be reconciled by being given equal standing (*τιμαί*) and (757 a 4) *τοῖς γὰρ ἀνίσους τὰ ἴσα ἀνισα γίνονται* ἂν, εἰ μὴ τυγχάνοι τοῦ μέτρου: as Cicero says, 'ipsa aequitas iniquissima est'. Plato reaffirms the existence of two political equalities, the

<sup>1</sup> The textual problem of 65 where the manuscripts read *ἀρχαί τε καὶ εἰσφοραὶ καὶ διανομαί*, producing an untranslatable and syntactically defective sentence, does not affect the political interpretation of the passage. On this see Morrow: *Plato's Cretan City* (Princeton, 1960), p. 132 and n. 115. He notes, however, that this property classification is also designed to rationalize the tax burdens (*εἰσφοραί*) and perhaps also distributions (*διανομαί*): this allusion to 'means tests' or 'progressive taxation' suggests an economic motive to which not even

the most doctrinaire democrat could object. We cannot argue that Plato is assuming an automatic correlation between a man's capacity for *εἰσφοραί* and his right to *ἀρχαί*, but it is common Greek political practice and hence highly probable.

<sup>2</sup> Compare Graham, *Colony and Mother City in Ancient Greece* (Manchester, 1963), p. 56 for colonists *ἐπὶ τῇ ἴσῃ καὶ ὁμοίᾳ* (Thuc. 1. 27 on the new colonists of Epidamnus) and evidence for similar equal distribution in the Cyrene and Black Corcyra decrees.

arithmetical, which any city can administer, and the true proportional equality, τὴν ἀληθεστάτην καὶ ἀρίστην ἰσότητα, which is often beyond men's perception. But these theories are no justification for the timocratic procedure, and his embarrassment is apparent, as he cloaks economic criteria of class with the morally ambiguous μείζων and ἐλάττων of 757 c 1, then moves hurriedly to μείζοσι μὲν πρὸς ἀρετὴν in c 4 and the safe generality of τὸ πρέπον ἑκατέροις . . . κατὰ λόγον which is τὸ πολιτικόν . . . δίκαιον (c 8,) and τὸ κατὰ φύσιν ἴσον (d 5), the goal at which the state must aim. If the end of this section with its careful compromise of the two equalities blended into the constitution (d 5 ff.) begins to approach Aristotle's discussion of equality in relation to constitutional forms, Aristotle himself was not deceived in rejecting Plato's electoral procedure of 756. This, he says firmly, in close verbal retort to Plato (1266<sup>a</sup>23) is not the way to compose a constitution from monarchical and democratic elements; it is oligarchic, and will beget faction.

How could Plato, despite his condemnation in 743 a ff. of riches as an end in life, so associate wealth with ἀρετὴ or ἀξία as to propose this oligarchic procedure and create a precedent for Cicero's justification of the Roman oligarchic Centuriate assembly? In the context of the *Laus* two considerations are important. (1) the wealth of the colonists is probably conceived of as inherited family property protected by religious associations, and the mark also of a 'good' family—birth is one of Plato's natural criteria in 744 b. (2) It cannot be acquired by usury, commerce, or dishonest means: Plato permits only agriculture (743 d); hence increased wealth can only derive from the toil and energy that achieve good farming—it is, then, a symptom of moral excellence. Hence in 744 b, property qualifications recognize a kind of merit similar to the natural superiority of ἀρετὴ or strength in man, and privileges related to property qualification are an element in τῶν . . . κατὰ πόλιν καιρῶν ἰσότης. Nevertheless, since Plato's μείζων, like Cicero's *summus*, can be a social rather than a moral word, relating to wealth or power, Plato's more careful structure gave Cicero a philosophical model which he could use to commend the oligarchic element in the *Res Publica*, in which financial superiority was recognized as a claim to greater political rights, and justice was seen in the proportional relation of political power to wealth.