

POLITICS, PERSUASION AND THE PEOPLE BEFORE
THE SOCIAL WAR (150–90 B.C.)*

By FERGUS MILLAR

The purpose of this paper is to present a particular model of how Roman politics worked, and of what Roman politics before the Social War was 'about'. In essence I want to place in the centre of our conception the picture of an orator addressing a crowd in the Forum; a picture of someone using the arts of rhetoric to persuade an anonymous crowd about something.¹ The most important subject of oratory, and the most important fundamental right exercised by whoever came to vote, was legislation. Yet the greatest of all the extraordinary distortions which have been imposed on our conception of Republican politics in the twentieth century is that the process of legislation, and the content of the legislation passed by the people, have both ceased to be central to it. With that we have ceased to listen sufficiently to the actual content of oratory addressed to the people, to the arguments from rights, from the necessities of the preservation of the *res publica*, from historical precedents, both Roman and non-Roman, and from social attitudes and prejudices. In the second century above all, we can see how the prestige which the office-holding class derived from family descent and personal standing on the one hand was matched on the other by popular demands for appropriate conduct, and by popular suspicions of private luxury, of profiteering from the conduct of public affairs, and of improper collaboration with wrong-doers both at home and abroad.

Those who spoke to the people in the Forum, from one or other of the two main stages used for the purpose—the rostra and the podium of the temple of Castor and Pollux—could use these popular prejudices and suspicions against each other, just as they could play on the crowd's knowledge of the individuals concerned. For a public meeting, a *contio*, was indeed a stage performance; this idea is expressed by Cicero in words which he puts into the mouth of Laelius in *de amicitia* 97: 'in scaena, id est in contione'. The Forum itself was a stage on which there steadily encroached monuments representing individuals, or recalling their achievements, or associated with their names. Before the middle of the second century the Forum area was already lined with statues of individuals, and in 158 the Senate decreed the removal of those which had not been voted by Senate and People (Pliny, *NH* xxxiv, 30, from the *Annales* of L. Piso). In 117 L. Caecilius Metellus restored the temple of Castor and Pollux. Seven decades later, defending Metellus' grandson, Scaurus, in a case in the Forum, Cicero could remind the *iudices*: 'his grandfather appears to have established the most holy gods in that temple, in your sight, so that they can plead for the safety of his grandson' (*pro Scauro* 24). After Marius' victory over the Cimbri, *scuta Cimbrica* hung as trophies on the *Tabernae Novae* in front of the Basilica Aemilia. Iulius Strabo could put them to demonstrative use, saying to Helvius Mancia in an

* This article represents the text of a lecture given at the Roman Society on 19 March 1985. As is obvious, it continues the themes and preoccupations of my paper 'The Political Character of the Classical Roman Republic, 200–151 B.C.', *JRS* LXXIV (1984), 1. As will be equally obvious, it pretends to be no more than an essay, or sketch, recommending one way of seeing the politics of this period; it does not attempt to give a full or balanced account. Hence the text remains essentially in the form in which it was given as a lecture, and no attempt has been made to give full references to modern works, or more than the minimum essential ancient evidence. I am grateful for comments to the Editorial Committee and also to Jean-Louis Ferrary.

¹ I use the word 'particular' to emphasize that this article, like its predecessor (above), can be seen as one reflection of a general reconsideration of the nature of Roman politics, as a reaction to interpretations which emphasize prosopography or the influence of *clientela*. In retrospect many of the most important considerations can be seen to be expressed already in P. A. Brunt,

Social Conflicts in the Roman Republic (1971), closely followed in many respects by M. I. Finley, *Politics in the Ancient World* (1983), who went some distance, though in my view not far enough, in recognizing the reality of political issues in second-century Rome. The fluidity and competitiveness which marked political life and the holding of office are well emphasized by Hopkins and Burton in *Death and Renewal* (1983), ch. 2, esp. 107 ff. The same competitiveness and individualism is also rightly stressed by T. P. Wiseman, *Roman Political Life 90 B.C.–A.D. 69* (1985), ch. 1. Similarly, note W. M. Beard and M. Crawford, *Rome in the Late Republic* (1985). My approach has derived much from all these studies, as also from L. Perelli, *Il movimento popolare nell'ultimo secolo della Repubblica* (1982). None, however, has shared the particular stress which I would like to put on the element of oratorical persuasion addressed to the crowd. Note, however, C. Nicolet, 'La polémique politique au deuxième siècle avant Jésus-Christ', in C. Nicolet (ed.), *Demokratia et Aristokratia* (1983), 37.

altercation before a crowd 'I will show what you are like', and pointing to the grotesque head of a Gaul painted on one of the shields (*de or.* II, 266). Before that, the first arch ever to appear on the Forum, the Fornix Fabianus, had been erected by Q. Fabius Maximus Allobrogicus, to commemorate his triumph in 121. It gave Licinius Crassus the opportunity to say in a *contio*, about the tribune Memmius, 'Memmius thinks himself so big that on his way down to the Forum he bends his head as he goes under the Fornix Fabianus' (*de or.* II, 267).

As we will see, orators of the office-holding class played on the prejudices and suspicions of the crowd to deploy much more significant and loaded mutual criticisms than that, both when speaking about legislation, before the popular courts constituted by the *comitia tributa*, and before the new jury-courts. These too of course met in the Forum, before a crowd of spectators. The *iudices* both represented the *populus* at large and functioned under its gaze. The mode of oratory, the forms of persuasion, and the bases of argument and justification used here might not always be very different from those before a *contio* or before the *comitia* functioning as a court.

Yet it is precisely here that we can see the remarkable distortion imposed on our conceptions of Republican public life by the most influential of all twentieth-century approaches to it; I mean of course Gelzer's *Die römische Nobilität*, published in 1912—'the key that unlocked the door from the 19th to the 20th century in historical research on the Roman Republic', as Badian described it.² The attempt which Gelzer made, to look behind the constitutional façade to the social reality, was in itself wholly justified. And no one will ever have read this slim volume for the first time—or indeed many more times—without a constant sense of illumination. Yet it is clear that it has actually been too successful. On some points, such as the definition of *nobilitas*, it is misleading, as Brunt has shown.³ On others, such as the importance of relations of personal obligation and dependence in Roman politics, its conclusions go far beyond the evidence which it itself cites: 'The entire Roman people, both the ruling circle and the mass of voters whom they ruled, was, as a society, permeated by multifarious relationships based on *fides* and on personal connections, the principle forms of which were *patrocinium* in the courts and over communities, together with political friendship and financial obligations. *These relationships determined the distribution of political power*'.⁴

This conclusion, to repeat, goes far beyond what the body of the book contains, namely illuminating observations on various social dimensions of the exercise of power. It is an explicit claim that these social dimensions constitute an adequate global explanation of the political process. More insidious still, however, is the implicit—and never openly acknowledged—direction of attention and selection of material which shapes the work as a whole. For instance, the only context in which Gelzer gives any attention to oratory is that of cases heard in the courts. There is not even the barest allusion to oratory deployed for or against the passing of laws—that *populare genus dicendi*, which, as Cicero says, enabled Sp. Thorius to get through a law relating to the *ager publicus* (*Brutus* 136), or that personal presence (*auctoritas*) and oratorical power which enabled Marcus Octavius to have the Lex Sempronia frumentaria abrogated by the votes of a *frequens populus* (*Brutus* 222), to be replaced by something more moderate.

This emphasis on forensic oratory and its political function both implicitly ignores one major focus of the political process, legislation, and explicitly attributes a primary significance to trials: 'political struggles were for the most part conducted in the courts'.⁵ Moreover, the major trials, which of course were indeed 'political', are interpreted solely, by careful selection and emphasis, in terms of the established conventions of personal obligation and connection among the upper classes. These conventions were naturally of some significance. As Gelzer duly notes (trans. Seager, pp. 76–7), when M. Antonius, in the mid-90s, defended Norbanus on a charge of *maiestas*, he openly stated his obligation to do this for his former quaestor. But you would not guess, from reading Gelzer, that he had

² E. Badian, *JRS* LVII (1967), 217, quoted by R. Seager, in the introduction to his translation, *The Roman Nobility* (1969), xi.

³ P. A. Brunt, 'Nobilitas and Novitas', *JRS* LXXII (1982), 1.

⁴ Gelzer, trans. Seager (op. cit., n. 2), 139 (my italics).

⁵ Gelzer, op. cit., 85.

said much else, of a wholly different sort. Yet we have the clearest possible evidence that he did. In *de oratore* II, 198–9, Antonius is made to recall what his speech contained:

I gathered together all types of *seditiones*, with their associated wrongs and dangers, and made the *oratio* a survey of all the successive phases of our *res publica*, and concluded by saying that even though all *seditiones* had always been an affliction, some none the less had been just and even necessary . . . Without dissension among the *nobiles*, the kings could not have been driven from this *civitas*, nor tribunes of the plebs created, nor the *consularis potestas* have so often been limited by *plebiscita*, nor the right of *provocatio* granted to the *populus Romanus*, as the *patrona* of the *civitas* and the *vindex* of *libertas*.

The argument from historical precedent was fundamental to the nature of the public political process. But there was also another aspect to the issue at stake in this case, an argument which was more specific in its terms and of more immediate contemporary relevance than that. The entire case (*tota illa causa*) depended on the definition of *maiestas minuta*, as laid down—for the first time ever—in the Lex Appuleia passed by Saturninus, probably in his second tribunate in 100.⁶ What then were the terms in which *maiestas* was defined in Saturninus' law, the earliest to give formal legal expression to this concept? Cicero supplies the definition in the *de inventione* II, 53:

To detract in any way from the *dignitas* or the *amplitudo* or the *potestas* of the *populus*, or of those to whom the *populus* has given *potestas*.

It might be worth considering in what light we would understand these words if we were told that they derived from the political life of a Greek city. Indeed it might help us to escape from the shackles of what we *think* we know about the Roman Republic if we were to read all the information which we are given about Rome between 150 and 90 B.C. as if it related to a Greek city. Nor would this be wholly inappropriate. Polybius, who should have known, did suppose that the categories of political analysis relevant to Greek cities could be applied to Rome. Moreover, there had never been a time, from the eighth century onwards, when Rome had not been within the orbit of the Greek world, and profoundly affected by Greek influences.⁷ And, specifically from this period, there is perfectly clear evidence that precedents from Greek history were regularly deployed in political reasoning in Rome (pp. 7–9 below).

Even without these innumerable real interconnections and influences, it would be a useful logical device for us to relocate the available evidence in a context to which we would apply different presuppositions. Nothing could then be easier than to read the wording of Saturninus' law in terms comparable to those which expressed the sovereignty of the Athenian *demos*, and the status of elected officials or commanders as the delegates of the *demos*. If we then returned to the year 101/100 in Rome and to the extensive law on the Eastern provinces, known in texts from Delphi and Cnidus, we would of course find exactly that presupposition, together with an assertion that the revenues of a newly-gained part of the Empire shall be gathered as the people instructs.⁸

Another parallel suggests itself with the case of classical Athens. A. H. M. Jones demonstrated some decades ago how the ideology of democracy in Athens has to be reconstructed from the attitudes taken up, and criticisms expressed, by writers who were largely, or wholly, unsympathetic to it. The same is largely true of that period of acute crisis in the Roman state which stretches from the middle of the second century to the Social War. We cannot help the plain fact that a high proportion of our evidence derives from the writings of Cicero. But we should read his judgements as reactions to a political

⁶ For the ideological content and revolutionary implications of Saturninus' legislation see above all the very important articles of J.-L. Ferrary, 'Recherches sur la législation de Saturninus et de Glaucia', *MEFR(A)* LXXXIX (1977), 619; 'Les origines de la loi de majesté à Rome', *CRAI* 1983, 556.

⁷ Note now especially A. D. Momigliano, 'The Origins of Rome', *Settimo Contributo* (1984), 379.

⁸ M. Hassall, M. Crawford, J. Reynolds, 'Rome and the Eastern Provinces at the End of the Second Century B.C.', *JRS* LXIV (1974), 195; note R. K. Sherck, *Rome and the Greek East to the Death of Augustus* (1984), no. 55 (translation and commentary).

system and not as descriptions of it, still less as expressions of the values which actually prevailed in it. Cicero's conception of the Roman state—or rather his aspirations and hopes for a Roman state dominated by the example set by the *boni* and *optimates*, and controlled politically by the Senate—has had far more success with posterity than it ever had in his lifetime, except for a single decade, or before it. Cicero was of course not alone in his view that it was the essential function of the Senate to guide political decision-making; the same view is for instance reflected, in the 80s, in *ad Her.*, iv, 35/47. But it is a mistake to elevate this aspiration into a description of an actual state of affairs. As a result, modern writing on the political history of the Republic is haunted still by the utterly misleading, unconscious presupposition that the Senate was a sort of parliament, which exercised the powers of government. So the question now becomes—how, within the walls of the Senate, within the circle of this governing body, did you gain power? The answer then becomes—by having an extensive set of connections, which of course it is naive to call a 'party' and which we now know that we cannot call a *factio* either. No other name will do instead, however, because, if we want to locate the exercise of power, this is the wrong question; we are looking in the wrong direction. Firstly, within the governing class, the thing which above all distinguished the exercise of power was its individualistic character.⁹ This aspect might of course have been confined to the pursuit of office, and military glory. But it was precisely the second half of the second century which saw the break-up of the relative (but by no means complete) consensus which had obtained among the governing class before, and which consequently led to the presentation to the people of political and constitutional propositions of strongly diverging ideological content. It is commonplace to stress the limitations on the people's power: they could only accept or reject laws put to them by an office-holder. This, though true, ignores, first, the conflicting opinions expressed in *contiones* held before a law was put to the vote; second, the fact that to achieve office a man had previously to have been elected; and, third, that effective legislative power still resided with those who, for whatever reason and in whatever numbers, came to the Forum to vote.

Gelzer's assertion—and it was no more than that—that the patterns of personal obligation, which he was able to illustrate so vividly, actually *determined* the political behaviour of the whole mass of voters, did of course have one very convenient corollary. It offered a blanket explanation of voter behaviour; or rather it dispensed us from troubling with the problem of explaining voter behaviour at all, of explaining who came to vote and what sorts of reason they might have had for voting the way they did.¹⁰ Furthermore, by silently omitting legislation altogether from his portrayal of the political process, he inevitably obscured the crucial distinction between electoral voting and legislative voting. The process of election to office may well often have had little or no ideological content. Even so, anyone who had already held public office will have had the opportunity, if he wished, to establish a public identity, and political posture, which would be relevant when it came to his next office: 'So, Quirites, when I set out from Rome I took with me belts full of silver which I brought back empty from my province; as for others, the amphorae full of wine which they took out with them *they* brought back filled with silver' (*ORF*³, p. 112). This of course is Gaius Gracchus, speaking about his quaestorship in Sardinia in 126–4; in the context of repeated public debates and altercations over personal conduct by office-holders, it is a highly political statement. He was, after all, soon to propose to the people legislation taking the extortion court out of the hands of senators.

It is, however, primarily a statement about himself, addressed to a crowd of citizens. The unconscious fiction of the collective parliamentary rule of the Senate has obscured the centrality of this much more important relationship, that is, of the one to the many, of the individual orator and/or office-holder and the crowd.¹¹

⁹ Cf. the works referred to in n. 1 above.

¹⁰ No such explanation is offered in this paper, and it is not clear to me whether any is possible. It is, however, worth noting the discussion, relating to a later period, in Lily Ross Taylor's *Party Politics in the Age of Caesar* (1949), ch. 3. It is interesting to note the presuppositions embodied in the title of this section,

'Delivering the Vote'. I hope to return to this question elsewhere, in the context of the popular politics of the last decades of the Republic.

¹¹ There is much to be learned from the analyses of the relation of the individual and the people in Z. Yavetz, *Plebs and Princes* (1969).

In the longer term it is only if we brush aside the fiction of senatorial government that the Roman revolution becomes intelligible. It was by popular laws, against the will of most senators on most occasions, that power was given successively to individuals like Pompey and Caesar. Once we allow ourselves to think of Republican Rome as a system having significant democratic features, as Polybius saw, we might then attach rather more importance to a passage in which Polybius discusses how a democracy breaks down.¹² Trouble arises through the inordinate ambition of politicians:

Setting out to seek power, and unable to gain their objectives by their own resources and through their own qualities, they dissipate their property, using every means to bribe and corrupt the masses. Then again, when they have rendered the many receptive and greedy for largesse through their insane appetite for prestige, the essential character of democracy is destroyed, and it evolves into a state of violence and government by force. The populace, once it is accustomed to feed off the property of others, and expects to live off the property of their neighbours, and when it finds a champion who is ambitious and daring, but is excluded by poverty from political rewards, brings the rule of force to completion, and gathering together, carries out murders, exiles and redistributions of land—until, having come to live in the manner of beasts, it finds once again a master and monarch.

To explain all that, we would indeed have to have some access to voter behaviour, which of course we do not. All we can recapture is, firstly, something of the forms of self-representation and of persuasion which were addressed to the voters; and secondly something—in certain cases rather a lot—of the actual content and wording of the laws which the people passed.

As regards self-representation, senators can be found repeatedly contrasting themselves with others, named and unnamed, just as Gaius Gracchus did after his quaestorship. They never, to my knowledge, proclaim their own attachment to any group; if they underline their associations with anyone, it is with members of their own families, both past and future. Association with past members of the family was precisely the function of the public funeral oration, delivered from the rostra; Q. Lutatius Catulus, consul of 102, was the first to deliver one for a woman, his mother Popilia (*de or.* II, 44), thus setting a precedent for Caesar. Nothing could more clearly have underlined the public significance of the prominent family. The next generation too could be publicly presented; in his hour of danger, as Sempronius Asellio recorded, Tiberius Gracchus produced his male children in public and commended them to the care of the *populus* (Aulus Gellius, *NA* II, 13). By comparison, C. Papirius Carbo Arvina, tribune in 90, was to recall in a *contio* the contrast between Livius Drusus, the deceased tribune of the previous year, and his father, Livius Drusus, consul in 122. The young Cicero heard him speak (*Orator* 213):

O Marcus Drusus—I call on the father—you used to say that the *res publica* was sacred, and that all those who had violated it had paid the penalty. The wisdom of the father's saying was proved by the rash conduct of the son.

Both father and son had of course held office at moments when major issues of principle were at stake—about the exercise of power in the state, the use of public property for the individual benefit of the citizens and the extension of the citizenship itself. That, finally, is one particular reason for concentrating here on the six decades before the Social War. Moreover, as is obvious, the Social War itself was a major turning-point, which introduced a new era in Roman politics. But how significant the war was is brought out only if we realise that the Romans lost. And we will only see that in perspective if we look at the legislation, and proposed legislation, of the previous half-century. A whole range of fundamental issues was put to the Roman people, and voted on by them. Among these questions there repeatedly came forward ones which affected the constitutional rights of Latins and Italian allies. Those proposed laws which would have extended such rights without exception failed to pass, or were never even put to the vote; those which restricted

¹² Polybius VI, 9, 6–9. I am very grateful to John North for pointing out to me in conversation that this

passage can be read as an implicit prediction of the course of events in the last century of the Republic.

them did pass. The only, partial, exception to the rule was the law of Saturninus in 100 which granted land in Gaul—probably Cisalpina—to former soldiers of Marius, including Italians, some of whom were to gain citizenship in the new colonies. It was passed only in the face of mob violence in the Forum; and some at least of the colonies envisaged were never sent.

This issue—of the extension, or rather non-extension, of citizen rights—was only one of a whole series of issues on which the Roman people were called upon to vote between 150 and 90 B.C. These issues were not all controversial, and the passing of a law might on occasion be a mere formality. But they did include the setting-up of permanent *quaestiones*, for *repetundae* and *maiestas* at least, and the qualifications and duties of the jurors; the procedures in voting—that is, above all the series of laws on the use of the ballot passed in the 130s and 104; the establishment of the basic constitutional principle that only the people could set up a court with capital jurisdiction; the transfer to the people of the election of members of the priestly colleges, proposed in 145, passed in 104; the use of the public land in Italy, and in Africa; the use to be made of the legacy of Attalus of Pergamon; the conduct of wars—in at least three forms: the direct appointment of commanders to wars, overriding the normal distribution of *provinciae* by lot; the use of tribunician legislation passed by the people to give direct instructions to holders of *imperium*, as in the law of 101/100 on the Eastern provinces; and the passing of laws to establish special *ad hoc quaestiones* to examine misconduct in diplomatic and military affairs.

Many of the known sumptuary measures too were also laws, though *senatus consulta* could perform a similar function, as in 161 B.C. (Aulus Gellius, *NA* II, 24, 2). Those which were laws were voted by the people, and involved persuasion and discussion before the people, as earlier in Cato's speech to the people about the growth of private luxury (Polybius xxxi, 25, 5). One important aspect of all this was precisely the arousal, by oratory, of popular resentment and suspicion about the life-styles of the rich. A notable example was the public *altercatio* between the *censores* of 92, revolving specifically round the luxurious character of Crassus' house (*ORF*³, pp. 248 ff.). But the restrictions in the laws which the people passed might later come to seem too burdensome on the voters themselves. As the tribune Duronius said to the people from the Rostra in 97, when proposing the abrogation of a sumptuary law, 'Reins have been placed on you, Quirites, which are not to be tolerated' (Val. Max. II, 9, 5).

This list does not exhaust all the categories of legislative activity in this period. It has also to be seen in immediate conjunction with those trials before the people which involved questions of the constitution, or of the safety of the state. Three examples of these will suffice: firstly, the prosecution of Opimius, consul of 121, by the tribune Decius in 120. The trial was brought *apud populum*, and the issue was whether the passing of the novel *senatus consultum* enjoining action for the safety of the state constituted a legal justification for the murder of Gaius Gracchus and the imprisonment of citizens (Livy, *Epit.* 61). As is well known, Opimius was acquitted. So too were the two ex-consuls against whom Cn. Domitius Ahenobarbus, as tribune in 104, brought actions for the imposition of a fine (*multa*), before the thirty-five tribes. Both concerned the safety of the state. M. Iunius Silanus, consul of 109, was tried for his defeat by the Cimbri in that year: the charge was that he had acted *iniussu populi*, and that his defeat had been the beginning of the disasters which the *populus* had since suffered (Asconius 80C). Aemilius Scaurus, probably then a *pontifex*, was accused on the grounds that the *sacra publica populi Romani* had been *deminuta* by his fault; to be precise, the rites of the Dei Penates at Lavinium had been improperly conducted. He too was acquitted, but more narrowly: only three of the thirty-five tribes voted for condemnation, but in the remaining thirty-two a majority for acquittal was achieved by only a few votes (Asconius 21C).

It was in this same year, that Domitius Ahenobarbus carried his law that the priestly colleges should be filled by popular election, a measure already proposed unsuccessfully in 145, when Laelius, speaking against the law, had discoursed to the people, going into the details of religious observance 'quas Numa nobis reliquit' (*Nat. Deor.* III, 43). Domitius' law, when finally passed, obliged anyone nominating a new augur for election *demortui loco* to do so *in contione*.

The principle of the accountability of office-holders, and the popular suspicion of impropriety and profiteering, themes which run through all the politics of this period, had their place in the regulation of religious observances also. Thus when L. Caecilius Metellus as Pontifex Maximus, along with the *collegium pontificum*, tried three Vestal Virgins for breaking their vows, acquitting two, a tribune of 113, Sextus Peducaeus, accused them of corrupt judgement (*male iudicasse*), and the *populus* voted to appoint L. Cassius to enquire into the issue. Here as elsewhere, no one need suppose that Roman politicians were devoid of personal motives. On the contrary, these motives could even be openly paraded before the people. We may recall Gaius Gracchus at a *contio* telling the *viator* to go and summon Piso to appear, that is before the people. 'Which Piso?', enquired the *viator*. 'You force me to say, my *inimicus*, Frugi' (Cicero, *Font.* 39). But, *inimicitiae* or not, it is essential not to forget, firstly, that the proposal of laws and opposition to them, the setting-up of *quaestiones*, *ad hoc* or permanent, and the conduct of trials before the people might all involve basic issues of the nature of the state, or sovereignty within it, or the disposition of its resources and of the management of its affairs. And, secondly, that all these issues were presented before the people at large through the medium of speeches. It was, after all, the people who voted.

It was also the same Calpurnius Piso Frugi himself who made a point of appearing in person to collect the fixed-price corn made available to the people by the *Lex frumentaria* of Gaius Gracchus, which he had opposed: 'I would prefer, Gracchus, that it were not your pleasure to distribute my property *viritim*; but if you do it, I will seek my share' (Cicero, *Tusc.* III, 48).¹³ That again was a public expression, before the crowd, of a political judgement about the resources of the state. There was also another dimension to this question, the fear of *dominatio*. Just as accusations of aspiring to tyranny or kingship had been brought against Tiberius Gracchus, so it may have been Gaius Fannius, the consul of 122, who argued, against Gaius Gracchus, that by *largitio* Peisistratus, Phalaris and Dionysius of Syracuse had corrupted the *cives* and sought *dominatio*. Thus these and other precedents from Greek history have considerable significance.¹⁴ Even after Gracchus' death it was possible (p. 2 above) for a tribune, by use of oratorical persuasion, to cause a crowded popular assembly to abrogate his law for corn distribution, and replace it with something less radical.

The questions of the public funds, of public property and its possible distribution, of the right form of management of public revenues, all therefore involved issues of principle; but they also exhibited fluctuations and inconsistencies in popular attitudes—or at any rate in the way that those people would vote who turned up on any one occasion. The subject-matter of politics also kept within certain bounds. Almost every aspect of the state itself was subject to legislative votes in this period, and in particular it lay in the nature of *leges* that they set down rules for the holders of office. *Leges* might also, but less characteristically, define criminal offences with which ordinary people might then be charged. Hence, of course, the famous distinction made in the advice of Servilius Glaucia to the people on how to listen when *leges* were read out. If the laws began 'Dictator, consul, praetor, magister equitum . . .', they need not be concerned. But if they heard the words 'Quicumque post hanc legem . . .' they should take note, in case they would be subject to a new *quaestio* (Cicero, *Rab. Post.* 14). What the operations of politics did *not* yet touch was private property. The only hint of a threat to that which we hear of in this period came in a speech, or speeches, of L. Marcius Philippus as tribune in perhaps 104. He said a great deal *populariter*, including the claim that there were not 2,000 men in the community who had any property. The speech at least implied the possibility of *aequatio bonorum*; but his *lex agraria*, of unknown content, was rejected (Cicero, *de off.* II, 73).

None the less the scope of the subject-matter of politics was enormously extended in this period; and the issues at stake embodied basic questions about the rights of citizens, the location of sovereignty in the state, the control of foreign relations and military affairs,

¹³ See now P. Garnsey and D. Rathbone, 'The Background to the Grain Law of Gaius Gracchus', *JRS* LXXV (1985), 20.

¹⁴ *ORF*³, pp. 144–5. See J.-L. Ferrary, 'A propos de deux fragments attribués à C. Fannius, cos. 122' in C.

Nicolet (ed.), *Demokratia et Aristokratia* (1983), 51, arguing that the quotations are not contemporary, but come from later declamations on the subject of Gaius Gracchus.

and the access of individual citizens to a share in the resources which the state had at its disposal. The best proof that what we see happening in this period represents 'real' politics, embodying serious challenges to the established order, is precisely the irruptions of violence which ended the lives of Tiberius and Gaius Gracchus and of Saturninus; this last event was of course to be celebrated in evocative detail by Cicero in the *Pro Rabirio*.¹⁵

We can hardly help seeing all this through the eyes of Cicero, whose youth was spent under the guidance of the major conservative figures of just this period.¹⁶ But there do remain two other avenues of access to the ideas which were embodied in popular legislation in this period, or which were expressed in speeches addressed to the people. The first and most important access is provided by the inscribed laws from this time. It cannot be stressed too often that these represent the only direct testimonies to the political mentality, conceptions and vocabulary of the period. As for the great inscription of the *repetundae* law, which we may take to be that of Gracchus, many aspects of its true significance have been brought out recently, for the first time, by Sherwin-White.¹⁷ He rightly stresses the emphasis which is placed in this law on publicity, that is the necessity of the observance, under the eyes of the people, of the rules on the part of both the praetor and the *iudices* themselves. That must give a possible clue to the real point of another law of Gracchus, that about the *censoria locatio* of the revenues of Asia. It should be seen not just as a political scheme to benefit the *equites* or *publicani*, but as aimed, firstly, at securing the revenues due to the people; and, secondly, at ensuring the allocation of the contracts by the censors, in Rome, before the people. Cicero himself emphasizes this point in arguing, before the people, against the Rullan agrarian bill of 63 (*de leg. ag.* II, 55): 'vectigalia locare nusquam licet, nisi in hac urbe, hoc ex loco, hac vestrum frequentia'. The inscribed Latin law of Bantia, whatever its precise date or purpose, embodies a similar concern: not only must office-holders and senators swear within five days to obey the law, but they must do so in public, during daylight, at specified locations bordering on the Forum—either *pro aede Castor(is)* or *ad aerarium*, i.e. before the temple of Saturn.¹⁸ Moreover, just enough is left of the inscribed *senatus consultum* of a treaty with Astypalaea in 105 to reveal (perhaps) the traces of a highly populist law, or laws, of the Gracchan period. The relevant clause may have read as follows, and may refer to Rome rather than Astypalaea: '. . . that according to the Rubrian and Acilian law (or laws) a copy (of this alliance) should be set up in a public and conspicuous place, exposed where the majority of citizens walk by, and that each year it should be read aloud (? in the assembly)'.¹⁹

But the major new item which must affect our view of the nature of the state in this period is the law of 101/100 on the Eastern provinces (n. 8 above); firstly, it is a popular law; secondly, it too obliges office-holders (other than the tribunes) to take an oath; thirdly, it gives detailed instructions to both consuls and governors. Most significant of all, perhaps, are the provisions laid down as to what steps the governor of Macedonia should take with regard to a newly-conquered area in Eastern Thrace; he is to proceed there, to see to the collection of the public revenues (i.e. those of the Roman state), and in future to spend there a period of not less than sixty days.

The notion that the funds of the Roman state were a perquisite of the Roman People, and should be at its disposition had been expressed most clearly of all in Gaius Gracchus' speech to the people about a law apparently intended to re-adjust royal territories in Asia Minor, at some point in the 120s. Almost all the themes and forms of persuasion which I have been trying to emphasize are embodied in the quotation by Aulus Gellius of part of this speech (*NA XI, 10*). Gracchus is speaking to the people:

As for you, Quirites, if you wish to display *sapientia* and *virtus*, you will, even if you search, find none of us coming forward here without reward. All of us who make speeches are seeking

¹⁵ See most recently E. Badian, 'The Death of Saturninus', *Chiron* XIV (1984), 101.

¹⁶ On this see esp. T. N. Mitchell, *Cicero: the Ascending Years* (1979), ch. 1.

¹⁷ A. N. Sherwin-White, 'The Lex Repetundarum and the Political Ideas of Gaius Gracchus', *JRS* LXXII (1982), 18.

¹⁸ Riccobono, *FIRA*² I, no. 6; Girard-Senn-Giuffrè, *Lois des romains*², no. 6.

¹⁹ For text and discussion of this document, long since destroyed, see R. K. Sherk, *Roman Documents from the Greek East* (1969), no. 16; id., op. cit. (n. 8), no. 53 (text and discussion). For a comparable publicity clause note the Fragmentum Tarentinum, Girard-Senn-Giuffrè, *Lois*, no. 9, 11. 13 ff.

something, and no one comes forward before you for any reason except to gain something. I myself, who am speaking before you in order that you may increase your *vectigalia*, and that you may more readily control your assets and the *res publica*, am not coming forward for nothing; but I seek from you not money but *bona existimatio* and *honos*. Those who come forward to dissuade you from accepting this law do not seek honour from you, but money from Nicomedes; those who persuade you to accept it do not seek *bona existimatio* from you, but profit and reward for their pockets from Mithridates. But those from the same station and *ordo* who maintain silence, these are the sharpest of all, for they take profit from all, and deceive all. You who believe that they are innocent of such things, accord them *bona existimatio*; but the embassies from the Kings, since they believe them to be maintaining silence in their interests, offer them lavish gifts of money.

He concludes with a story from fourth-century Greek history, of how the orator Demades boasted that he had received ten talents from the King (Philip) for holding his peace.

Once again some knowledge of Greek history is assumed, and is used to hold a mirror to current events. But the important point is the right of the people to the profits of empire, and the suspicion that senators are lining their private pockets by not pressing the public interests of Rome as against those of allied kings. This speech of Gaius Gracchus is the essential background to much of the tribunician agitation which fills Sallust's account of the Jugurthine war. Not many people in the streets of Rome would have swallowed the view that senatorial inaction after Jugurtha's seizure of power should be put down to 'natural unwillingness to think ill of an old friend'.²⁰ The quotation from Gaius Gracchus shows that we do not need to disregard as a historical fiction the speech which Sallust gives to Memmius, tribune of 111 (*Jug.* 31). The counter-reaction to Gaius Gracchus, Memmius says, had labelled as *regni paratio* what was in fact an attempt 'to restore its own to the *plebs*'. In subsequent years the people (he says) have watched in silent indignation the pillaging of the *aerarium*, and Kings and free peoples paying a *vectigal* to *pauci nobiles*. Sallust also represents Memmius as referring to the early secessions of the plebs. There is no reason whatever to think that the making of such a reference must be an unhistorical elaboration by Sallust himself. We know, for instance, that M. Antonius, in the 90s, retained the *seditiones* by which the liberties of the people had been secured (p. 3 above); and Cicero notes the existence of a *popularis* tradition of the history of Rome (e.g. *Acad.* II, 13). If we were to doubt the public relevance of earlier history in this period we have only to look at the irrefutable contemporary, and documentary, evidence of the coins, on which an emphatic break is marked by the appearance of historical themes and political symbols from 137 onwards; perhaps most notably PROVOCO on coins of 110-109.²¹ Moreover, as Peter Wiseman has argued, it was in this period that there came to be a great deal more of Roman history in written form than there had ever been before.²² Whether this was 'true history' or 'false history' does not matter in this context. What matters is the way that beliefs about history could be put to current use. Appian could well be right in reporting that in 148 the people shouted that by the 'laws of Tullius and Romulus' the people was sovereign in the elections and could validate or invalidate the laws (*Lib.* 112/531).

The elements of a popular, even a democratic, tradition and ideology in a Roman context could easily be put together even from the evidence we have.²³ But, significant though this is, it is not the intention of this paper to attempt to restore the Roman People to their proper place in the history of democratic values. On the contrary, its purpose is to present a neutral, or purely functional, model of how politics worked: that of the individual orator using persuasion, and addressing his words to the crowd which has the right of voting and decision. This in the end was to lead to just the conclusion which Polybius had implicitly predicted.

But we also see another side, in relation to the half century before the Social War, if we remember that all the measures, taken or proposed, in relation to the Latins and

²⁰ So E. Badian, *Roman Imperialism in the Late Republic* (1968), 25.

²¹ See M. Crawford, *Roman Republican Coinage* I (1975), 266 ff; for 110/9, p. 313.

²² T. P. Wiseman, *Clio's Cosmetics* (1979), ch. 2.

²³ The use of historical *exempla* in various public contexts is one mode which, *pace* M. I. Finley (op. cit. n. 1), 126 ff., the Romans of this period did possess for representing political conflict.

Italians were laws, put to the people, argued for and against by the medium of oratory, and voted or rejected by the people. We should not think of these laws simply as actions 'of' the person who proposed them: the alien law 'of' Pennus in 126; the law 'of' Licinius Crassus and Mucius Scaevola as consuls of 95. As noted above, many laws extending the rights of Latins and Italian allies were proposed, or at least mooted, in this period. Not one was passed. Those which were passed were those which *restricted* those rights. Tiberius Gracchus perhaps intended to offer citizenship to the Italians; in any case such a law was certainly not voted; nor (in my view at least) did Italians share in his allotments of Roman public land.²⁴ More certainly, Iunius Pennus, as tribune in 126, did get a law passed prohibiting *peregrini* from the city. Gaius Gracchus seems, once again, to have used historical *exempla* to argue against it: 'Those *nationes* destroyed their *res publicae*, among other things, by *avaritia* and *stultitia*'.²⁵ In 125 Fulvius Flaccus made a proposal for extension of the citizenship, which seems never to have come to a vote.²⁶ Gaius Gracchus did propose a law, which, as it seems, gave Latin voting rights to the Italians and full citizenship to the Latins. This too, if ever put to the vote, was not passed.²⁷ But we know from Cicero (*Brut.* 99) of a speech of Gaius Fannius, consul of 122, *de sociis et nomine Latino contra Gracchum*. It is evidently from this that there comes one highly illuminating fragment, addressed to the People: 'If you were to give the *civitas* to the Latins, do you suppose that you would have any room in the *contio*, in the same way as you have now assembled, or would be able to attend the *ludi* or days of public business?'.²⁸

I mentioned earlier (p. 6) the violent conflicts in 100 over land allotments which would have included Italian along with Roman ex-soldiers.²⁹ If a share in the profits of Empire, for which they had to fight, was one of the things which the Italians wanted, they must surely have noted this episode. Worse was to come. A law passed by the consuls of 95, Licinius Crassus and Mucius Scaevola, set up a procedure to enquire into citizen rights improperly enjoyed, or claimed, by Italians: no one was to be *pro cive* who was not in fact a citizen.³⁰ It is easy and natural to see this step as an action 'of' the two consuls; but it was not only theirs. Like any other law it had to be notified in advance, and proposed in *contiones* before the People. Innumerable proposed laws met opposition, by counter-persuasion or force, and many were never passed. This one *was* passed, by the votes of the People. Contrast this with the events of 91-90, which might reasonably be taken as the prime example of divisions within the office-holding class, of the presentation of conflicting views before the People, and of the People's effective right to call members of the senatorial class to account, and (until military necessity dictated otherwise) to protect its own constitutional powers. It is instructive to compare the law mooted by Livius Drusus, to give citizenship to the Italians, which (as it seems) never came to a vote, with that of Varius, directed against those who had helped the Italians, which was passed.

There seems to be no direct evidence as to what was said in support of, or against, Drusus' law to enfranchise the Italians; nor is it quite certain that the matter ever reached the stage of being debated in *contiones*. The *contio* held by Drusus which the consul, L. Marcus Philippus, tried to interrupt, only to suffer physical violence for his pains, apparently concerned the agrarian law, or laws (Val. Max. IX, 5, 2; *de vir ill.* 76, 9). Cicero does, however, describe the *contio* which Philippus held in September, and in which he raised popular feeling against the Senate, saying that he would need to seek

²⁴ For an interesting and valuable, but not ultimately persuasive, attempt to argue that under Tiberius' agrarian law Italian *socii* could receive both allotments of *ager publicus* and a simultaneous grant of the citizenship, see J. S. Richardson, 'The Ownership of Italian Land: Tiberius Gracchus and the Italians', *JRS* LXX (1980), 1.

²⁵ Festus 286M/362L. Cicero, *de off.* III, 47, suggests, without quite proving, that the law was actually passed. Was it directed specifically against Italian *socii*, or against all (or overseas?) *peregrini*? In the latter case it may not be quite certain that Gaius Gracchus was opposing the law. Might he not have been arguing that *aeae nationes* (e.g. the Greek cities) had suffered disaster by their own fault?

²⁶ Val. Max. IX, 5, 5; Appian, *BC* I, 21/86-7; 34/152.

²⁷ Appian, *BC* I, 23/99-101. I would not put any weight on the various proposals and counter-proposals vaguely recorded by Plutarch, *Gaius Gracchus* 5 and 8-9.

²⁸ Iulius Victor 6, 4 (Halm, *Rhetores Latini Minores*, p. 402).

²⁹ Appian, *BC* I, 29-30/129-40. For a detailed discussion of this passage, the only item in our evidence to mention popular hostility to benefits for Italian ex-soldiers, see now H. Schneider, 'Die politische Rolle der *plebs urbana* während der Tribunate des L. Appuleius Saturninus', *Ancient Society* XII/XIII (1982/3), 193.

³⁰ See esp. Cicero, *de off.* III, 47; Asconius 67-8C.

another *consilium*; for with that Senate (as it then was) he could not conduct the affairs of the *res publica*. Drusus then summoned the Senate, to report on the consul's speech, and Licinius Crassus delivered his swan-song, a denunciation of the consul's attack on the place of the Senate in the State. The celebrated narrative (*de or.* III, 1-11) in which Cicero retails all this surely reveals enough to suggest that the real issue at this moment was popular hostility to Drusus' proposal, and suspicion of those within the Senate who were believed to support it. A few days later Crassus died. A few days after that Gaius Cotta was 'depulsus per invidiam tribunatu'—that is, through *invidia* he failed to gain the tribunate for which he was a candidate (*de or.* I, 25). The reason is surely clear from the fact that some months later he was exiled under the law proposed by the tribune Q. Varius, and passed, perhaps in 90 rather than 91, by the People. This law set up a *quaestio* into the actions of those 'by whose assistance or advice the (Italian) allies had taken up arms against the *populus Romanus*' (Asconius 22C). All those persons known to have been condemned were Roman senators. They did not of course include Livius Drusus himself, who had been murdered in October of 91; nor apparently, did they include the aged Aemilius Scaurus, whom Varius summoned separately before the *populus* and accused of having incited the Italians to arms; but he rebutted the accusation by a direct demand to the Quirites to believe his word (Asconius 22C). Popular opinion could always be swayed by an effective personal plea. But when Drusus' opponent, the consul Marcius Philippus, denounced the Senate to the People; when Cotta lost the tribunate *per invidiam*; and when Varius could persuade the People to vote a law to investigate and punish those who had betrayed them from above by encouraging the Italians in the hope of sharing their rights—all that was surely as clear a demonstration as we could possibly have of the power of popular politics, and the strength of popular feeling for the retention of the People's exclusive rights to the exercise of political power: 'non vidit (Crassus) flagrantem Italiam bello [non] ardentem invidia Senatum, non sceleris nefarii principes civitatis reos' (*de or.* III, 8).

Within a few months the war forced the People to pass the first of the laws by which they were after all to share those rights with the Italians. With that there began a new phase in the nature of the Roman political system, one in which military force and organized violence were to play a part in a way unknown before, and in which any crowd which gathered in the Forum bore an even more erratic relationship to the vastly increased number of qualified voters. It was also to be the greatest age of Roman oratory, much of it directed to the People at *contiones*. Persuasion was still vital; and the votes of those few who did vote played a crucial part in the last decades of Republican history.

Brasenose College, Oxford