

## POLICING ROME\*

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### I

One fundamental question is already implied in the use of the word 'policing'. A glance at the scholarly literature shows that 'policing' is used in the context of Roman history with respect to the *aediles* and the *tresviri capitales*, or as an equivalent of magisterial *coercitio*; or it is applied to the *vigiles*, the *cohortes urbanae* or the *cohortes praetoriae* of the Principate as well as to the respective *praefecti*; and, of course, to the various controlling bodies and agents of the Later Roman Empire. This is at least partly due to the fact that the fundamental nineteenth-century works reflect a usage of 'policing' which oscillates between the description of a function, i.e. securing public order, on the one hand and the designation of a specialized agency to fulfil this function on the other hand. This is due to the fact that the establishment of a specialized law-enforcement apparatus only took place during the (eighteenth and) nineteenth century. The institutionalization of a professional police force represents a fundamental change in societal as well as individual attitudes towards and demand for public order. It may easily be overlooked that the indisputable gain in security and public order had to be paid for with a considerable loss of flexibility in the interaction between rulers and ruled (which was now mediated by a bureaucratic organization), and with an intensification of control and discipline in the everyday life of most members and strata of society.<sup>1</sup>

The delegation of almost all (or at least the most important) functions of law-enforcement to public authorities has had such a decisive impact on the modern perception of law and order that pre-modern societies are often characterized as showing a lack of necessary institutions and provisions. Such an approach, however, disregards the simple fact that it is not the absence but the very existence of such forces which is exceptional in universal history. That is why the non-existence of a police force in the modern sense cannot as such provide a satisfactory explanation for the problems of, for example, the Late Republic. I should add immediately that though Republican Rome as a 'policless society' may be compared to the overwhelming majority of pre-industrial societies, it was an exception in one important respect. The sacred borderline between the spheres *domi et militiae* excluded employing an emergency measure which was available to the authorities of many other pre-modern societies: the use of regular troops for maintaining public order.<sup>2</sup>

We have to ask which were actually the ways and methods used to secure public order, and we have to overcome an approach which is too narrowly concentrated on the competences of magistrates and institutionalized forces. 'Policing' in this sense is to be understood as a function which is not necessarily fulfilled by a specialized force.

In the following discussion I shall concentrate on the Republican period and on problems of public peace. The question of preventive protection against and prosecution of individual crimes cannot be dealt with in this paper.<sup>3</sup>

### II

I should like to start my discussion of the basic principles of public order in the Republic with an example dating from the Second Punic War. Livy (25, 1, 6 ff.) gives an account of

\* This is a revised and somewhat enlarged version of a paper read to a seminar in Cambridge in June 1982. What I have to say on the problem of maintaining public order in Republican Rome is based on work in progress and should therefore be understood primarily as a discussion of fundamental problems.

<sup>1</sup> See e.g. A. Silver, 'The demand for order in civil society', in D. J. Bordua (ed.), *The Police* (1967), 1-24; D. Philipps, '"A new engine of power and authority": the institutionalization of law-enforcement in England, 1780-1830', in V. A. C. Gatrell et al. (eds.), *Crime and the Law: a social history of Crime in Western Europe since 1500* (1980), 155-81.

<sup>2</sup> See now M. I. Finley, *Politics in the Ancient*

*World* (1983), 18 f. and on the use of troops for riot control in early modern England W. Nippel, 'Reading the Riot Act: aspects of law-enforcement in eighteenth-century England', *History and Anthropology* 1 (1984), forthcoming.

<sup>3</sup> I should only like to indicate that the important hypothesis of the *tresviri capitales* exercising a summary criminal jurisdiction over the urban masses, which has been put forward by W. Kunkel, *Untersuchungen zur Entwicklung des römischen Kriminalverfahrens in vorsullanischer Zeit* (1962), 64 ff., 71 ff., is demonstrably biased by the assumption of the necessity of public prosecution of crimes, which reflects a peculiarly modern experience.

proceedings against foreign cults which became increasingly popular because of the precarious military situation; in 213 B.C. these cults were already practised in public places and on the Capitol. Livy reports that at first 'good citizens' expressed their indignation. Then the matter reached the senate. The senate censured the *aediles* and the *tresviri capitales* because of their lack of activity. When they tried to remove the crowd from the forum and to destroy the *adparatus sacrorum*, they were attacked by the crowd. Now that the senate could no longer expect the *minores magistratus* to cope with the situation, the *praetor urbanus* was charged with the suppression of the cults. The *praetor* called a *contio*, read the senate's decree and issued an edict that all books on foreign rites should be delivered to him and that no one should practise such cults in public or consecrated places. As far as we know that was the end of the affair.

We may conclude from this episode that there was actually a flexible way of dealing with matters of public order. Authorities did not take any counter-measures until the disturbance had reached a certain degree of virulence. Although there were lower magistrates who were considered to be in charge of certain functions of policing, in a more difficult situation the higher magistrates and the senate had to take the initiative. Magistrates had to face the citizenry in person: they could not avoid the risks of physical confrontation with the addressees of their orders. Magistrates had to rely on the acceptance of their authority and not (or not so much at least) on threatening or applying coercion.

Livy's account is one of the very few detailed reports on a confrontation between magistrates and citizens which is, unlike those during the Struggle of the Orders or the Late Republic, not part of a major political conflict. To support the generalizations I have put forward it is necessary to discuss the functions of lower magistrates, the importance of *coercitio* and the role of the auxiliary staff of the magistrates. As far as general assumptions and basic principles are concerned one can also make use of the accounts of the Early Republic, without having to discuss the vexed question of the reliability of the tradition.

### III

The senate's censure of the *minores magistratus* in 213 B.C. might be understood as an indication that the *aediles* and the *tresviri capitales* were regularly in charge of police functions. The *aediles* did actually fulfil a variety of administrative tasks which as a whole contributed to maintaining public order. In particular, they were responsible for the supervision of markets, and the cleaning, maintenance, repair, accessibility, etc. of streets, public places and temples.<sup>4</sup> This unquestionable responsibility may have been at issue in the case of 213 B.C. Given the absence of corroborative evidence we should, however, not assume a general and comprehensive competence of the *aediles* in maintaining law and order.<sup>5</sup>

It is even more difficult to come to a conclusive assessment of the competence of the *tresviri capitales*.<sup>6</sup> I leave aside the most difficult question of whether they exercised a summary criminal jurisdiction over slaves and humble citizens in the sense suggested by Kunkel.<sup>7</sup> The assumption that the *tresviri capitales* performed a *Sicherheitsdienst*<sup>8</sup> and patrolled the streets during the night<sup>9</sup> might be a possible interpretation of the very meagre evidence, but in any case it is not certain<sup>10</sup> (and I am more inclined to ascribe it to the conviction, rooted in modern experience, that such methods of policing were simply necessary).

Anyway, it is worth stressing that in the cases in which the *minores magistratus* are reported to have been in charge of special watches and to have been authorized to arrest citizens they were acting on the senate's special order.<sup>11</sup> Thus, whatever the role of the lower magistrates in maintaining public order in everyday life may have been, they were apparently not expected to deal independently with major disturbances of and threats against public order and security. In such cases the higher magistrates had to appear on the scene.

<sup>4</sup> Th. Mommsen, *Staatsrecht* II<sup>3</sup>, 499 ff.

<sup>5</sup> cf. A. W. Lintott, *Violence in Republican Rome* (1968), 95.

<sup>6</sup> Mommsen, *St.-R.* II<sup>3</sup>, 594 ff.; H. Strasburger, 'Triumviri', *RE* 7A (1939), 518 f.

<sup>7</sup> See n. 3 above.

<sup>8</sup> Mommsen, *St.-R.* II<sup>3</sup>, 512, cf. 597.

<sup>9</sup> Lintott, *Violence*, 104, cf. Mommsen, *St.-R.* II<sup>3</sup>, 597.

<sup>10</sup> The crucial point is whether their duties at night went beyond the task of fire-watching (Paulus, *Dig.* I, 15, 1; cf. Val. Max. 8, 1, *damn.* 5) and whether their right to arrest runaway slaves (Asc. 37 C) and perhaps manifest criminals implied an obligation to search out suspects.

<sup>11</sup> Liv. 32, 26, 17 (198 B.C.); Liv. 39, 14, 9 f.; 39, 16, 12; 39, 17, 5 (186 B.C.); Sall., *Cat.* 30, 7; 32, 1 (63 B.C.).

## IV

*Coercitio* is generally understood to be the special instrument of enforcement which a magistrate had at hand. *Coercitio* (hardly a technical term down to the Late Republic) should be understood as the general term for a number of measures a magistrate could use to enforce obedience without instituting legal proceedings.<sup>12</sup> It covers scourging and execution (by decapitation with an axe), arresting and carrying a disobedient person to prison, imposing a fine up to a *multa maxima* limit or seizing a pledge (*pignoris capio*).<sup>13</sup>

The gravest form of *coercitio*—scourging and execution<sup>14</sup>—was banned by the *provocatio* laws. The controversial points in the development of *provocatio* are of no interest in our context. It should, however, be stressed that the tradition on cases in which this kind of *coercitio* was successfully applied (if only in the sense that menacing its use proved to be sufficient) suggests that it had been in particular an instrument of military discipline, using an extremely spectacular procedure, particularly when an example was made of a member of the aristocracy itself. The famous story of T. Manlius Imperiosus Torquatus executing his son,<sup>15</sup> as well as the tradition on conflicts between a *dictator* and his *magister equitum*,<sup>16</sup> preserve conspicuous examples.

In the overwhelming majority of cases reported from the Middle Republic onwards, in which the other means of *coercitio* were actually taken, it was a matter of a conflict between one magistrate and another, or between a magistrate and a senator: a higher magistrate against a lower one,<sup>17</sup> a magistrate versus a candidate for office who is not properly qualified,<sup>18</sup> the consul summoning the senate against a senator who refuses to appear,<sup>19</sup> the consul being in the chair at a senate meeting against a senator who obstructs proceedings.<sup>20</sup>

Consideration of those cases which are examples of magistrates using *coercitio* leads to the conclusion that, as a rule, it was not an instrument to discipline the man in the Roman street, but a weapon to be used as a means of controlling and disciplining members of the ruling class itself. (Coercive action taken by tribunes, too, was generally directed against magistrates; because of its different origin and character it had better not be subsumed under *coercitio*.)

There is obviously one objection to this prima-facie result. The sources tend to report spectacular instances and not everyday practice. However, the assumption that *coercitio* was of only minor practical importance can be upheld on the basis of some reflections on the functions of the lictors.

The lictors were the kind of auxiliary personnel who could have played the part of a magistrates' staff in enforcing obedience.<sup>21</sup> They carried the *fasces*, instruments as well as symbols of physical coercion. They were present at any confrontation between higher magistrates and citizens, and they were the proper personnel to be employed, whereas the use of public slaves or auxiliary staff privately recruited in cases of coercive measures against citizens was considered to be inadmissible.<sup>22</sup>

The *magistratus cum imperio* never appeared in public without his lictors. On the other hand, lictors could only fulfil their tasks with the magistrate present. This means that they could not relieve the magistrate of the physical confrontation with the addressees of his orders.

<sup>12</sup> Kunkel, *Kriminalverfahren*, 140; J. Martin, 'Die Provokation in der klassischen und späten Republik', *Hermes* 98 (1970), 82.

<sup>13</sup> Mommsen, *St.-R.* 1<sup>3</sup>, 136 ff.; A. H. J. Greenidge, *The Legal Procedure of Cicero's Time* (1901), 331 ff.

<sup>14</sup> As a rule scourging was a punishment preliminary to decapitation: there are only few traces of its use as a punishment on its own; cf. the evidence collected in M. Fuhrmann, 'Verbera', *RE, Suppl.* 9 (1962), 1589 ff. and W. Waldstein, 'Geißelung', *RAC* 9 (1976), 481 f.

<sup>15</sup> Val. Max. 2, 7, 6; Liv. 8, 7, 8 ff.; Dion. Hal. 2, 26, 6; Cic., *Fin.* 1, 23; Cic., *Sull.* 32; Gell. 9, 13, 20; Flor. 1, 14, 2; Oros. 3, 9, 2.

<sup>16</sup> Q. Fabius Maximus versus M. Minucius Rufus during the Second Punic War: Liv. 22, 25, 13; 22, 27, 3; Plut., *Fab. Max.* 9–10; the story reported for the year 325 (Liv. 8, 32, 10; 8, 33, 21; Val. Max. 2, 7, 8; [Aur. Vict.], *Vir. Ill.* 31) may be a

doublet of the historic case. See further the conflict at the consular elections of 215 B.C.: Liv. 24, 9, 1 f.

<sup>17</sup> e.g. Liv. 42, 9, 4; Suet., *Caes.* 17, 2; Cic., *Mil.* 89; cf. Liv. 3, 55, 9; 5, 9, 7; 5, 11, 11.

<sup>18</sup> e.g. Val. Max. 9, 7, 1; Vell. Pat. 2, 92, 3; App., *B.C.* 3, 31.

<sup>19</sup> e.g. Varro *ap. Gell.* 14, 7, 10; Cic., *Phil.* 1, 12; Plut., *Cic.* 43, 7; J. Stroux, 'Die Versäumnisbuße der Senatoren', *Philologus* 93 (1938), 85–101; O'Brien Moore, 'Senatus', *RE, Suppl.* 6 (1935), 702.

<sup>20</sup> e.g. Ateius Capito *ap. Gell.* 4, 10, 8; Cic., *De Or.* 3, 4.

<sup>21</sup> Kübler, 'Lictor', *RE* 13 (1926), 507–18; the following account owes much to B. Gladigow, 'Die sakralen Funktionen der Liktoren', *ANRW* 1, 2 (1972), 295–314.

<sup>22</sup> This statement holds true even if the role of the *servi publici* was more important than assumed by the *communis opinio*, as W. Eder, *Servitus Publica* (1981), now argues.

The lictors were not even fit to act as a body-guard: their walking one by one in single file in front of the magistrate is naturally not functional from a practical point of view.

It was evident that the lictors had primarily a symbolic function, after the laws of *provocatio* had banned physical coercion. It is, however, revealing that the accounts of the application of such coercion during the Struggle of the Orders indicate that even then such acts (within the city) were rather a demonstration of the claim to obedience than an actual attempt at exacting obedience by means of physical force. When magistrates were confronted with the plebeian masses, they apparently wanted to single out ringleaders in order to punish them exemplarily.<sup>23</sup> Such attempts were doomed to fail when the man was backed by the crowd<sup>24</sup> or protected by a tribune's *intercessio*. This was not just a matter of the crowd outnumbering the small number of lictors. What the sources in fact suggest is that in such a situation the lictors were only ordered to seize ringleaders; in many cases only one lictor was dispatched to do this.<sup>25</sup> The lictors were not employed as a force to disperse the crowd, and there was no question of using their *virgae* indiscriminately as instruments to apply physical force. The rods were only untied on the magistrate's explicit order after a delinquent had already been seized.<sup>26</sup> This means that the lictors could only be effective if they were accepted as the representatives of the magistrate's authority. This is the core of the reasoning which Livy attributes to the crowd in the Volero Publilius conflict in 473 B.C.: the power of the lictors consists only in the plebeians' internalization of respect.<sup>27</sup> Or, to put it the other way round, the capability of the lictors to quell serious disturbances depends on the authority of a magistrate being positively accepted<sup>28</sup>—a rule which applies also to their routine tasks of clearing a way and exacting reverence for a magistrate,<sup>29</sup> which may amount to marshalling crowds at public events.<sup>30</sup>

It is misleading to understand the weakness of lictors in situations of actual conflict in terms of a lack of efficiency,<sup>31</sup> since that implies applying standards of policing in a modern sense. The core of the lictor's task is the symbolic representation of the magistrate's claim to obedience, which is expressed by a complex set of acts and rituals involving the *fasces*, to which considerable importance was ascribed down to the Late Republic (and the Empire).<sup>32</sup> Significantly they are also used to demonstrate that the rules of discipline also apply to hierarchical subordination within the magistracy itself.<sup>33</sup> Breaking the *fasces*, on the other hand, symbolizes either the *de facto* deposition of a magistrate,<sup>34</sup> or it symbolizes a demonstrative disregard of the magistrate's authority by a crowd.<sup>35</sup>

Maintaining public order derives from the display of magisterial authority, and not vice versa. That is why magistrates are expected to be able to deal with disturbances just by virtue of their presence and eloquence,<sup>36</sup> and why it is assumed that the dismissal of a turbulent public meeting by the presiding magistrate is a sufficient means of restoring order.<sup>37</sup> On the other hand, magistrates are also advised not to engage unnecessarily in confrontations which could affect their dignity.<sup>38</sup>

## V

The preconditions for the working of a system which depends to such a high degree on the magistrate's authority being indisputably accepted must be rooted in the basic structure of society and its mechanisms of social control.<sup>39</sup> There must be an interdependence between

<sup>23</sup> Liv. 2, 23, 15; 2, 27, 12; Plut., *Publ.* 7, 3; cf. Liv. 4, 50, 2.

<sup>24</sup> Dion. Hal. 9, 39, 3 ff. and the evidence quoted in n. 25.

<sup>25</sup> Liv. 2, 29, 2; 2, 55, 4; 3, 41, 3; 3, 49, 4.

<sup>26</sup> Liv. 2, 55, 5; 8, 32, 10.

<sup>27</sup> Liv. 2, 55, 3.

<sup>28</sup> Dion. Hal. 7, 35, 5.

<sup>29</sup> See the evidence for *summovere*, Kübler, *RE* 13, 512.

<sup>30</sup> Liv. 22, 56, 1; 27, 50, 10; 27, 51, 5; Cic., *Cluent.* 147; Cic., *Q. fr.* 1, 1, 21; Plut., *Aem. Paul.* 32, 3.

<sup>31</sup> Pace Lintott, *Violence*, 89.

<sup>32</sup> e.g. Liv., *per.* 89; Suet., *Caes.* 20, 1; Caesar, *B.C.* 1, 6, 7; Dio 43, 48, 2; 43, 14, 3; Vell. Pat. 2, 58, 3; Sall., *Cat.* 36, 1; Asc. 33 C.

<sup>33</sup> See esp. the episode of a father (himself a proconsul) being ordered by a lictor to pay reverence to his son, the consul (Liv. 24, 44, 10; Plut., *Fab. Max.* 24, 1 f.; Quadrigarius *ap. Gell.* 2, 2, 13), and the story of Q. Fabius Maximus demonstrating the absolute superiority of a dictator by commanding the consul to approach him without lictors in front of the army (Liv. 22, 11, 5 f.; Plut., *Fab. Max.* 4, 2).

<sup>34</sup> Val. Max. 2, 7, 7; Dio 59, 20, 3.

<sup>35</sup> Liv. 2, 55, 9; 3, 49, 4; Flor. 1, 22, 2; Zonaras 7, 17.

<sup>36</sup> Cic., *Brut.* 56 f.

<sup>37</sup> Cic., *leg.* 3, 11; 42.

<sup>38</sup> Liv. 3, 11, 5; 25, 3, 19.

<sup>39</sup> See Finley, *Politics in the Ancient World*, chs. 2 and 6 *passim*.

the military discipline imposed almost permanently on the society as a whole, the sacred aura of the magistracy and the function of state cults, the public representation of the success of the Republic and its élite, manifest in buildings, statues, funerals and triumphs, the disciplining effects of patronage, etc. on the one hand, and the general assumption that the magistrates were capable of dealing successfully with problems of public order on the other hand. It is, however, almost impossible to demonstrate the functioning of such mechanisms of social control in actual situations of conflict.<sup>40</sup>

The argument can, however, be supported by the fact that the sources reveal the nobility's feeling of vulnerability to alleged conspiracies and the potential danger of autonomous associations in society.

Night meetings are considered as the nucleus of the independent organization of the *plebs* in the Early Republic; <sup>41</sup> *coetus nocturnus* was banned by the Twelve Tables (VIII, 26). Clandestine meetings in private houses are reported as being the origin of conspiracies aimed at a restitution of the Tarquins <sup>42</sup> or at a tyranny of Spurius Maelius <sup>43</sup> or Manlius Capitolinus. <sup>44</sup> Risings of slaves in the early period of the Republic were understood as conspiracies as well. <sup>45</sup> The authenticity of almost all these cases can be doubted, but the important point is that the annalistic tradition reflects an almost traumatic alertness of the authorities to the dangers of conspiracies. Such an attitude governs the reaction of senate and magistrates in some cases in the Middle Republic, i.e. the disturbances and conspiracies allegedly involving slaves, war captives (and hostages) in the years 259, <sup>46</sup> 217, <sup>47</sup> 198, <sup>48</sup> the incendiarism of 210 <sup>49</sup> and then, of course, the Bacchanalian affair (and later again the Catilinarian conspiracy).

Typical reactions of the authorities include the summoning of special watches under the command of the *minores magistratus*, especially to prevent arson. <sup>50</sup> Furthermore, a significant (and always effective) counter-measure in these cases (fictitious or historic) is giving or even offering officially in advance rewards to informers, money for citizens and liberty (plus money) for slaves. <sup>51</sup> To offer liberty to slave informers implied not only interfering with the property rights of slave-owners; it also meant an instigation of the denunciation by slaves of their masters. The establishment of such an exemption to the rule vital for a slave-owning society that slaves cannot give evidence against their own masters <sup>52</sup> is a significant demonstration of how seriously alleged conspiracies were taken.

The nature of this fear of plots may perhaps best be inferred from the reaction of the authorities to the scandals associated with the Bacchanalian cult in 186 B.C. The suppression of the cult as such was apparently not the main aim. The decree of the senate did not necessarily exclude any form of individual worship of the god, provided official permission was obtained. It forbade, however, without any qualification the keeping of common funds, and it allowed no *magistri* and male priests. <sup>53</sup> The crucial aim seems to have been the destruction of associations which might estrange parts of the citizenry from their 'natural rulers', since the initiation could create particular loyalties. Or, as Livy makes the consul say, it makes young men unable to serve as soldiers. <sup>54</sup> Associations of an exclusively religious character with hierarchies of their own and commanding the devotion of their members could also appear to be a potential danger to the integrative function of state cults. <sup>55</sup> Moreover, they seemed to provide possibilities of organizing outside the control of the authorities, especially as the city had transcended the dimensions of a face-to-face society. <sup>56</sup> In the speech which Livy attributes to him, the consul stresses in front of the people that it was

<sup>40</sup> Compare, however, Liv. 2, 28, 5; 3, 41, 6; 5, 25, 2 f.; Plut., *Aem. Paul.* 31 and n. 75 below.

<sup>41</sup> Liv. 2, 28, 1 ff.

<sup>42</sup> Liv. 2, 3, 7 ff.; Dion. Hal. 5, 6 f.; Plut., *Publ.* 4 ff.

<sup>43</sup> Liv. 4, 13, 10.

<sup>44</sup> Liv. 6, 20, 4.

<sup>45</sup> W. Hoben, *Terminologische Studien zu den Sklavenerhebungen der Römischen Republik* (1978), 28 ff. and *passim*.

<sup>46</sup> Zonaras 8, 11; Oros. 4, 7, 12.

<sup>47</sup> Liv. 22, 33, 1 f.; Zonaras 9, 1.

<sup>48</sup> Liv. 32, 26, 4 ff.; *per.* 32; Zonaras 9, 16.

<sup>49</sup> Liv. 26, 27, 1 ff.

<sup>50</sup> See n. 11 above.

<sup>51</sup> e.g. Plut., *Publ.* 7, 3 ff.; Liv. 2, 5, 9; 4, 45, 2; 22, 33, 2; 26, 27, 6 ff.; 32, 26, 14; 39, 14, 6; 39, 19, 3 ff.; Sall., *Cat.* 30, 6.

<sup>52</sup> See now D. Liebs, 'Der Schutz der Privatsfäre (sic) in einer Sklavenhaltergesellschaft: Aussagen von Sklaven gegen ihre Herren nach Römischen Recht', *BIDR* 83 (1980, i.e. 1982), 147-89; L. Schumacher, *Servus Index: Sklavenverhör und Sklavenanzeige im republikanischen und kaiserzeitlichen Rom* (1982).

<sup>53</sup> *SC de Bacchanalibus*, lines 10 ff.; Liv. 39, 18, 9.

<sup>54</sup> Liv. 39, 15, 13; cf. Cic., *leg.* 2, 21.

<sup>55</sup> J. North, 'Religious toleration in Republican Rome', *PCPS* 205 (1979), 85-103.

<sup>56</sup> Liv. 39, 9, 1.

Roman tradition to allow only officially summoned meetings. Every meeting of a group of citizens should be led by a *legitimus rector multitudinis*.<sup>57</sup>

As a matter of fact, the authority of the senate and the stability of the aristocratic regime were not seriously in jeopardy in those days: the authorities were able to carry through persecution on an unprecedented scale. Arrests on a very large scale and summary trials of hundreds or thousands of people are only possible with the support of quasi-military forces.<sup>58</sup> We have to assume that citizen volunteers played this part in 186 B.C.<sup>59</sup>

## VI

I should now like to deal briefly with the handling of those violent breaches of public order which became almost endemic during the Late Republic. These occurrences were mainly concomitants of the regular processes of decision-making,<sup>60</sup> at a time when tendencies to disintegration within the aristocracy led to the disregard of fundamental constitutional conventions.<sup>61</sup> The classic instance is the conflict which arises when *intercessio* or *obnuntiatio* is used against the passing of a plebiscite.<sup>62</sup> This indicates that even if Rome had developed the idea of quelling riots by specialized forces of order, it would have been impossible to reach such a solution under Republican conditions. That is not only a question of who could be entrusted with the command of such a force—which would be difficult enough to solve by itself. One would have had to establish fixed rules on initiative in legislation, the proper use of *intercessio* and *obnuntiatio*, etc. That would have led in the end to an almost total reconstruction of the constitution. This is, of course, a hypothetical argument but it should demonstrate (again) that one cannot just discuss the problem simply as a technical question.<sup>63</sup>

As the disturbances were conflicts within the aristocracy on the one hand, and breaches of the rules for putting through legitimate decisions on the other hand, there was a fairly high threshold, the crossing of which demanded the taking of counter-measures. Many decisions put through against the rules and by violence were accepted *de facto*.<sup>64</sup>

In certain cases, in which preventive measures were deemed necessary to secure undisturbed proceedings with respect to trials, legislation or elections, *ad hoc* body-guards for the magistrates could be set up.<sup>65</sup> The designation of such a posse as a *praesidium* suggests that the force was armed. Calling a *praesidium* was, as a rule, authorized by a decree of the senate.<sup>66</sup> Presumably, either clients of magistrates or citizen volunteers<sup>67</sup> were recruited.

The senate's decision to authorize such a body was, as far as we know, only taken in reaction to serious breaches of public peace, the continuance or repetition of which was to be expected.<sup>68</sup> It was, however, a sensible measure only in a situation in which the author (or authors) of disturbances could neither count on sympathy in considerable parts of the aristocracy, nor command massive support from the masses.

## VII

The problem took on a quite different character if and when the senate was confronted with instances of open rebellion. I cannot deal in detail with those well-known cases which led to the institutionalization of the so-called *senatus consultum ultimum* (and I do not want to discuss the constitutional problems connected with that decree, which was formally passed for the first time in 121 B.C.<sup>69</sup>). But I want to stress that in the cases of the Gracchi and of

<sup>57</sup> Liv. 39, 15, 11.

<sup>58</sup> Liv. 39, 17, 5 f.; 39, 18, 5 f.

<sup>59</sup> Liv. 39, 16, 13; Finley, *Politics*, 21.

<sup>60</sup> See W. Nippel, 'Die *plebs urbana* und die Rolle der Gewalt in der späten römischen Republik', in H. Mommsen and W. Schulze (eds.), *Vom Elend der Handarbeit: Probleme historischer Unterschichtenforschung* (1981), 70 ff.

<sup>61</sup> cf. W. Nippel, *Mischverfassungstheorie und Verfassungsrealität in Antike und früher Neuzeit* (1980), 150 ff.

<sup>62</sup> App., *B.C.* 1, 2; Cic., *leg.* 3, 11; 42 f.; *fam.* 1, 2, 4; *Sest.* 77; *Phil.* 1, 25.

<sup>63</sup> C. Meier, *Res Publica Amissa* (1966), 157 ff.

<sup>64</sup> J. Bleicken, *Lex Publica* (1975), 463 ff.; Lintott, *Violence*, 132 ff.

<sup>65</sup> C. Meier, *GGA* 216 (1964), 44 ff.; Lintott, *Violence*, 89 ff.

<sup>66</sup> See, however, Cicero's tendency to designate privately recruited body-guards of dubious legality as a *praesidium* as well; K. J. Nowack, *Der Einsatz privater Garden in der späten römischen Republik* (Diss. München, 1974), 71 ff.; Bleicken, *Lex Publica*, 486 ff.

<sup>67</sup> cf. Asc. 75 f. C.

<sup>68</sup> Dio 36, 39, 1; Asc. 60 C; Cic., *Att.* 1, 16, 5; Schol. Bob. p. 85 St.; Dio 37, 46, 2 f.; Plut., *Cic.* 29, 6 f.

<sup>69</sup> See the standard account by J. v. Ungern-Sternberg, *Untersuchungen zum spätrepublikanischen Notstandsrecht* (1970) and C. Meier, 'Der Ernstfall im alten Rom', in A. Peisl and A. Mohler (eds.), *Der Ernstfall* (1979), 40-73.

Saturninus the magistrates and the senate could not simply order massive repression. Only if the authorities could count on a substantial number of followers in the citizen body, could repression be a way out at all. This presupposed that the character of the situation as an emergency was evident. Measures against the Gracchi and Saturninus were only taken when they had been driven to a state of open rebellion, occupying public places with (armed) retainers (cf. Caes., *B.C.* 1, 7, 5 f.).

The procedure of the *senatus consultum ultimum* took the form of an appeal to those citizens who were prepared to defend the *res publica*, as is indicated by the use of the *evocatio* formula, which itself was understood as the expression of the inalienable right of citizens to use self-help when the commonwealth was seriously endangered.<sup>70</sup> (The optimate tradition on Scipio Nasica, who in 133—as a *privatus* and against the will of the responsible magistrate—had taken the initiative to crush Tiberius Gracchus, shows that the *senatus consultum ultimum* was understood as neither essentially creating nor totally absorbing the right of self-defence in an emergency.<sup>71</sup>)

In practice it meant primarily the self-organization of the upper classes, the employment of their direct dependants and the mobilization of the 'reliable parts' of the citizenry. Senators and knights could arm themselves and were able to supply their followers with weapons.<sup>72</sup> We may assume that in general the majority of the population had no direct access to weapons. In the case of the proceedings against Saturninus arms were distributed from the public arsenals—a method which still allowed reasonable control.<sup>73</sup> Senators, knights, their retainers and clients, and the 'loyal parts' of the *plebs*,<sup>74</sup> the 'intacta perniciosis consiliis plebs'—as Velleius Paterculus (2, 3, 2) nicely puts it—were able to gain the upper hand. However large that part of the urban masses whose support could be counted on by the authorities may have been, it was strong enough to deal with situations of open rebellion when the number of the tribune's supporters had already dwindled to a hard core and resistance had broken down after the leaders had been killed. It was the crucial weakness of the great *populares* of the late second century B.C. that they were not successful—in spite of considerable efforts—in winning lasting and reliable support from the *plebs urbana*. All in all, the conviction that they could command the stronger forces in the last resort enabled the authorities to stick *volens volens* to an attitude of wait-and-see. Their success depended on a consensus being reached within the ruling class on the necessity of armed repression, and on these measures being accepted at least passively by the bulk of the citizenry.<sup>75</sup>

Thus, consensus within the citizenry was a necessary precondition for the implementation of emergency measures, with respect to the physical means of power as well as to the legitimacy of armed repression. To stabilize such a consensus the magistrates took additional measures to demonstrate that the leaders of sedition had been rightfully killed.

The houses of C. Gracchus and Fulvius Flaccus, and later that of Saturninus, were pulled down.<sup>76</sup> Their goods were confiscated.<sup>77</sup> The bodies of C. Gracchus, Flaccus and others were not allowed to be buried, but thrown into the river.<sup>78</sup> Their widows were forbidden to go into mourning.<sup>79</sup> There are hints that in the case of Saturninus it was forbidden to keep his portrait.<sup>80</sup> Later in the first century the same measures were also employed against those officially named *hostes* and in connection with the proscriptions.

The imposition of such measures against the leaders of sedition corresponds to the posthumous sanctions which, according to the sources, were applied against public enemies of the Early Republic. The destroying of their houses and the confiscation of property were allegedly sanctions following the elimination of the would-be tyrants Spurius Cassius, Spurius Maelius and Manlius Capitolinus.<sup>81</sup>

<sup>70</sup> Lintott, *Violence*, 91; Ungern-Sternberg, *Notstandsrecht*, 18, 63, 64 f.

<sup>71</sup> esp. Cic., *Tusc.* 4, 51; *Brut.* 107; 212; *Cat.* 1, 3.

<sup>72</sup> Plut., *C. Gracch.* 14, 4.

<sup>73</sup> Cic., *Rab. perd.* 20.

<sup>74</sup> Cic., *Rab. perd.* 21 ff.; 27; 31; Oros. 5, 17, 7.

<sup>75</sup> At least in 133 B.C., the social superiority of senators was still a factor of some importance; Plut., *Ti. Gracch.* 19, 4; App., *B.C.* 1, 16; cf. Diod. 34/35, 33, 7.

<sup>76</sup> Val. Max. 6, 3, 1c; Cic., *dom.* 102.

<sup>77</sup> Oros. 5, 17, 10; Plut., *C. Gracch.* 17, 5; *Dig.* 24, 3, 66 *pr.*; W. Waldstein, 'Zum Fall der "dos Licinniae"', *Index* 3 (1972), 343–61.

<sup>78</sup> Plut., *C. Gracch.* 17, 5; Flor. 3, 15, 6; Vell. Pat. 2, 6, 7.

<sup>79</sup> Plut., *C. Gracch.* 17, 5.

<sup>80</sup> Cic., *Rab. perd.* 24 f.; Val. Max. 8, 1, *damn.* 3; Quint., *Inst.* 6, 1, 49.

<sup>81</sup> Mommsen, *St.-R.* III, 1189 f.; Waldstein, 'Bona damnatorum', *RE, Suppl.* 10 (1965), 100.

Recourse to these equivalents of *damnatio memoriae*<sup>82</sup> can be understood as attempts by the authorities to confirm emphatically the rightness of their actions, to stabilize the corresponding consensus within the ruling class and the rank and file of the citizenry, to prevent the dead from becoming heroes of the people (which was not successful, as we know, with respect to the great *populares* in the long run), and also to demonstrate the intention to defend what had been done and to issue an unambiguous warning to potential aristocratic dissidents.

Corresponding functions can be attributed to the criminal proceedings which were instituted against supporters and followers of both Gracchi, although some important differences between the proceedings of 132 and those of 121 have to be established.

A *quaestio extraordinaria* was carried out by the consuls of 132. That means that it took place several months after the actual events which had culminated in the death of Tiberius Gracchus. His murder aroused the anger of the *plebs*. According to Diodorus (34/35, 33, 6 f.) tribunes summoned senators to a *contio* and asked them to name the murderers. While the majority of them gave elusive answers or refused to answer, Scipio Nasica openly admitted his responsibility. He declared that he and the senate, but not the people, had realized Gracchus' tyrannical aspirations. Impressive as his public statement may have been, the senate's decision to send him abroad is due to the continued popular anger against him.

Establishing a *quaestio extraordinaria* was then a move by the senate to take the initiative, by trying to substantiate its contentions as to Gracchus' true intentions. The defendants were some friends of Gracchus, who were probably men of a certain prominence. We know only details of the case of Blossius of Cumae.<sup>83</sup> It is not clear whether he had directly participated in Gracchus' final act of despair. He was granted a sort of hearing by the consuls (and was probably not arrested at the time of his interrogation). Blossius was at last either acquitted or not prevented from going into exile. In any case, there was obviously no real reason to have him executed. The famous story of his examination, namely the question whether he would have followed an order of Gracchus to set fire to the Capitol, suggests that the real intention of the trial was to prove the treacherous aspirations of the tribune. In other words, prosecuting the friends of Tiberius Gracchus in a situation in which there was still tension and debate about the acceptability of the tribune's killing was intended to confirm the rightness of the action taken. When this objective had been achieved, the individual fate of the defendants did not matter much.

The proceedings in 121 had a quite different function. They were instituted by the consul Opimius, immediately after Gaius Gracchus had been crushed. They were aimed against those who had actually formed the body with which C. Gracchus and Fulvius Flaccus had occupied the Aventine. The execution of about three thousand men is reported.<sup>84</sup> To punish the anonymous delinquents, they had to be arrested on the spot, which was only possible by an armed force of considerable strength. (It should be mentioned in passing that in later accounts representing the optimate view of events the unit of Cretan archers, which Opimius had employed in addition to the posse of senators, knights and their dependants, was passed over in silence<sup>85</sup>—probably because it did not fit the picture of a citizen-body defending itself.) Their execution without any kind of trial was intended to intimidate and deter the people<sup>86</sup>—certainly a reaction to the fact that Gaius Gracchus had had a considerable following until his final day.

#### VIII

The senate's success in the late second century not only in winning the upper hand in terms of physical power, but also in creating a consensus within the ruling class and in having its proceedings at least accepted by the urban masses should be contrasted with the situation of the post-Sullan era. The inability of the authorities to cope with major disturbances should not only be seen as resulting from the paralysis of government caused by power struggles within the nobility or ascribed to the fact that the rapid increase of the city population had created further difficulties. I shall argue that at least the developments of the fifties reveal a

<sup>82</sup> Dio 7, 26, 1; F. Vittinghoff, *Der Staatsfeind in der römischen Kaiserzeit* (Diss. Bonn, 1936), 13.

<sup>83</sup> Val. Max. 4, 7, 1; Cic., *am.* 37; Plut., *Ti. Gracch.* 20, 3 f.

<sup>84</sup> Oros. 5, 12, 10; Aug., *Civ. Dei* 3, 24.

<sup>85</sup> Plut., *C. Gracch.* 16, 3; Oros. 5, 12, 7.

<sup>86</sup> cf. Sall., *Iug.* 31, 7; 16, 2; Oros. 5, 12, 10.



dramatic breakdown of the senate's authority, which indicates that the cultural hegemony of the ruling class was seriously shaken. Thus the social preconditions of the Republican system of securing public order no longer prevailed.

Some examples must suffice to illustrate this argument.<sup>87</sup> The *collegia* of the Late Republic were to a certain extent an autonomous organization beyond the control of the nobility, which served especially to articulate the cultural identity of the urban masses. The *collegia* united members of different status groups of the lower classes. Their *magistri* (and the *magistri vicorum*) were able to organize considerable parts of the *plebs urbana* on the basis of professional groups and neighbourhood units. Thus the nightmare which the nobility had always feared materialized, and the senate was no longer able to exorcize it effectively.

Clodius made the *collegia* the structural backbone of his activities. His importance for the events of the fifties lies in his ability to identify his own cause (whatever his personal aims may have been) with the general issue of *libertas*, to create—to a certain degree—a collective identity of the urban masses by uniting them against common enemies and by developing new forms of demonstratively expressing the will of the people.<sup>88</sup>

Clodius was especially successful in demonstrating that the people themselves should be the authority to outlaw public enemies. As tribune of the people he promulgated a law which provided for the exiling of anybody who had killed a *civis indemnatus*.<sup>89</sup> Cicero was publicly insulted and attacked in order to make it evident that he was the person against whom the law was directed. As far as we know, the law did not specify the form of legal prosecution. Probably Clodius would have argued that Cicero, who had always boasted of his decision to execute the Catilinarians, should be treated as a manifest criminal who had even confessed his crime, and that therefore a trial was not necessary at all<sup>90</sup>—thus using the very arguments which had been employed against the conspirators.<sup>91</sup>

Cicero went into exile the day before the law was passed. After the law had come into force, Clodius immediately staged the destroying of Cicero's house on the Palatine hill, which was situated 'in conspectu prope totius urbis',<sup>92</sup> and of Cicero's villa in Tusculum. Thus he demonstratively executed the penalty to be imposed on a public enemy by an act of popular justice.<sup>93</sup> Cicero, of course, later denounced these actions as acts of vandalism. In his speech *De Domo Sua* (100 ff.), however, he tried to establish that the case of his property could not be compared with the proceedings against the would-be tyrants of earlier times or the leaders of the 121 sedition. So, Cicero concedes by implication that the destroying of his houses had been a carefully directed imitation of official sanctions.

A second law was aimed directly against Cicero and, declaring his being outlawed as already established,<sup>94</sup> included a provision on the confiscation of his property.<sup>95</sup> The dedication of a statue of *Libertas* on the site of Cicero's Palatine house<sup>96</sup> was a symbolic act which can be best compared with the dedication of a temple of *Concordia* by the consul *Opimius* in 121.<sup>97</sup> During the conflict over the validity of the dedication after Cicero's return from exile, Clodius also seems to have used a travesty of the *evocatio* and *SCU* formula to exhort the people to defend the 'consecrated' site.<sup>98</sup>

Clodius' policy against Cicero can be understood as an attempt to establish the right of the people to outlaw a public enemy. It is significant that it was carried through on different levels of interaction, i.e. by using the rights of tribunes, as well as by various ways of direct action

<sup>87</sup> The following part is a short summary of Nippel, art. cit. (above n. 60), 81 ff.; fuller documentation and a more detailed substantiation of my interpretation of Clodius' policy may be found there.

<sup>88</sup> The success of John Wilkes with the London masses in the sixties and seventies of the eighteenth century is an illuminating parallel; see esp. J. Brewer, *Party Ideology and Popular Politics at the Accession of George III* (1976), ch. 9 and id., 'The Wilkites and the law, 1763-74', in J. Brewer and J. Styles (eds.), *An Ungovernable People* (1980), 128-71.

<sup>89</sup> Vell. Pat. 2, 45, 1.

<sup>90</sup> A. W. Lintott, 'P. Clodius Pulcher—Felix Catilina?', *G&R* 14 (1967), 164.

<sup>91</sup> Cic., *Cat.* 4, 10; Sall., *Cat.* 52, 36; App., *B.C.* 2, 6.

<sup>92</sup> Cic., *dom.* 100.

<sup>93</sup> Dio 38, 17, 6.

<sup>94</sup> Cic., *dom.* 47; 82.

<sup>95</sup> Cic., *dom.* 44; 45; *Sest.* 65; *Pis.* 30.

<sup>96</sup> Cic., *dom.* 51; 110; 116; *leg.* 2, 42; Dio 38, 17, 6; Plut., *Cic.* 33, 1.

<sup>97</sup> Plut., *C. Gracch.* 17, 6; App., *B.C.* 1, 26; Aug., *Civ. Dei* 3, 25.

<sup>98</sup> Cic., *Att.* 4, 2, 3, 'hortatur ut se et Appium sequantur et suam Libertatem ut defendant'. Cf. Val. Max. 3, 2, 17 f.; Cic., *Rab. perd.* 20; Ungern-Sternberg, *Notstandsrecht*, 12, and the collection of evidence on the *SCU* formula by G. Plaumann, 'Das sogenannte Senatus consultum ultimum, die Quasidiktatur der späteren römischen Republik', *Klio* 13 (1913), 321 ff.

which could be presented as expressing immediately the will of the people. That was also the symbolic content of other forms of violence which conjured up either the Struggle of the Orders (e.g. when the *fascēs* of consuls were broken<sup>99</sup>), or which adapted elements of popular justice—typical means of social control in small communities—as instruments of social and political protest (e.g. the charivari-like demonstrations against Cicero<sup>100</sup> and Pompey<sup>101</sup> in 57 and 56 respectively to pillory them as responsible for the famine).

To underline the fact that Clodius did train the *plebs urbana* to use new methods of articulating their will does not imply over-estimating his influence and success (and it does not mean playing down the violence which was used). We can assume that a number of his actions were only carried out by a relatively small group of fervent supporters. His attempt to strengthen the power of the *collegia* by making them responsible for the distribution of the corn dole<sup>102</sup> was thwarted when Pompey was charged with the *cura annonae*.<sup>103</sup> But the really crucial point is that the patterns of (violent) protest which had been staged by Clodius could be transferred to the mobilization of the masses, at least in situations of extreme excitability: the riots on an unprecedented scale after the murder of Clodius (and later of Caesar) prove that point. The reaction of the *plebs urbana* at that time was in sharp contrast to their putting up with the liquidation of the great *populares* some decades earlier.

The estrangement of large parts of the urban population from the nobility made obsolete the system of crisis management which had been developed since 133 B.C. After the violent reaction of the *plebs urbana* to their hero's murder in 52, which culminated in the burning down of the *curia*, the senate commissioned Pompey to levy troops in Italy and to use them to restore order in Rome.<sup>104</sup> The decision to authorize the employment of troops marked the breakdown of the Republican system which had always excluded the use of regular troops *domi*.<sup>105</sup> It was significant that the aristocracy was no longer able to cope with genuine mass protest without sacrificing fundamental principles of Republican government. Despite the importance of this step the employment of troops in 52 was only a temporary measure (which can only indirectly be linked with the events of the civil war period, when the respective military leaders used their troops several times to suppress disturbances in Rome).

## IX

During the Principate, the praetorian guards and the *cohortes urbanae* could always be employed when the Emperor believed his position to be challenged. These units represented a new means of policing the capital. One should, however, avoid precipitate equations with modern police forces, especially since the decision to make use of these forces to quell riots was of a highly discretionary character. Emperors often knew that riots could express and stabilize the affective ties between *plebs* and *princeps*. And the Emperors tried to improve the material conditions of the urban population as well as to develop new ways of symbolic integration.<sup>106</sup>

I have attempted to stress the main aspects of a very complex problem. On the question of policing Rome, we have to avoid fixation on agencies of enforcement. The problems of maintaining law and order during the Late Republic have to be seen within the broader framework of the aristocracy increasingly losing their ability to integrate all parts of the urban population socially and politically. The new institutions of the Principate are fundamental elements of a new, comprehensive attempt at regaining stability by intensifying welfare as well as control.

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<sup>99</sup> Dio 38, 30, 2; Cic., *Pis.* 28; *red. in sen.* 7; *red. quir.* 14.

<sup>100</sup> Cic., *dom.* 14; *Att.* 4, 1, 6.

<sup>101</sup> Cic., *Q. fr.* 2, 3, 2; Plut., *Pomp.* 48, 7.

<sup>102</sup> C. Nicolet, 'Le temple des Nymphes et les distributions frumentaires à Rome à l'époque républicaine d'après des découvertes récentes', *CRAI* 1976, 29–51.

<sup>103</sup> Cic., *dom.* 25 f.

<sup>104</sup> Asc. 34 C; Dio 40, 50, 1; Caes., *B.G.* 7, 1, 1;

Cic., *Mil.* 67; 70.

<sup>105</sup> Cicero had always boasted that he had mastered the crisis of 63 B.C. as *consul togatus* (see C. Nicolet, '“Consul togatus”', *REL* 38 (1960), 695–716) and saved the Republic 'sine tumultu, sine dilectu, sine armis, sine exercitu' (Cic., *Sull.* 33).

<sup>106</sup> See W. Nippel, 'Aufruhr und "Polizei" in der späten römischen Republik und in der frühen Kaiserzeit', *Humanistische Bildung*, Heft 6 (1983), 105 ff. for a provisional account.