

ELECTORAL BRIBERY IN THE ROMAN REPUBLIC*

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I. INTRODUCTION

In Western Europe to-day we tend to assume automatically that electoral bribery is pernicious, in that it distorts the democratic process, the selection by the people of their own representatives, by shifting whatever power lies in the generality of the electorate back into the hands of the people who seek office, so that a democratic procedure becomes in effect oligarchic. We even term bribery the presentation of attractive policies to the electorate by a person or party, which we believe will not be in the people's long-term interest or will be rapidly discarded in favour of policies which suit those in power. Such judgements may be superficial and too dependent on the presumption that without bribery elections will be free. It is arguable that in specific societies and in specific historical contexts bribery may on the contrary make elections less predictable, dissolving the existing ties by which the electorate are already bound to those seeking office, rather than reinforcing them. Alternatively, bribery may be regarded as an accepted part of the political scene, which does not materially affect the result of elections and thus the course of political history. In Roman politics it is hard to refute the suggestion that the sort of people who actually held magistracies was not seriously influenced by electoral bribery, even though on occasions this may have determined that one man rather than another should be consul or praetor.

There remain, however, other objections. Bribery may be considered an evil because of secondary, knock-on effects. The need to bribe implies the need to raise money. This may take place by corrupt means, or may produce financial and/or political debts, which corrupt the behaviour of men when in office. It may be a way in which men outside the political process, whether legitimate businessmen or criminals, such as gangsters and drug-barons nowadays, seek to control it. If pursued on a vast scale, bribery may have unfortunate political consequences by dangerously expanding credit. Moreover, if bribery is prevalent in elections, this will affect the perception of politics both by office-seekers and those who elect them. Office-seekers may come to despise the venality of an electorate, which may, unknown to them, be exercising a considerable degree of independent judgement; the electorate for its part may deduce from the bribes that it is offered, that those pursuing public office are merely self-seekers who are not concerned with the general interest of the public.

The Latin word for electoral bribery is *ambitus*, connected with the verb *ambire*, 'to go round', 'to canvass support', and with the noun *ambitio*, which expresses the concept of the pursuit of office and political fame (perhaps to excess).¹ The Romans voted directly in electoral units within their various assemblies for the purposes of

* The only book on *ambitus* published this century known to me is Lorenzo Fascione, *Crimen e quaestio ambitus nell'età repubblicana* (1984), reviewed by K.-J. Holkeskamp, *ZSS* 104 (1987), 791-6. Other recent contributions on the subject are: L. Fascione, 'Alle origini della legislazione *de ambitu*' in F. Serrao (Ed.), *Legge e società nella repubblica romana I* (1981), 3-27; J. Linderski, 'Buying the Vote: Electoral Corruption in the late Republic', *Ancient World* 11 (1985), 87-94; E. Deniaux, 'De l'*ambitio* à l'*ambitus*: les lieux de la propagande et de la corruption électorale à la fin de la République' in *L'Urbs—Espace urbain et histoire*, Coll. Éc. Fr. Rome 98 (1987), 279-304; C. Ambrosone, 'Note sull'illecito nelle elezioni romane', *AAN* 94 (1983), 223-33.

For nineteenth-century treatments of the crime see W. Rein, *Das Criminalrecht der Römer* (1844), 701-19; A. W. Zumpt, *Das Criminalrecht der römischen Republik*, II² (1869), 217-34; Th. Mommsen, *Römisches Strafrecht* (1899), 865-75.

The most useful books on Roman politics in this context are: G. W. Botsford, *The Roman Assemblies* (1909/1968); L. R. Taylor, *Party Politics in the Age of Caesar* (1949); *The Voting Districts of the Roman Republic* (1960); *Roman Voting Assemblies* (1966); T. P. Wiseman, *New Men in the Roman Senate* (1971); E. S. Staveley, *Greek and Roman Voting and Elections* (1972); R. Rilinger, *Der Einfluss des Wahlleiters bei den Konsulwahlen von 366 bis 50 v. Chr.* (1976); R. Develin, *The Practice of Politics at Rome 366-167 BC*, Coll. Latomus 188 (1985).

For comparative British material I am most indebted to: L. B. Namier, *The Structure of Politics at the Accession of George III*² (1968); C. O'Leary, *The Elimination of Corrupt Practices in British Elections 1866-1911* (1962). Comparative material from the United States may be found in M. I. Ostrogorski, *Democracy and the Organisation of Political Parties* (trans. F. Clarke) II (1922), esp. 343 ff.

¹ Varro, *Ling. Lat.* 5. 22; 7. 30; Festus 5L,M; 15L=16M.

legislation, political trials and choosing magistrates. It is only with regard to the last that we hear of corruption through gifts, as opposed to violence and menaces, and appropriately the Roman term for electoral corruption is derived from the physical activity of a candidate seeking office. Both *ambitus* and bribery are emotive, perjorative words, but there is no alternative to using them for behaviour which was defined as a criminal offence. When they are used in what follows, this must be understood as being without prejudice to the historical valuation which is to be put on this behaviour.

In this paper I want to consider the *ambitus* at Rome both from the political and legal points of view. The evidence is largely from the late Republic. Yet even in this generally well-documented period it is remarkable how short we are of basic information. There are plenty of allegations of bribery but little clear detail and little, if any, analysis of its significance in ancient authors. In face of this, I have thought it appropriate to adduce a range of comparative material, drawn from British history, where there are ample resources and a number of points of contact, in order to interpret what Roman evidence we have. First, however, we must consider *ambitus* as the Roman themselves saw it.

II. *AMBITUS* AND THE FALL OF THE REPUBLIC—THE ROMAN VIEW

There was a strong tradition at Rome that moral corruption was at the root of the failure of the Republic, which had its origins in the second century B.C.. I have discussed its validity elsewhere.² It is sufficient to say here that a perception founded in reality became both inconsistent in detail and less convincing as a whole, when elaborated, especially as the notion that greed and immorality were new arrivals on the political scene in the second century B.C. was a myth in more than one sense of that word. Sallust's denunciations of moral decline are well-known. In the *Catiline* he dilates on the wealth produced by empire and the stimulus this gave both to the love of money itself (*avaritia*) and to the pursuit of office (*ambitio*) which could in turn lead to the acquisition of money. In the *Jugurtha* he sees the military success of Rome as a licence to the dominant few to exploit their power in the search for further power and wealth.³ There is no precise reference to *ambitus* here.⁴ For this we have to go to Lucan, Florus and Tacitus. In the famous passage in the *Bellum Civile* where Lucan surveys the long-term causes of the conflict between Caesar and Pompey, he begins with the increase of wealth, especially in landholdings, and the corresponding want of necessities and loss of liberty among the poor. Hence, he claims, arose the will to violence; might became the measure of right; legislation was promoted by force while consuls and tribunes undermined the constitution by riots. Hence too the *fascēs* were seized at a price, the people put their support up for sale and bribery brought the death of the city in the annual contests of the venal Campus. Hence arose devouring usury, the collapse of credit and the advantage for many in war.⁵

Florus has a similar passage in which the connection between wealth and both violence and electoral corruption is articulated with examples. Like Lucan, he believes the origin of the seditions from the Gracchi to Livius Drusus to have been the combination of luxury and poverty. He continues, 'to touch on now the more seemingly attractive vices, was not the pursuit of office by bribery (*ambitus honorum*) stirred up by this same wealth? But from this sprang the storm of Marius, from this the storm of Sulla'.⁶ Marius and Sulla seem to illustrate the greed for office, *ambitio*, rather than electoral bribery itself. Yet Florus may have had in mind actual occasions in their early careers when Marius and Sulla bribed themselves into office (we know that Marius was accused of bribery after election to the praetorship in 116 B.C. and a

² 'Imperial Expansion and Moral Decline in the Roman Republic', *Historia* 21 (1972), 626–38.

³ *Cat.* 10. 1–3; 10. 6–11. 1; *Jug.* 41.

⁴ A hint, however, in *Hist.* 1. fr. 13—'omnium partium decus in mercedem corruptum', cf. fr. 16.

⁵ Lucan 1. 160–82, esp. 173 ff.: 'hinc rapti fascēs

pretio sectorque favoris | ipse sui populus letalisque ambitus urbi, | annua venali referens certamina Campo | hinc usura vorax avidumque in tempora fenus | et concussa fides et multis utile bellum'.

⁶ Florus 2. 47. 7 ff, esp. 11–13.

jibe to the same effect was made against Sulla) and regarded them as a foretaste of their later pursuit of power.⁷

In both these passages *ambitus* is a vice secondary to *vis* and the two vices derive equally from the dominance of wealth. This seems to be Tacitus' point too in an aside on the corruption of the Republic: 'invalido legum auxilio quae vi ambitu postremo pecunia turbabantur.'⁸ Thus *ambitus* is rightly taken as one feature of a larger problem by these authors. Nevertheless, it is not merely an undesirable consequence of moral corruption but has a special role in causing the civil wars. According to Florus, it inspired Marius and Sulla to dream of excessive power and, according to Lucan, it bankrupted men in the fifties to the extent that they sought to remedy their losses by civil war. This last suggestion is especially plausible in the light of the evidence for massive spending on elections at that time and echoes the comments of Caesar and Cicero on the leading supporters of Pompey.⁹

For the reasons stated in the introduction it is better to avoid simple moral condemnations of *ambitus* as a vice, if we are to analyse its part in Republican politics. This does not mean, however, that we should reject the negative interpretation of *ambitus* completely. Clearly, in so far as it contributed to the outbreak of civil war, which lasted intermittently for twenty years and made impossible the survival of freedom for the assemblies and the senate, Roman authors were right to censure it, even if they had a poor grasp of the real nature of Republican politics. Nevertheless, this should not be allowed to prejudice our view of how *ambitus* functioned throughout the Republic. In what follows it will be argued, first that the soliciting of votes through money and other favours did have its positive side, secondly that the crime of *ambitus* was separated by fine, at times negligible, distinctions from behaviour which the Romans regarded as natural and desirable.

III. THE HISTORY OF *AMBITUS* AND ITS LEGAL REPRESSION

The Early and Middle Republic: Ambitus as a Liberator from Traditional Dependence

Polybius claimed that one of the reasons for Rome's superiority to Carthage was its customs and traditions concerning the handling of money (χρηματισμοί). 'This is an indication: among the Carthaginians they obtain office by openly giving bribes, but among the Romans the penalty for this is death.' It is disconcerting that we have no further evidence to back Polybius on this point, while the late Republican bribery laws known to us had non-capital penalties. Yet we may suppose Polybius to have been referring to an ancient law, which had in practice become obsolete by his time.¹⁰ As we shall see, the history of British laws against bribery shows that a reduction in penalties is not unthinkable. We should perhaps also lay stress on the word φανερώς 'openly', which may be a translation of the Latin *manifesto*. In this case the law would have been directed against the clearly attested giving of bribes by the candidate himself.¹¹

The annalistic tradition about bribery in the early Republic does not appear particularly trustworthy, but this is not a reason for complete scepticism about an early law. The plebiscite of 432 forbidding candidates to be in fact *candidati*, i.e. to add white to their garments, is simply puzzling. We hear nothing of its repeal, which must have occurred, if the story has any foundation.¹² The law against bribery

⁷ Plut., *Mar.* 5. 3-6; *Sulla* 5. 2.

⁸ Tac., *Ann.* 1. 2.

⁹ Caes., *BC.* 1. 4. 2; Cic., *Att.* 9. 11. 4.

¹⁰ Pol. 6. 56. 4. It has been held (most recently by Ambrosone (1983), 224, for earlier authorities see Walbank's commentary ad loc.) that it was the law of 181 B.C. (see below) which laid down the death penalty, but such a penalty was not applied in this period to other offences involving money, such as *repetundae* and *peculatus*. Fascione (1984), 102-3 believes that the passage refers to the Lex Poetelia of 358 B.C..

¹¹ The term *manifestus* did not only refer to a crime

detected in the act. See Gaius 3. 183 ff. on *furtum manifestum* (a category established by the Twelve Tables, whose interpretation was disputed later) with du Zulueta's commentary, A. Watson, *Roman Private Law about 200 B.C.* (1971), 148 f.

¹² Livy 4. 25. 13. Ogilvie in his commentary suggests that this was a fanciful elaboration of a misunderstood annalistic notice—*album proscriptum*. The story is anyhow unlikely to be a retrojected account of a genuine later event. Fascione ((1984), 21 and (1981), 258 ff.) tries hard to make sense of the account as history.

attributed to a C. Poetelius in 358 (a plebiscite passed with the senate's backing) may be genuine. However, the explanation that it was intended to check the *ambitio* of new men, who were going around the markets (*mundinae*) and country meeting-places (*conciliabula*), although not implausible in the period following the admission of plebeians to the consulate and the expansion of the *ager Romanus* in south Etruria, sounds like a retrojection of the better-known political conflict in the early second century.¹³ The saga of C. Maenius the dictator of 314, repeats the theme of the struggle of new men against *nobiles* in a different way. Maenius, appointed originally to deal with conspiracies in Campania, turned his attention to Rome, where he maintained that dangerous conspiracies had been made to secure office, 'coitiones honorum adipiscendorum causa factas contra rem publicam'. The *nobiles*, who were his particular target, claimed that it was not their fault but that of the new men. Maenius was forced to abdicate but was acquitted when put on trial. Subsequently, another enemy of the *nobiles*, Publilius Philo, took over the investigation, which was first diverted in the direction of accomplices of lower social standing and then smothered by aristocratic collusion.¹⁴ In this story the problem seems to have been not so much bribery itself but the existing power of aristocratic patronage, which was being reinforced by associations similar to later *sodalitates* or the *hetaireiai* of late-fifth-century Athens. There is nothing particularly anachronistic in this or in the story of the two dictators: indeed the latter is unparalleled in later history. Some of the elaboration may, however, be ascribed to a desire to portray the limits of dictatorial power. As for the description of the way the investigation fizzled out, this may reflect later experience of investigating electoral corruption, where it was a perpetual problem that the illegalities were committed by small men and the great disclaimed responsibility.¹⁵

Ambitus disappears from history with the loss of the second decad of Livy. Nor does it reappear in the third decad describing the times of the Second Punic War. This may be misleading, since Polybius remarked that Scipio, later Africanus, obtained his aedileship because he was a giver of great gifts (μεγαλόδωρος) as well as being an affable man ready to perform services for people.¹⁶ By the end of the war there was some discontent over the workings of aristocratic patronage, to judge from the Lex Cincia de donis of 204 which forbade the receipt of gifts by patrons.¹⁷ Then, after the war, there was vigorous competition for office, made more acute by the existence from 197 B.C. of six praetorships compared with only two consulships. In the midst of this we find our first unimpeachable evidence for bribery operating in competition with traditional deference and dependence on the aristocracy. In 192 L. Flamininus and P. Scipio Nasica competed for the consulship open to patricians with the aid of the conquering heroes, Scipio Africanus and Titus Flamininus, who were their respective relatives: 'ambitio magis quam umquam alias exarserat.' It was the same thing again next year: 'eo anno quoque magna ambitio fuit, quod patricii tres in unum locum petierunt.'¹⁸ In particular, in 189 there was a great struggle ('magna contentio') in the consular elections, aggravated by the fact that one competitor, M. Lepidus, had left his province of Sicily without senatorial approval. The elections for the censorship produced 'another even greater struggle'. The favoured candidate was M'. Acilius Glabrio. Not only had he defeated Antiochus the Great at Thermopylae in 191, but he had distributed many *congiaria*, through which he had put under an

¹³ Livy 7. 25. 12–13. Fascione ((1981), 269 ff.) argues for the authenticity of both the law and Livy's interpretation. For the later importance of *conciliabula* see Lex (Acilia) repetundarum (CIL I², 583) l. 31; Livy 25. 5. 6; 39. 14. 7; 40. 37. 3; 43. 14. 10; ORF no. 48, fr. 34–7—C. Gracchus' speech against Popilius Laenas there.

¹⁴ Livy 9. 26. 8 ff. For a defence of the genuineness of Livy's account and an examination of its implications for the legality of repeated magistracies see R. Rilinger, 'Die Ausbildung von Amtswechsel und Amtsfristen',

Chiron 8 (1978), 247–312 at 280 ff. Develin (1985), 145 ff., is not convinced by Livy's interpretation, because he believes that *coitiones* and *factiones* were a constant feature of elections and could not in themselves have produced a crisis.

¹⁵ See below pp. 8, 9, 12. This was for a long time a problem in drafting bribery legislation in Britain.

¹⁶ 10. 5. 6. Cf. Livy 25. 2 on his behaviour as aedile.

¹⁷ Evidence in *MRR* I, 307.

¹⁸ Livy 35. 10. 1; 24. 4.

obligation to him a large number of men.¹⁹ These gifts of money, because they were not targeted, but indiscriminate, and had not been made immediately before the election, may have been difficult to use as grounds for a charge of bribery, but nevertheless won Acilius support. The nobles, we are told, were angry that a new man was being preferred to them after such hand-outs. Consequently, two tribunes, both Sempronii, accused him before the assembly of failing either to carry in his triumph or to return to the treasury in some other way the money and other booty seized in Antiochus' camp. Cato, a rival candidate for the censorship, gave evidence against Glabrio. The outcome was that Glabrio abandoned his candidature and the tribunes then desisted from prosecution.²⁰

In 184 Appius Claudius, the consul presiding over the election, was only able to get his brother Gaius elected consul by 'vis Claudiana'. It is not quite clear what this amounted to, but he is said to have employed especially vigorous canvassing, abandoning his lictors and flitting about the forum at his brother's side, and there were disturbances at the actual *comitia*.²¹ At the censorial elections Cato was once more a candidate. All his opponents, apart from L. Flaccus, formed a *coitio*, an electoral pact, to keep him out, partly because he was a new man, partly because he was likely to be a severe censor. The methods used are not stated, but Cato seems to have exploited against them his reputation for integrity, especially in financial matters ('contemptor gratiae, divitiarum') and it may be that this was attractive precisely because of the deployment of wealth against him.²²

It can hardly be a coincidence that a *Lex de ambitu* was passed in 181—by the consuls P. Lentulus and M. Baebius Tamphilus *ex auctoritate senatus*²³—to be followed by another in 159.²⁴ The first of these laws, moreover, can be seen as part of a programme of related measures. A *Lex Baebia* of 181 provided that only four praetors should be elected in alternate years, thus reducing pressure on the consulship. Then in 180 the first *Lex annalis* was passed by the tribune L. Villius, its purpose to define the minimum age for candidature for the various magistracies.²⁵ Not reported by Livy but equally important was the first sumptuary law dealing with expenditure on entertaining at dinners, the *Lex Orchia* of 182.²⁶ We cannot exclude the influence of Cato's austerity here. He had apparently during his censorship put a tax on expensive vehicles, slaves and women's clothing.²⁷ However, we should not follow our imperial sources on the republican sumptuary laws, when they assume that the only object of the *Lex Orchia* and its successors was to improve morality by reducing gluttony.²⁸ Tacitus is more perceptive on this topic in the digression on luxury, which takes its cue from Tiberius' rejection of new sumptuary legislation in A.D. 22.²⁹ After referring to the acme of expenditure on dinners reached between the battle of Actium and the year of the four emperors Tacitus remarks: 'There was a time when rich or distinguished families of the nobility plunged headlong in the pursuit of magnifi-

¹⁹ 37. 47. 6; 57. 9–58. 2. See H. H. Scullard, *Roman Politics 200–150 B.C.* (1973), 137–8; A. E. Astin, *Cato the Censor* (1978), 3 f. Fascione, (1984), 127, argues that the competition between *nobiles* and new men helped to promote corruption. Develin, (1985) 134 ff., by contrast maintains that one cannot prove any increase in corruption. He accepts that the law of 181 against bribery is important, but thinks that it is more significant of changed perceptions of acceptable behaviour. It seems to me more likely that the increase in competition and the increased availability of overseas wealth actually increased corruption, which no doubt in turn led to changes of perception about what could be permitted.

²⁰ Livy states that Glabrio had brought in at his triumph 3,000 lb of uncoined silver, 113,000 Attic tetradrachms and 249,000 *cistophori*, as well as a number of silver vessels (37. 46. 3).

²¹ Livy 39. 32. 5 ff.

²² Livy 39. 40–41 (esp. 40. 10).

²³ Livy 40. 19. 11; cf. Cato, ORF no. 8, fr. 136. I see no reason to amalgamate this law with the *Lex Baebia de praetoribus* (see below), as Fascione has done

((1984), 28–9), following P. Fraccaro, *Opuscula* 1. 227 ff. and others since Mommsen.

²⁴ Livy, *Per.* 47. Fascione ((1984), 55 ff.) argues that this was a consular law, the *Lex Cornelia Fulvia*, which created *quaestio perpetua* procedure for the first time (against the natural interpretation of Cic., *Brut.* 106) and was identical with the *Lex Cornelia*, the law in force at the beginning of 67 B.C.. Thus there was no Sullan law about *ambitus*. Even if the traditional view contains a number of questionable assumptions, this revision does not seem to offer increased plausibility.

²⁵ Livy 40. 44. 1–2. Expenditure on games was also limited (40. 44. 10). Cf. Cato fr. 137–8 on the *Lex Baebia*. On the nature of the *Lex Villia*, see Astin, *The lex annalis before Sulla* (1958).

²⁶ ORF, no. 8, fr. 139–40; Macr. 3. 17. 1–3; Festus 220L. Macrobius dates it two years after Cato's censorship and places the *Lex Fannia* of 161 in the 22nd year after it, cf. Gell. 2. 24. 2 ff.

²⁷ Plut., *Cato mai.* 18. 2 ff.; Cato, ORF fr. 93.

²⁸ Macr. 3. 17; Gell. 2. 24, cf. Lintott, op. cit. (n. 1), 629–30.

²⁹ *Ann.* 3. 55.

cence: for it was still permitted then to do favours to the Roman plebs, the allies and client-kings and to receive favours from them. The more spectacular a man's wealth, house and furniture was, the more distinguished he was held to be by virtue of his name and *clientelae*. Dinners for clients and those who were for the occasion regarded as clients were an obvious way of obtaining electoral support. A series of laws followed the Lex Orchia: the Lex Fannia of 161 allowed a maximum of 100 asses to be spent on dinners and this only on certain holidays, the Lex Didia extended the provisions to dinners throughout Italy (presumably those given by Roman citizens); then a Lex Licinia, perhaps passed by the consul of 131, raised the upper limit of expenditure and excluded produce of the soil; Sulla pushed the maximum cost allowed up to 300 sesterces.³⁰ The last republican sumptuary law, the Lex Antia of 68 B.C., specifically forbade magistrates or candidates to go out to dinner, except to certain hosts. This seems to be an attempt to prevent evasion of the existing restrictions by using friends as surrogate hosts for clients and potential supporters.³¹

In the light of these counter-measures it is clear that the Livian narrative only gives us a glimpse of the way that elections were being fought in the second century. The fierceness of the competition even had its effect on Roman comedy. In Plautus wealth is linked with *factio* (in its abstract sense of political clout or manipulation), the importance of clients is stressed and political *ambitio*, associated with improper methods of canvassing, is said to have become an established custom.³² Moreover, the playwright's attacks on the dire effects of *ambitio* in the theatre and the bribing of supporters (*fautores*) have political implications. If they are exaggerated, it is likely that they have been exaggerated as a parody of current political practice; if genuine, they suggest a prevalence of bribery in society from which politics is unlikely to have been exempt.³³ However, the impression given by Livy that it was the most prestigious offices of consul and censor that stimulated corrupt electioneering may well be right. Competition for lower offices with the important exception of the aedileship was likely to be less cut-throat, simply because more places were available each year. There is a puzzle about why elections in the *comitia centuriata*, which was so organized as to ensure the dominance of the wealthy,³⁴ were considered such a fruitful ground for bribery in comparison with the *concilium plebis* which elected tribunes. We will return to this problem later in the light of the late-Republican evidence.

The Late Republic: the Organization of Ambitus to deal with a Wider Electorate

It is remarkable that in the turbulent and almost revolutionary period between the destruction of Carthage and Sulla's dictatorship we hardly have any specific evidence of *ambitus*. The only well-documented example is provided by the praetorian elections for 115, when C. Marius, who was last in the list of those elected, was accused of bribing men in the Campus through the agency of a certain Cassius Sabaco.³⁵ The trial took place in a *quaestio* of some kind, perhaps a magistrate with a *consilium* rather than a court with a large jury such as prescribed for trials *de repetundis* by C. Gracchus' law.³⁶ We also hear of M. Antonius being accused by M. Duronius, after being elected to the censorship of 97 B.C.³⁷ Otherwise, for our sources this was an age of violence in assemblies rather than bribery. One important political develop-

³⁰ Macr. and Gell., loc. cit (n. 28); Athenaeus 274c, Lucilius 1172, 1200M.

³¹ Gell. 2. 24. 13. A Lex Aemilia of Lepidus, the consul of 78, is said to have limited the kinds of food provided (ibid., 12). For evasion cf. Cic., *Mur.* 72.

³² *Trinummus* 466 ff.; 491 ff. (note 470-1 on dinners for clients); 1033 ff.; *Menaechmi* 571 ff. Cf. on *factio* Caecilius, *Plocium* 172 Rib. and see D. C. Earl, *Moral and Political Tradition of Rome* (1967), 25 ff.; idem, 'Political Terminology in Plautus'. *Historia* 9 (1960), 235-43.

³³ *Amphitruo* 64-78; *Poenulus* 36-9.

³⁴ As Cicero (*Rep.* 2. 39) admits.

³⁵ Plut., *Mar.* 5. 3-6.

³⁶ See W. Kunkel, *RE quaestio* xxiv 720 ff.; idem, *Untersuchungen zur Entwicklung des römischen Kriminalverfahrens* (1962), esp. 45 ff.

³⁷ Cic., *de Orat.* 2. 274. It is, though possible, far from certain that the Q. Coponius, whom the elder Pliny (*NH* 35. 162) relates as condemned for *ambitus* for giving an amphora of wine to a voter, should be identified with the man honoured by the *koinon* of Phocians at Delphi shortly after 150 B.C. (*SEG* I. 151).

ment was the introduction of secret ballot in elections by the Lex Gabinia of 139 B.C.³⁸ Although a radical measure, denounced by the character Quintus Cicero in Cicero's dialogue *De Legibus*, it seems to have produced little controversy at Rome and may have been supported by many members of the aristocracy as a possible antidote to bribery and intimidation. The same may have been true of the Lex Maria, normally ascribed to the tribunate of C. Marius in 119, which made the galleries (*pontes*) leading to the tribunal with the voting-baskets narrow, presumably to reduce harassment of those on the point of voting.³⁹

I follow the majority of scholars in believing that Sulla included a law about bribery among the judicial reforms he introduced as dictator in 81 B.C. All we know about it is that the maximum penalty was a ten-year exclusion from public office.⁴⁰ The procedure of the court was probably also brought into line with that of other *quaestiones*. One feature attested in the late Republic is *inquisitio*, the investigation by the accuser of witnesses and documents: we are told that the accused was entitled to have a representative present during this inquiry.⁴¹ It would be optimistic, however, to regard this law as much of a deterrent. Ten years of conflict in Italy, first between allies, then between citizens, had left Rome in the hands of an oligarchy of Sulla's supporters, who had little to fear constitutionally thanks to Sulla's abolition of the tribunes' power to legislate and, for the most part at least, of their right to prosecute.⁴² The influence of money was paramount in the post-Sullan 'establishment', to judge from what we learn of the influence of P. Cethegus as a 'fixer', who could secure for a magistrate the province he desired.⁴³ It does not necessarily follow that candidates were obliged to bribe the electorate as well, but Cicero's description of the situation in 70 B.C. suggests that *pari passu* this had also become well-organized. Cicero claims in his first speech against Verres that ten chests full of Sicilian money were in the hands of an unnamed senator for use against Cicero in his candidacy for the aedileship of 69. All the *divisores* were summoned by night to the senator's home. Only one of them took up the challenge to keep Cicero out of office for a deposit of 500,000 sesterces. He was Q. Verres of the Romilian tribe, well-educated in the ways of *divisores*, the pupil and friend of Verres' father. Q. Verres tried to extend his influence round the other tribes through their own *divisores*, but his efforts could not prevent Cicero's election.⁴⁴

The thirty-five tribes (thirty-one rural, four urban), which were the fundamental divisions of the electorate, even affecting the *comitia centuriata* after its third-century reform, had always been geographical units without any necessary kinship basis and after the expansion of Roman citizenship throughout Italy tended to be artificial groupings.⁴⁵ Nevertheless, they had developed an organization and perhaps some sort of social structure of their own. The *divisores* appear in other passages of Cicero. Their existence can be traced back at least to about 100 B.C., for the post was held by the fathers of Q. Verres and C. Herennius (trib.pl. 61 B.C.) as well as by a certain Numonius whose name became the butt of a joke by the orator Antonius.⁴⁶ Furthermore, they seem to have held an established and, on the surface, respectable position, in that everyone knew who they were and they had a specific relationship to a particular tribe. Cicero later criticizes Clodius for killing off the *divisores* throughout the tribes by taking over himself the profitable business of the Campus in the late 60s. It was alleged against the emperor Augustus that his father C. Octavius had been an *argentarius* and *divisor* by profession.⁴⁷ We may reasonably conclude that *divisores*

³⁸ Cic., *Leg.* 3. 35; *Amic.* 41. Like the 1872 Ballot Act in Britain (see below), this was probably more effective against intimidation than bribery. J. Bleicken, *Lex Publica*, 278 ff., has argued that this measure broke the link between social dependence and electoral behaviour, but the presumption that up to this time *clientela* was dominant is questionable. See P. A. Brunt, *The Fall of the Roman Republic* (1988), 423 ff. and my own reservations in *ZSS* 104 (1987), 34 ff. at 39–40.

³⁹ *Leg.* 3. 38; Plut., *Mar.* 4. 2. The latter passage makes it likely that C. Marius, not M. Marius Gratidianus, as the Cicero text might suggest, is the author of the bill.

⁴⁰ Cic., *Sulla* 17 with Schol. Bob. 78 St. See n. 24 above for the view that Sulla's law did not exist.

⁴¹ Plut., *Cato min.* 21. 5.

⁴² On this problem see Lintott, *Hermes* 106 (1978), 125 ff.

⁴³ Cic., *Parad. Stoic.* 5. 40; Plut., *Luc.* 5. 4; psAsc. 259 St.

⁴⁴ Cic., *Verr* 1. 22–3; 25.

⁴⁵ Taylor (1960).

⁴⁶ Cic., *Verr.* 1. 23; *Att.* 1. 18. 4; *de Orat.* 2. 257.

⁴⁷ Cic., *Har. Resp.* 42; Suet., *Aug.* 3. 1.

were traditional officials, whose job was to distribute to members of tribes gifts coming from patrons of the tribe.⁴⁸ Although originally they were middlemen in chains of established patronage, they could also be exploited for the distribution of bribes on behalf of a candidate who was not a regular patron of the tribe.⁴⁹ The importance of the tribal organization increased with the unification of Italy. Even if relatively few Italians became involved in the voting process, whether through not being formally enrolled by the censors as they should have been or because of their physical distance from the assembly ground at Rome, their importance, at least in the elections held for consuls and praetors in the *comitia centuriata*, was considerable.^{49a}

We also hear of *sequestres* operating both in elections and trials. Cicero alleged before the elections of 64 that Catiline and Antonius had gathered with their *sequestres* at the house of a noble well-known for bribery. In the *Verrines* and *pro Cluentio* they seem simply to be agents used for corruption in the courts.⁵⁰ They may have derived their name from the function of holding money on deposit until the result of the political event was known. There was a law against bribery proposed by the tribune Lurco in 61, to the effect that the candidate who promised money in a tribe should suffer no penalty, if he failed to deliver what he had promised, but, if he gave the money, he should be liable to pay 3,000 sesterces as long as he lived to every member of that tribe—I take this to be a once and for all payment, but one which not only the current members at the time of the man's condemnation but future members, enrolled by the censor through being granted citizenship or reaching manhood, could demand.⁵¹ The principle behind this proposal seems to have been that the man who had given money had to show that this was a disinterested piece of patronage of tribesmen with whom he had a special relationship, irrespective of the needs of a particular election. *Sequestres*, then, may have acted as bankers for the candidate, so that he could promise money but withhold it. The essential difference between them and *divisores* was that they were employed by the source of the bribes and were responsible to him. This was the position in fact held by the unnamed senator on behalf of Verres in 70.

We have more references to bribery, at least as regards the curule elections, in the late Republic than at any other time. From 67 to 50 B.C. there is hardly a year in which it is not alleged to have occurred on a greater or lesser scale. To some extent this corresponds to the number of trials for bribery attested, and it has been argued by E. S. Gruen that what in fact increased was the use of the criminal courts for political infighting.⁵² But trials are not the only evidence. 'Follow me now into the Campus', writes Cicero in 54 B.C. 'Bribery is flaring up. "This shall be a sign unto you". Interest has gone up from four to eight percent.'⁵³ Nor can the frequent changes in the law about bribery have been undertaken merely to facilitate the prosecution of political rivals.

The Failure of the Courts to repress ambitus

Sulla's law about *ambitus* was replaced in 67 B.C. after agitation and conflict with *divisores*. Originally the tribune C. Cornelius promulgated a bill including penalties for these officials; a milder bill was proposed by the consuls. After Cornelius' bill was blocked or abandoned, that of the consuls came to the vote, but the *divisores* resisted its passage by force and the consul Piso had to gather men to give him physical backing in order to secure the vote by using the formula traditional in a military crisis

⁴⁸ Mommsen, *Staatsrecht* III², 196; Ambrosone (1983), 228.

⁴⁹ cf. Cic., *Corn.* 1, fr. 40–41 Puccioni; also *Att.* 1. 16. 12 for the S.C. of 61 B.C. censuring the keeping of *divisores* as lodgers at one's home, as apparently the consul Pupius Piso was.

^{49a} See Wiseman (1971), chs. 2–3.

⁵⁰ Asc. 83C; Cic., *Verr.* 1. 36; 2. 2. 108; *Clu.* 25, 72, 87. cf. *Cael.* 16; 30; *Planc.* 38; 44–8; Mommsen, *Strafrecht*, 869.

⁵¹ Cic., *Att.* 1. 16. 13. Shackleton Bailey's emenda-

tion of *tribulibus* to *tribubus* makes for an excessively small financial penalty, unless it was to be repeated every year. It is not clear, however, that *quoad vivat* means either every year, as both he and How believe, or every election.

⁵² E. S. Gruen, *The Last Generation of the Roman Republic* (1974), 160 and for the evidence see his index under 'Electoral Bribery' and '*Ambitus*'.

⁵³ Cic., *Att.* 4. 15. 7—literally from 1/3% to 2/3% a month.

(*tumultus*)—‘Those who want the *res publica* to be secure, follow me.’⁵⁴ What penalty was proposed for *divisores* we do not know; for the candidates it was a fine, exclusion from any office gained in the election and a ten-year ban on seeking further office.⁵⁵ The law also designated specific improper practices—the hire of *sectatores* to accompany candidates, large-scale distribution of free places at gladiatorial shows and the giving of dinners by candidates. There was a Lex Fabia limiting the actual number of *sectatores*, which seems to have been a recent innovation in 63.⁵⁶ Cicero also refers to a *senatus consultum* of 64 affecting electioneering. This may be identified with the decree declaring newly created *collegia* to be illegal and urging magistrates to suppress their activities.⁵⁷ The following year Cicero and Antonius as consuls increased the penalty suffered by candidates to exile and aggravated the penalty applied to agents. They also introduced a restriction on the presentation of gladiatorial shows on behalf of candidates. Moreover, the senate drew the candidates’ attention to the rules laid down in the Lex Calpurnia about entourages, dinners and shows.⁵⁸

Eight turbulent years later, after Pompey and Crassus had achieved their second consulships more by force and intimidation than bribery, Crassus passed the Lex Licinia de sodaliciis. In spite of the fact that Cicero’s client Plancius was tried under this law, we know very little about it. According to the scholia to the speech the issue was the use of *sodales* or *sodalitates* to distribute money to tribes. The historian Cassius Dio thought that in some way violence was involved. In fact we know of a *senatus consultum* of 10 February 56, passed after the violence between Clodius and Milo, requiring the disbandment of *sodalitates* and *decuriati* and recommending the enactment of a law which would make any such groups who persisted liable to suffer the penalty for committing public violence.⁵⁹ However, this proposal directed against the rank and file of *sodalitates* did not deal with the organizers and exploiters of such groups. When Crassus’ bill came to be drafted in 55, the issue was conceived more broadly: candidates who made use of *sodalitates*, as Plancius was alleged to have done, were made liable and bribery as well as violence was brought within the bill. Our ignorance of its provisions would not matter so much if we knew more clearly what *sodales* were in this context. It does not seem that they were members of *collegia* under another name.⁶⁰ Traditionally, *sodalitates* were brotherhoods in the upper orders of society under the aegis of a divinity and concerned with a particular cult. Our earliest example is now the *suodales* of Poplios Valesios on the *lapis Satricanus* with their cult of Mars.⁶¹ The author of the *Commentariolum Petitionis* implies that they were comparatively small groups from the élite, concerned as much with mutual support in the courts as in elections. ‘For in this last two years you have put under an obligation to yourself four *sodalitates* of men who are most influential in electioneering—C. Fundanius, Q. Gallius, C. Cornelius, C. Orchivius; I know what their *sodales* have promised and assured you in putting their cases in your hands, for I was there.’⁶² We are reminded of the $\xi\nu\nu\omega\mu\omega\sigma\iota\alpha\iota$ ἐπὶ δίκαις καὶ ἀρχαῖς, who performed the groundwork of the oligarchic revolution at Athens in 411.⁶³ The *sodales* were evidently exerting influence through the channels of the tribes, since the juries under the Lex Licinia were to be determined on this basis. The accuser would select four tribes to provide jurors—presumably, *pace* Cicero, those least likely to have been bribed originally—and the defendant would reject one.⁶⁴

Pompey’s law of 52 did not change definitions of *ambitus*. It increased the penalty—probably to indefinite exile and confiscation of property—and introduced a

⁵⁴ Cic., *Corn.* 1, fr. 40–1 Puccioni; Asc. 58, 69, 75C. Cf. M. Griffin, ‘The Tribune C. Cornelius’, *JRS* LXIII (1973), 196 ff.

⁵⁵ Cic., *Sulla* 17 with Schol. Bob. 78–9 St; Dio 36, 38, 1; 37, 25, 3.

⁵⁶ Cic., *Mur.* 67; 71.

⁵⁷ cf. A. Lintott, *Violence in Republican Rome* (1968), 80. The assumption seems to have been that *collegia* had no right to exist, unless legitimized, and that magistrates could properly disperse any meetings.

⁵⁸ Cic., *Mur.* 45; 47; 89; cf. 67–8 for the S.C.; Schol.

Bob. 79 St; *Planc.* 83; Dio 37, 29, 1.

⁵⁹ Schol. Bob. 152 St; Dio 39, 3, 7; Cic., *QF* 2, 3, 5. ⁶⁰ *Comm. Pet.* 5, 16 and 19; Lex repetundarum (*CIL* I² 583) ll. 10, 20, 22; and see R. Cagnat in Daremberg-Saglio s.v., IV, 1372–3; H. S. Versnel in C. M. Stibbe (op. cit. (n. 61)), 108 ff.

⁶¹ C. M. Stibbe et al., *Lapis Satricanus*, *Arch. Stud. Neder. Inst. Rome: Scripta Minora* V (1980).

⁶² 5, 19.

⁶³ Thuc. 8, 54, 4.

⁶⁴ Cic., *Planc.* 36–7; Schol. Bob. 167 St.

brief procedure, in which *laudationes* (character-testimony) were forbidden.⁶⁵ Convictions immediately followed, but the long-term effect was obscured by the outbreak of civil war. In the meantime it seems that bribery in local government had become an issue. When a constitution was drafted in the late forties for Caesar's Colonia Genetiva at Urso, it was considered appropriate to include rules about the behaviour of candidates for office similar to those applying at Rome. They were forbidden to hold or attend dinners and parties to promote their election or to distribute gifts to that end.⁶⁶

Ambitus became comparatively unimportant at Rome under Caesar's dictatorship and the Triumvirate, but not extinct. Suetonius tells us that Augustus, after crushing bribery by multiplying the penalties (this suggests that the law had been relaxed since Pompey's third consulship), used to give his fellow-tribesmen in the Fabia and Scaptia tribes 1,000 sesterces a man, so that they should not seek this from any candidate.⁶⁷ In fact, what we know of the Lex Julia de ambitu from other sources does not reveal an especially tough law. According to Dio, those convicted were only banned from standing for office for five years, while the Digest suggests a fine of 100,000 sesterces for those who stood for office contrary to the provisions of the law in municipalities.⁶⁸ Another late legal source states that the collection of a mass of supporters was to be treated as an act of public violence, but it is far from certain that this was part of the original law.⁶⁹ We still find candidates at Rome in the time of Pliny the younger exploiting gifts and dinners to curry votes from their fellow-senators, and the procedure of the *quaestio* was well-known.⁷⁰ Nevertheless, *ambitio* and *ambitus* gradually ceased to be an important feature of politics there under the Principate, while remaining a lively issue in the cities of Italy and the empire and in the provincial councils.⁷¹

IV. CICERO'S EVIDENCE: *AMBITUS* AS A FORM OF PATRONAGE

Whatever view we ourselves may take about the importance of electoral bribery in the downfall of the Republic, it was clearly considered by contemporaries as something dangerous requiring suppression. However, what was precisely understood by *ambitus* and why, in their view, had it to be suppressed?⁷² These questions are sharpened, if we consider some passages of Cicero, which are in uncomfortable contrast with his denunciations of bribery. As we have seen, Cicero had apparently won the support of four *sodalitates* before his election in 65. This was but one part of a general programme, in which he was encouraged to get on his side the leaders of all the *conlegia*, *pagi* and *vicinitates*. 'If you have added their leaders to your circle of friendship, you will easily secure the mass of the remaining members.' Even if the author of the *Commentariolum* cannot recommend that Cicero gives dinners for the common people, he is advised to give dinners for his friends and to make sure that these are talked about in public, especially among members of the same tribe. Moreover, the doors of his house and the expression on his face should both be open. 'For men not only want promises, especially in regard to what they desire from a candidate, but generous promises which add to their standing.'⁷³ As Cicero reveals in the *pro Murena*, there was a way round the restrictions of the law. Candidates were not supposed to provide free shows for their fellow-tribesmen, but their friends could. In fact, Cicero maintains, the granting of seats to friends and fellow-tribesmen was a longstanding tradition. Another tradition was the assembly of a crowd of *sectatores*. The laws laid down that these could not be hired or gathered in excessive numbers, but this too was a fine old custom, according to Cicero, which enabled the

⁶⁵ Asc. 36C. The exclusion of *laudationes* was ignored by Pompey himself in the case of Munatius Plancus—Val. Max. 6. 2. 5; Plut., *Cato min.* 48. 8; *Pomp.* 55. 8–9; Dio 40. 55. 1–7. Dio also tells us that five judges could be rejected by either side.

⁶⁶ Bruns⁷ no. 28, cap. 132 (pp. 139 f.).

⁶⁷ Suet., *Aug.* 40. 1.

⁶⁸ Dio 54. 16. 1; cf. *Dig.* 48. 14. 1. 1; *RE* XII. 2365 ff.

⁶⁹ Paul., *Sent.* 5. 30a; cf. *Dig.* 48. 6. 3 on the Lex Julia de vi publica.

⁷⁰ Pliny, *Ep.* 6. 5. 2; 19. 1–5.

⁷¹ Modestinus in *Dig.* 48. 14. 1. pr. and 1.

⁷² The questions are rightly put by Gruen, op. cit. (n. 52), 66.

⁷³ *Comm. Pet.* 5. 19; 8. 30; 11. 44; cf. Lintott, op. cit. (n. 57), 78 ff.

poor to feel that they could do something for great men and get in return favours like places at gladiatorial shows.⁷⁴ In particular, a great man had a customary duty towards his fellow-tribesmen, which, as the emperor Augustus later showed, he would perform, even when there was no likelihood that they would fail to support his interests.⁷⁵ All this was quite different to *largitio*, which Cicero was urged in the *Commentariolum* to check by threatening to use his oratorical skill in prosecuting its proponents.⁷⁶

Clearly, one's concept of bribery depends on whether one is the offender, the offender's friend or the victim. To bribe is an irregular verb: 'I take appropriate care of my friends, you are recklessly generous, he bribes'. Yet there is an objective element too in Cicero's attitude. The traditional care of dependants is honourable, the separation of people from their former connections by throwing money about is immoral—a conservative paternalist view very much in harmony with Cicero's general approach to politics. We can go further, if we realize that Cicero's approach to obtaining electoral support is essentially a structured and hierarchical one. He seeks to attach to himself friends from his own or near his own level of society, who can be trusted to bring over their associates and dependants with them. In the passage from the *Commentariolum* directly preceding the reference to the four *sodalitates* he has won to his side, Cicero is urged to help those men who wish to use electoral influence to advance their own career.⁷⁷ Their support for Cicero will then be self-interested, since his electoral success will be intertwined with theirs.

It is this strategy which explains what at first sight is puzzling about *ambitus* in the Republic—that it is chiefly to be seen in elections for the higher magistracies, which took place in the *comitia centuriata*, an assembly dominated by the votes of the wealthy. Unless the candidates made a gigantic outlay, bribery would only benefit significantly the poorer members of the assembly, and the votes of the fifth, fourth and even third classes counted for comparatively little. The richer voters, on the other hand, because they were more likely to be affected by personal connections and the *gratia* produced by benefits received in the past, would be less likely to change their allegiance for the immediate small profit of a bribe. However, if the effect of bribery in a tribe, *collegium*, *pagus* or *vicus* was, through helping the poor, to advance the standing of certain local *principes* in this social group *vis-à-vis* the other members, then the candidate could achieve two things at once—favour among the *tenuis* and a close connection with wealthy men who were their local patrons. The man who used bribes and the man who appealed to these various leaders or would-be leaders, through friendship and past services, were in fact playing the same game; *ambitus*, as the laws understood it, was simply more crude, blatant and short-term.

V. A PARALLEL CASE: ELECTORAL BRIBERY IN BRITAIN AND ITS USE TO SUBVERT AND TO REINFORCE DEPENDENCE

While violence and the threat of violence (which British law now includes in the term 'undue influence') have been prohibited in English elections since a statute of the third year of Edward I's reign (1275), electoral bribery has only been a criminal offence since 1696.⁷⁸ Between the end of the seventeenth century and the Reform Act of 1832 the amount of money required to obtain a seat in Parliament grew considerably. Harwich, a constituency with 32 electors, cost Samuel Pepys £8 in 1689, but in 1727 cost Lord Egmont £1,000. In 1761 a 'pocket borough' cost the future MP a payment of about £2,000 to its patron, but this was a conventional sum, which was soon exceeded when an electorate had actually to be bribed individually.⁷⁹ Eighteenth-century England, like Republican Rome, was a stratified society, where it was generally accepted that great landowners in the counties and patrons in the

⁷⁴ Cic., *Mur.* 70–2; cf. *Att.* 2. 1. 5 for gladiatorial shows.

⁷⁵ Suet., *Aug.* 40. 1; cf. Cic., *Att.* 1. 16. 13 discussed above.

⁷⁶ *Comm. Pet.* 14. 55.

⁷⁷ 5. 18; cf. 8. 32. On later 'brokerage', cf. R. P.

Saller, *Personal Patronage under the early Empire*, 69 ff., esp. 74–87.

⁷⁸ 3 Edw 1 c. 5, to be found in *Statutes in Force under Representation of the People*; O'Leary (1962), 3.

⁷⁹ O'Leary, 9; Namier (1968), 104 ff.; 160 ff.

boroughs had the right to dictate the choice of the electorate. At the same time it was recognized that the vote was an asset with an exchange-value for its possessor and that a member of Parliament was expected to ensure that benefits flowed to his constituents individually and collectively.⁸⁰ Against this a law against corruption was unlikely to make much headway, when its penalties were regarded as over-severe and any prosecution had to be authorized by a majority in Parliament itself.⁸¹

Before pursuing the history of British electoral corruption further, it is important to determine what resemblances and what differences between British politics at this time and those of Republican Rome are significant. It is not, I think, relevant here that British electors were in fact electing a legislature, not magistrates. For candidates stood for membership of the House of Commons, as Romans stood for magistracies, in their own right, not with a commitment to promoting the programme of an administration.⁸² A British MP, unlike a Roman magistrate, could hold his position indefinitely, but he could do so only at the cost of continually defending his position in elections. Hence, it might be held, there was more temptation to bribery and, once the bribery was successful, a continuing need to repeat it. A Roman candidate was, by contrast, seeking an annual office. Nevertheless praetorships and consulships in the late Republic might be followed by longer service abroad as a pro-magistrate; magistracies also led to a permanent change of status through, first, admission to the senate and then attainment of a higher ranking there. Hence, in the Roman Republic election to an annual magistracy had long-term rewards. Correspondingly, our evidence shows that Romans did expect to secure permanent electoral patronage over tribes and centuries for their own benefit and that of their friends, and this resembles the nursing by a British MP of his constituency.

In eighteenth-century Britain the tradition of looking after one's electorate without great regard for the law tended to be a conservative influence. However, where there was some genuine freedom of election, in the counties and about one quarter of the boroughs, fierce contests might develop and candidates frequently resorted to generous spending, even if, in an electorate of 500 to 1500, this could amount only to a few guineas per elector and a generous supply of drink. The latter could also be used to render the opposition incapable.⁸³ A rough parallel can be seen here to Roman politics in the early second century B.C., when *ambitio* and *ambitus* first seem to have become a serious issue. The plebs of Rome had been used to largesse from its patrons, at least in the shape of dinners and other entertainment. However, the *congiaria* of Acilius Glabrio, partly because they were lavished on the general public and not aimed at a particular group, introduced a new and disturbing element in the old pattern and led to greater expenditure. In particular, the men who had made their money out of Roman expansion overseas were the counterpart to the 'nabobs' and 'caribbees' who were making an impact on British politics in the eighteenth century. The controversy that arose at Rome in consequence was also a sign that the electorate were becoming emancipated from customary forms of dependence. As L.B. Namier wrote, 'Political bullying starts usually from above; the demand for benefits from below.'⁸⁴

Desire for reform in Britain originally centred on the structure of the franchise itself. In fact, the 1832 Reform Act, which abolished 'rotten' boroughs and extended the franchise to £10 householders seems to have increased bribery and made it more complex.⁸⁵ The organization created in the parties, including the appointment of party whips and national agents, led to funds being channelled down from above, while at ground level a respectable form of bribery was discovered in the form of 'colourable employment', that is, temporary employment by a political party as an inducement to vote in the right direction. Refinement of the law against bribery by the introduction of election accounts, and by lowering the penalty in order to increase the probability of conviction, did little good. In fact, it has been calculated that at

⁸⁰ O'Leary, 1; Namier, 161.

⁸¹ O'Leary, 11, 20 f.

⁸² cf. R. Pares, *King George III and the Politicians* (1953), 2.

⁸³ Namier, 80 ff.

⁸⁴ P. 104.

⁸⁵ O'Leary, 16.

Yarmouth in the 1865 election only 10 per cent of the expenditure was publicly admitted, 90 per cent was bribery, while at Lancaster both Liberals and Conservatives spent five to six times more than they returned. 'Colourable employment' flourished: labourers were paid for loss of time at the election, committee-men were employed with non-existent duties.⁸⁶ We find the same thing at Rome in the hiring or rewarding in some other way of *sectatores*. The general attitude in nineteenth-century Britain was that money-payments were a right; they were only a bribe when offered by a candidate of a different party to that which they formerly supported. This resembles the attitude of the *Commentariolum* and Cicero in *pro Murena* to the difference between customary *beneficia* and *largitio*.

At the time when the 1867 Act extended the franchise to most house-occupiers the pressure for secret ballot had been increasing.⁸⁷ The arguments for and against this resemble those deployed in Cicero's *De Legibus*. On one view the franchise was a trust on behalf of the community, which should be exercised openly. Against this it was argued that openness encouraged violence and corruption.⁸⁸ In the event, the 1872 Ballot Act, which introduced secret voting, was better at checking intimidation than bribery. A complaint was made in 1882 that it had promoted 'the most un-English practice' of taking bribes from both sides or that of voting against the side from which a bribe had been accepted.⁸⁹ Finally in 1883 an Act was passed which to a great extent is preserved in the current Representation of the People Act 1983 (including reference to hackney-carriages and stage-coaches in the section on hiring).⁹⁰ The main principle of these acts is that only expenditure authorized by the candidate or his agent should be permitted. There are two grades of offences: first, 'corrupt practices' such as bribery, treating, intimidation, undue influence, personation and false statements about expenses; secondly, 'illegal practices' such as 'hiring' and 'colourable employment'.

The 1883 bill had been advocated by arguments which mixed morality and expediency. Corrupt practices, it was said, were intrinsically wrong and bringing political institutions into disrepute; furthermore, with an expanding electorate the old practices were becoming an intolerable burden on all but the wealthiest candidate. In the meantime the election of 1880 had seen the first national campaigns by party leaders and mass organizations. Bribery was thus ceasing to give value for money.⁹¹ As traditionalists complained, it was replaced by buying votes with promises and programmes—the equivalent of Roman protests against the *largitiones* of the *populares*.⁹²

British politics illustrate how bribery can expand and diversify with increased competition and a growing electorate—both features of the late Republic. They also show that the need to cut election expenditure was a powerful motive among those in power for the promotion of laws to repress corruption. The problem was to create a law, which was, first, not so harsh that politicians would fear to enforce it through fellow-feeling with their competitors and, more important, fear of reprisals, and, secondly, which would bring offences home to the people really responsible. The Romans never found a satisfactory way of penalizing candidates for the activities of friends and associates which had been undertaken on their behalf but independently. However, the most important lesson of British politics is that even comparatively small electorates in the constituencies were not controllable either by traditional patronage or by the competing bribery of new politicians seeking to break these ties. The fact that in Britain for about 150 years bribery and electoral freedom increased *pari passu* should be remembered, when we seek to interpret the Roman Republic.

⁸⁶ O'Leary, 28 ff.; 50 ff., who cites also Anthony Trollope's experiences at Beverly recounted in his *Autobiography*, 298–300 (Oxford ed.).

⁸⁷ O'Leary, 25.

⁸⁸ O'Leary, 60 ff. Openness certainly made 'undue influence' easier: workers were dismissed for voting against their employers (*ibid.*, 61). Cf. the argument of Marcus about the *Lex Gabinia* in Cic., *Leg.* 3. 38–9.

⁸⁹ O'Leary, 155 ff., esp. 165.

⁹⁰ See Section 101.

⁹¹ O'Leary, 137 ff., 228; cf. Gorst in the *Fortnightly Review* n.s. 34, 690–2 quoted in H. J. Hanham, *The Nineteenth Century Constitution* (1969), 291–3.

⁹² O'Leary, 183 on Conservative complaints that radical promises of houses, land and property ought to be construed as bribery: it was more corrupt to offer what was not your own than a sum of money out of your own pocket—sentiments of which Cicero would have approved.

VI. TOWARDS AN INTERPRETATION OF *AMBITUS* DURING THE REPUBLIC

Elections, especially to the higher magistracies, are unlikely to have been determined primarily by bribery down to the Second Punic War. A powerful attempt has been made recently to minimize the significance of patron-client relations in Republican politics.⁹³ With much of this I am in agreement. A simplistic picture of patrons having secure control of the votes of their clients does not fit with what we know of the politics of the second and first centuries B.C.: not least it makes it almost impossible to explain the popularity and success of *ambitus*. Relations of dependence were neither exclusive nor inflexible.⁹⁴ It does not, however, follow that relations between patrons and clients had no significance in elections, even if they had to be reinforced with more specific inducements near the time of the election. Almost certainly, in the early and middle Republic benefits were provided by candidates to dependants, but, because they were being conferred on clients, these were regarded as part of the normal order of life. The same applied to the services the clients supplied to candidates, which tended to stabilize their loyalty. When *ambitus* begins to be recorded in the early second century, it is as a disruptive intrusion for those who have the established power, but for the electorate itself it was not only profitable but liberating, as it created the assumption that their votes were on the open market. Among the majority of politicians, however, there remained a distinction between the legitimate cultivation of connections and the subversive raiding by means of *largitiones* of votes which had belonged to others.⁹⁵ This applied of course to the supreme and massive form of *largitio*, as judged by Roman optimate standards—legislation on behalf of the welfare of the plebs. A man was expected above all to cultivate his own tribe and any other with which he had a family connection. When Augustus regularly gave his fellow-tribesmen in the Fabia and Scaptia a thousand sesterces each at election time, he was deliberately acting in the mode of a Republican *princeps*.

How far does legislation against bribery reflect this attitude? The new law in the second century B.C. may be ascribed to the natural desire of those with an existing political advantage to preserve it from being destroyed by the deployment of greater wealth by others. There is also a more altruistic explanation: the defence of *mores maiorum* by those who believed in the tradition known to Polybius (note 10 above), that one of the foundations of Rome's greatness was the incorruptibility of her leaders. By the late Republic the succession of *Leges de ambitu* suggests a sudden concern in face of a change in bribery both quantitative and qualitative. The organization which had developed gave candidates the impression that their success lay in the hands of the tribes' agents. Bribery had become institutionalized, the money disbursed an expected pay-off rather than a piece of voluntary, if calculated, generosity. At the same time the sums required mounted enormously.

Like British laws in the last two centuries, those of the late Republic came to be directed particularly at the use of agents to distribute money. One aim here was practical, to strike at the mechanism of *ambitus*. But there may also have been an element of ideology, a belief among the governing class that, through being institutionalized, *ambitus* was losing the positive aspect of providing a link between themselves and the electorate. We would have expected that such feelings cut little ice with the plebs. The ordinary voters would have been happy to have both the money and the freedom of choice the constitution permitted them. Yet they voted the bills about *ambitus* into law, the main resistance arising from the vested interests of the *divisores*. We can only speculate about the majority attitude. There may have been resentment against the use of menaces and 'undue influence' simultaneously with the offer of money. Or this may have been another instance of the view that bribery is something that happens to someone else, in your own case it is a matter of perfectly proper gifts.

⁹³ Brunt, *op. cit.* (n. 38).

⁹⁴ The notion of a rigid system of *clientela*, as postulated by N. Rouland, *Pouvoir politique et dépendance personnelle* (1979) is on the evidence an anachronism in the second century. For changes in dependence over generations cf.

Lex repetundarum (*CIL* 1², 583) ll. 10, 33.

⁹⁵ Plaut., *Men.* 571 ff. Livy 37. 57. 1 ff.; *Comm. Pet.* 5. 15–19; 11. 33–4; Cic., *Mur.* 70–2. Cf. O'Leary, 51 ff. on money only being a bribe, if offered by a candidate of the opposing party.

Against this background how effectively did the laws against *ambitus* function? The distinction between normal patronage and bribery, as the Roman upper class understood these terms, was very difficult to frame in any law about bribery. We have no evidence that presents to fellow-tribesmen were specifically excluded. Indeed, if they had been, Cicero would surely have said so in the *pro Murena*. On the other hand it was possible to argue in court that these gifts had another explanation than the pursuit of votes. The *ambitus* laws only dealt with expenditure which could be traced to the pursuit of votes on behalf of a candidate. Conceivably, some minimum amount was specified, in the same way that the *Lex de repetundis* fixed a minimum for which thefts could be prosecuted. In the post-Sullan period the giving of meals and parties, previously only restricted by the sumptuary laws, was brought within the scope of the *ambitus* law, perhaps also the granting of other favours, as in the *Lex Ursonensis* (c. 132), 'neve quis petitor kandidat'us convivium donum munus aliudve quid det largiatur petitionis causa sc(iens) d(olo) m(al)o'. Moreover, the giving of gladiatorial shows was forbidden, except as a memorial prescribed in a will.

Apart from their failure to square in some respects with conventional perceptions of what was acceptable behaviour, *ambitus* laws were unsuccessful in making candidates responsible for the behaviour of men who were not legally their agents. Although it was possible to detect and punish *divisores* who distributed bribes, a candidate profiting from these bribes might disown their actions. On the other hand, a *sequester*, who might well have been proved to be the candidate's agent, was not directly concerned with the giving of money to voters.

Bribery may have been a hybrid monster, *multiforme malum*, as Seneca called it.⁹⁶ Yet at Rome, as in Britain, its range of operation and effectiveness were limited. It is chiefly associated in the evidence we possess with the elections of consuls and praetors, occasionally with those of censors and aediles. It was not so much the aedileship itself but its value in assisting men to even higher offices which would have encouraged competition and bribery.⁹⁷ Although one Ciceronian text implies that there had been bribery in the tribunician elections in the fifties B.C.,⁹⁸ in general it was violence and intimidation which were here the distorting elements. The number of places available must have taken the edge off the competition and the mass of electorate may have been more concerned with the candidates' likely performance as representatives of the plebs.

Cato Uticensis did not reach the consulship; Servius Sulpicius Rufus only did so after a thirteen-year delay and at Cato's expense.⁹⁹ Yet it is hard to assess how far the Roman people were deprived of capable magistrates by the existence of bribery, either because such men failed to get returned or because they were deterred from standing. In general, there was a remarkable similarity in the percentage of men from consular families who reached the consulship themselves in the last two hundred years of the Republic—a little over 50 per cent in most of the constituent thirty-year periods. As for the men without consular ancestors, if anything, they increased in the late Republic, when bribery was most rife. In spite of bribery and 'undue influence', it was still believed that the magistrates were genuinely the people's choice, a choice which might be affected by many factors—family, military record, oratorical powers, as well as generosity. As for the character of the senate, given the nature of Roman society, it is arguable that this would have remained the same, whatever the methods of elections to magistracies; the important determining factor was its size and consequent degree of exclusiveness.¹⁰⁰

Only in the sixties and fifties B.C. did the less immediate consequences of bribery become serious. Financial instability caused by large-scale borrowing in order to

⁹⁶ *Const. Sap.* 2. 2.

⁹⁷ Cic., *Off.* 2. 57. The Verres case would not necessarily have been the only reason why bribery was deployed against Cicero in 70 B.C..

⁹⁸ Cic., *Att.* 4. 15. 7 for the agreement among candidates for the tribunate in 54 to eliminate bribery.

⁹⁹ Plut., *Cato min.* 49. 3–50. 1.

¹⁰⁰ See in general K. Hopkins, *Death and Renewal*

(1983), ch. 2, and cf. Namier, 82 for the view of Soames Jenyns published in 1784: 'Different modes of election may make some difference in the trouble and expense of the candidates, and may differently affect the morals of the people, and the peace of the country, but will make no difference in the representative body when brought together ...'.

bribe created political instability among the aristocracy. The plethora of corruption in 54 and 53 led to lack of faith in the constitution and politicians were prepared to obstruct normal procedures in order to create a crisis.¹⁰¹ Yet Pompey's third consulship did restore confidence in the constitution and elections, except in so far as he himself was thought to be the disturbing factor.¹⁰² Bribery must be given its place in the complex of causes that led to the civil war but cannot be assigned a special importance outside that complex. As we have seen, it is not at first sight clear why the Roman people as a whole, who were beneficiaries of *ambitus*, were so ready to vote in laws against it. Although in the past *ambitus* had developed as a competitor to traditional patronage and a liberator from existing ties, in the late Republic it may have appeared to be buttressing an attempt to control voting systematically through the organizations of the various tribes. Nevertheless, the competitive increase in bribery in the 50s shows that the various tribal organizations had not fallen under the control of any single powerful politician or group of politicians. To this extent *ambitus* was still compatible with free institutions.

Finally, we must consider how much *ambitus* contributed to the weakening of traditional values in Roman society in favour of the pursuit of money. There was consensus among ancient authorities that moral decay set in during the second century B.C. and that electoral bribery was one of its features. It is not clear, however, that *ambitus* provided a major dynamic. It seems rather to have been a natural development from the increase in wealth available and in competition for office. Polybius, writing in the middle of the second century, remarked, apropos of the suggestion that Flaminius had accepted bribes from Philip V, that he would have confidently made a general assertion that this could not have happened, while the Romans retained their ancient traditions and character before their overseas wars: in the present time he would not venture to claim this for everyone.¹⁰³ The history of the *quaestio de repetundis* and its antecedents during the second century is evidence of the temptations to which magistrates overseas succumbed. It is only from the time of the Gracchi onwards that we hear about the bribery of politicians at Rome itself, chiefly in association with the representatives of foreign powers. For example, C. Gracchus himself denounced the bribery by the kings of Bithynia and of Pontus in his speech on the Lex Auleia; Saturninus actually assaulted the ambassadors of Mithridates VI.¹⁰⁴ In Sallust's *Jugurtha*, if we treat with caution the sweeping advice allegedly given to Jugurtha that everything at Rome was on sale, the bribery that arises at Rome is through the impact of Numidian money.¹⁰⁵

Ambitus was certainly furthered by money obtained by theft, extortion or embezzlement from abroad and was for this reason an impetus towards such behaviour. However, the enormous profits made by men like Caesar and Pompey from their overseas commands would have occurred, even if they had not needed to help men to consulships or to buy the support of tribunes. Augustus claimed to have brought back in his legislation many fine old traditions which were dying out.¹⁰⁶ One of them was that old-fashioned electoral patronage which conservatives preferred not to think of as bribery. There had been little scope for this under Caesar's dictatorship and the Triumvirate but, with the restoration of republican appearances, *ambitus* had a curious half-life under the Principate. As for Augustus' own largesse to his *tribules*, we might consider this to have been intended *inter alia* as an encouragement to other established families to undertake similar largesse, in order that the old links of patronage between the aristocracy and plebs should be restored. In the Roman view the crime of bribery indeed depended on who was doing the bribing.

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¹⁰¹ See e.g. A. Lintott, *JRS* LXIV (1974), 62 ff. at 64–8; idem, op. cit. (n. 57), 198–200.

¹⁰² cf. the well-known comment of Tacitus (*Ann.* 3. 28). For Cicero's general appreciation see *Att.* 5. 6. 1; 5. 7; 7. 1. 4.

¹⁰³ *Pol.* 18. 35. 1–2.

¹⁰⁴ *Gell.* 11. 10. 1 = ORF, p. 187, fr. 44; *Diod.Sic.* 36. 15.

¹⁰⁵ 13. 5–6; 15. 1; 15. 4–5; 16. 1; 16. 3–5; 33. 2; 34. 1; cf. 40, and 31. 2 for the alleged advice.

¹⁰⁶ *Res Gestae* 8. 5.