

‘Cultural Hegemony’ and the Communicative Power of the Roman Elite

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When Cicero published his corpus of consular speeches, he included a series of four memorializing his defeat of a tribunician agrarian bill.¹ The three extant orations *de lege agraria* show the orator first in the senate, then in *contiones* before the people, running rhetorical circles around his hapless younger adversary, winning the battle above all by (ostensibly) exposing his bill as not the much-needed act of political justice that it probably was but as a cleverly baited trap to rob the Roman people of their freedom and hand power over to a shadowy junta.² Close examination of the very limited source material shows that the story of Cicero’s rhetorical triumph was a little more complicated than that. Apparently a hostile tribune threatened to veto Rullus’ bill, which may never even have reached a vote.³ There was then another front to this war that goes completely unmentioned by Cicero. Yet, veto or no veto, Cicero probably does in fact deserve the credit (if that is what we should call it) for defeating the Rullan bill, since, as a practical reality of republican politics, the effectiveness of a veto-threat depended on its sustainability in the Forum in the face of the Roman people.⁴ If in fact after Cicero’s withering rhetorical attack Rullus’ agrarian bill limped on until it was ultimately put out of its misery by a veto (or, alternatively, withdrawn in the face of a veto-threat), this

¹ Cic. *Att.* 2.1.3 (SB 21), with Crawford (1984), 79–81. I wish to thank Catherine Steel and Henriette van der Blom warmly for their kind invitation to speak at the conference and the original audience for a very fruitful exchange on that occasion. Once again I owe a debt of gratitude to Alexander Jakobson for helpful discussion of the issues raised here and for allowing me to see proofs of his 2010 article in advance of publication.

² Morstein-Marx (2004), 190–202. Jakobson (2010), 297–300, properly stresses that there were at least some limits to Cicero’s opportunities for deception and manipulation in the *de lege agraria contiones*. That may be readily conceded; yet the success of Cicero’s strategy itself still shows just how great was the opportunity for deception and manipulation.

³ Cic. *Sul.* 65: L. Caecilius Rufus.

⁴ Morstein-Marx (2004), 124–6.

hardly suggests that Cicero's speeches had little to do with the outcome: rather, the reverse.⁵ Now in the published version of the speeches themselves Cicero lays emphasis on how remarkable it was for a consul himself to take the offensive in the *contio* against an agrarian bill, so it would be reasonable to conclude that one of his objectives in publishing this rhetorical monument is precisely to offer an inspiring example of how highly 'popular' measures (in both senses of the word) could still be defeated in the arena of public deliberation, which conservatives had often forfeited as hopeless, by means of a rhetorical campaign undertaken by a sufficiently able orator.⁶

Cicero's use of a remarkably manipulative rhetorical strategy to defeat what on its face would have been an overwhelmingly popular bill might be taken as a paradigm case illustrating the characteristic peculiarities of the Roman deliberative process and of contional oratory itself. It does lay bare in an exceptionally clear way the key elements of the 'communicative power' of the elite, that is, a steeply hierarchical speech-situation based fundamentally on the speaker's possession of plausible claims to privileged knowledge while the popular audience lacked independent sources of authoritative information and was excluded from direct monitoring of deliberative activity in the alternative locus of power, the senate.⁷ These fundamental realities were reflected in, and further reproduced by, the basic assumptions of mass oratory, an ingratiating and manipulative rhetoric of authoritative revelation which focused listeners' attention on assessing political leaders' authority and sincerity rather than on alternative visions of the public good, thus ultimately reinforcing social tendencies toward deference rather than autonomous self-government.⁸ Through his claims to privileged knowledge of what Rullus was *really* up to, bolstered by his accumulated personal credibility and consular authority, Cicero was able to deprive the people of a reform bill that was almost certainly in their interest.

This appears to be an impressive example of what Jürgen Habermas called 'systematically distorted communication', and it is tempting to say that any political system in which this kind of travesty of public deliberation occurred is one in which the elite hold pretty much all the cards, especially once we add on the well-known institutional biases that favoured elite leaders and constrained public participation.⁹ Only magistrates and those authorized by the presiding

⁵ See Morstein-Marx (2004), 193: Plu. *Cic.* 12 and Plin. *Nat.* 7.117 attribute the result entirely to Cicero's oratory, even though Pliny can be read as suggesting that the matter actually came to a vote (*legem agrariam, hoc est alimenta sua, abdicarunt*).

⁶ *Cic. Agr.* 1.23–5 (he will call his own *contio* and force Rullus to defend himself); 2.7 (consuls generally avoid the *rostra*). See now Pina Polo (2011b), 89–98.

⁷ 'Communicative power': Morstein-Marx (2004), 251.

⁸ Morstein-Marx (2004), 204–78.

⁹ For a less pessimistic view of the phenomenon, see Jakobson (2010). On the *contio* in the late Republic, see also recently Tan (2008) and Tiersch (2009).

magistrate—in practice, virtually always senators, usually highly influential ones—were given the podium to speak, while ordinary citizens' participation was limited to expressing support or rejection of the speakers' words by their vocal reaction (sometimes quite dramatic, of course) and indeed their decision to show up or not to show up.¹⁰ In view of all this, then, one might well conclude that the process of public deliberation in republican Rome was just an elaborate sham, and the impressive legislative powers of the Roman People on which Fergus Millar in particular laid so much weight were largely empty.¹¹

Or second thoughts might obtrude. A healthier antidote to Cicero's monument to his own eloquence can hardly be imagined than James C. Scott's seminal book *Domination and the Arts of Resistance*, published in 1992. Scott attacks head-on the notion—originally Marxist, but by the late twentieth century pretty non-sectarian—that subordinate groups are usually induced by some kind of 'false consciousness' in one of its many variants to accept a trickle-down 'dominant ideology' that actually sustains their own subordination. That is certainly the impression we often get from our records, which contain a great deal of *prima facie* testimony to the idea that subordinate groups actually consent to their own domination. In our context, for example, we might immediately think of Cicero's picture of how the 'true' Roman people readily assents to the direction of its authoritative *principes*, including himself as performer of his published speeches.¹² Scott turns this notion on its head by assembling a dazzling array of evidence ranging from his own fieldwork among Malay peasants through pre-Abolition American slave narratives, early modern Carnival rituals, 'world-upside-down' prints and studies of the twentieth-century working class, interpreting all signs of apparent acquiescence or consent as either manifestations of ironical 'command performances' or the product of direct or implied coercion and intimidation, while on the contrary the dominated nurture their spirit of resistance unabated in anonymous sabotage or 'foot-dragging', in ambiguous and deniable acts of 'insolence', and in covert speech in safe places among themselves ('hidden transcripts'). So terrible are the likely consequences of open rebellion that the content of the 'hidden transcript' is very rarely openly pronounced; but it would be naive to assume on these grounds that what emerges at these times of great stress is not in fact frequently there just below the visible surface. There had been earlier, eloquent dissidents from the 'Dominant Ideology Theory';¹³ what Scott adds is a powerful theory of how communication itself—and thus,

¹⁰ Morstein-Marx (2004), 119–59, 161–72.

¹¹ Millar (1986), (1995), (1998); cf. the criticisms of Hölkeskamp (2010).

¹² Morstein-Marx (2004), 63–7, 243–6. cf. also Cicero's self-representation in the *de lege agraria* orations (above).

¹³ Most notably, Abercrombie, Hill, and Turner (1982) and Willis (1981). Scott acknowledges his debt at (1992), 71 n. 2.

necessarily, much of the data on which historians or sociologists ultimately rely—is skewed by the distortion created by starkly unequal power-relations.¹⁴

Could it be then that the impression of the overwhelming ‘communicative power of the elite’ that appears to emerge from our texts is in fact a figment of elite imagination as per Scott? Is it possible to imagine that Cicero’s picture of a docile and malleable *populus* was mostly in fact a pleasant hegemonic dream with only a loose connection with reality, or better, an ideal world that he wished to help create by training his students and readers in demagogic manipulation of *the right sort*?

To begin to answer that question we would need to gain a somewhat higher vantage point than we have used hitherto. Much has been gained, of course, from close readings of individual illustrative cases: rhetorical analysis of surviving speeches and careful analysis of the circumstances of known *contiones*. But it is one thing to see *what was possible* for a skilled orator on the *rostra* by putting, say, the *de lege agraria contiones* under the microscope, and quite another to aggregate known cases to form a picture of what was *normal*; and that may be equally significant, or even more so. For instance, those who wish to stress the aristocratic character of the Roman Republic offer us a series of absolutely jaw-dropping things that magistrates *could* do (at least to judge from Livy), such as stopping a vote in progress and lecturing the people to do it over again properly, or simply invalidating the result altogether.¹⁵ But if it had been *really* so easy to whip misbehaving plebeians into line, none of the great popular initiatives of the late Republic could possibly have passed, or once passed, have been sustained; and in fact, in the late Republic, the period about which we know the most, these devices seem to have been little used or generally unsuccessful in the face of a strong popular consensus.¹⁶ We probably make too much of these things. Turning the question on its head, Alexander Jakobson has often made the point that after all popular initiatives *could* be passed over strong senatorial resistance.¹⁷ Yet on its face, this is merely another statement of what was possible. The question is: how often?

Even when illustrative cases are aggregated, we always come back to the problem of whether what was evidently possible was actually normal or simply represents one of myriad exceptions. There is also always the problem that when studying individual instances we inevitably privilege the dynamics of

¹⁴ Gal (1995). For some cautions regarding the application of Scott’s theory to the Roman Republic, see Morstein-Marx (2012), 193–7.

¹⁵ e.g. the famous instance of the war-vote in 200 BC: Liv. 31.6–8. See Hölkeskamp (2010), 18–20, and *passim* for the ‘aristocratic character’ of the Republic. It is notable that these practices seem almost non-existent in the late Republic.

¹⁶ De Libero (1992), 91–101, thinks these were still quite successful devices in the late Republic; yet it is notable how relatively few of the laws listed below fell victim to them. Even if the legislation of Saturninus, Titius, and Sulpicius is struck from our list, this would lessen the proportion of ‘successful assertions of popular sovereignty’ by only 9–13%, depending on whether the *lex Sulpicia* is originally counted or not.

¹⁷ See esp. Jakobson (2006).

those about which we happen to have a great deal of information, such as the passing of the *lex Gabinia*, over others whose circumstances of passage remain pretty obscure but are likely to have been at least as important (such as the series of second-century Ballot Laws). What we need, in short, are statistics, even if they are the sort of crude ones that we get in ancient history.

A promising route would seem to be to compile a list of those bills in the late Republic (between *c.*140 and *c.*50 BC) that—so far as we know or can reasonably infer from our evidence—(1) were passed by the popular assembly, *but* (2) against significant opposition from within the senate.¹⁸ The combination of the two defining criteria should more or less remove the danger that a significant number of real instances might escape us, since even before we reach the quite well-documented Ciceronian era major legislative contests involving significant conflict between senate (or leading senators) and people, especially ones resulting in a popular victory, were apt for these very reasons to attract the attention of our sources.¹⁹

Obviously, many subtle judgements are involved in deciding which items of legislation should be placed on the list and which left off. Sometimes it is quite difficult to say in a particular instance just how much resistance located within the senate is enough to justify its inclusion as an example of a victory of the popular ballot over senatorial *auctoritas*, or indeed when, and when not, to include cases where such resistance is not explicitly mentioned but can be inferred with a rather high degree of probability. For the senate to yield to a highly popular measure due to intimidation or clearly prudential reasons is a well-known phenomenon; where this dynamic is well attested (as it is, for example, surrounding Caesar's agrarian law in 59 BC), then I consider these cases still to be examples of the people imposing their will upon a recalcitrant senate, and have therefore placed them on the list.²⁰ On the whole, however, I think I have erred on the conservative side: the list is almost certainly too

¹⁸ The list differs from that provided by Mouritsen (2001), 68–9, because of the conditions for inclusion stated in the text: not all laws with arguably or apparently 'popular' content seem to have faced significant senatorial opposition (whether because they were not, in fact, terribly controversial, or because no opposition was overtly mobilized for merely prudential reasons).

¹⁹ Similar considerations suggest that a comparable attempt to collect instances of the *defeat* of popular measures would be futile, since the bias of our sources against mentioning measures that failed (either in the voting itself or because they had succumbed to a veto-campaign before reaching a vote) would leave it quite imponderable just how great a proportion of promulgated bills had escaped our notice altogether. Also, the success of a bill supplies at least some concrete measure of popular support.

²⁰ For the senate's 'fear of the people', see Morstein-Marx (2000), 476, with n. 44; (2004), 166–7, 172–9. Caesar's agrarian law: D.C. 38.4.2. Similarly, although we have no explicit reference to active senatorial opposition to the restoration of the powers of the tribunate in 70 BC, our best evidence indicates that this was a case of reluctant resignation, not authentic consensus (below, n. 33). However, the 'fear of the people' that induced the senate to opt for war against Jugurtha in 112 BC (Sal. *Jug.* 27.3 *populum timet*: see Morstein-Marx [2000], 472–6; also Yakobson [2009]) is left out because the crucial decision was formally made in the senate rather than through legislation and thus does not meet our formal criteria.

short.²¹ Readers will also recognize that legislation is not the only indicator of popular self-assertion: for instance, the numerous successful tribunician prosecutions of incompetent (or worse) commanders in the last two decades of the second century surely had the character of popular triumphs as great as any law of the time, and it could reasonably be argued that exclusion of these instances unduly diminishes our impression of the strength of popular resistance in the era of Memmius, Mamilius, and Saturninus.²² But it seems best to focus on legislation in order to attain maximal clarity in our investigation of the phenomenon. In sum, I believe the broad pattern revealed by the data is pretty clear and not likely to be significantly changed by any reasonable quibbling over individual cases. The overall coherence of the data and their broad consistency with the well-known narrative of the late Republic suggest that the list is probably quite accurate, above all in its aggregated numbers, with omissions balanced against some (perhaps) debatable inclusions.

Here, then, is a list of what I shall sometimes refer to for brevity's sake by the ugly acronym of SAPS, or 'successful assertions of popular sovereignty', between 140 and 50 BC.²³

- 139 Gabinian ballot law (secret ballot in elections)²⁴
- 137 Cassian ballot law (secret ballot in popular trials except for *perduellio*)²⁵
- 133 Agrarian law of Tiberius Gracchus
- 131/130 Papirian ballot law (secret ballot in legislation)
- 123–122 Various laws of Gaius Gracchus, especially his a) grain law, and b) judiciary law
- 119 Marius' law narrowing voting gangways
- 118 Colonial law (Narbo)
- 113 *Lex Peducaea* appointing special prosecutor to investigate sacrilege
- 110–109 Mamilian law (establishing the *quaestio Mamiliiana*)
- 107 *Lex Manlia* (transferring Numidian command to Marius)
- 104 Various laws of L. Cassius Longinus,²⁶ especially that increasing the penalty for senators condemned by the people, or whose *imperium* had been abrogated

²¹ For instance, I have omitted some laws (for instance, the *lex repetundarum* of Servilius Glaucia, 104 or 101 BC, or the *lex Domitia* on priestly appointments, 104 BC) that seem almost certainly to have met with strong senatorial opposition because, in the current state of the evidence, no direct testimony to such resistance survives. See also nn. 27, 29–31, 35, 36, 40, 42, 46 for similar restraint.

²² Below, nn. 27, 48.

²³ It would be otiose to provide full documentation for each law (see *MRR* and Rotondi [1912]); I therefore restrict myself to giving references only when necessary to make the point that strong senatorial opposition existed.

²⁴ *Cic. Leg.* 3.35 does not make clear whether significant opposition existed, but the comments of 'Laelius' at *Cic. Amic.* 41 certainly seem to presuppose it.

²⁵ See esp. Yakobson (2006), 388–98.

²⁶ *Asc. Corn.* 78C: *plures leges ad minuendam nobilitatis potentiam tulit, in quibus hanc etiam ut quem populus damnasset cuive imperium abrogasset in senatu ne esset.*

- 103 Law probably enabling the trials of Caepio and Mallius (perhaps Saturninus' *maiestas* law?)²⁷
- 103 Saturninus' first agrarian law
- 100 Saturninus' laws in his second tribunate, in particular his a) second agrarian law,²⁸ and b) grain law
- 99 *Lex Titia agraria*²⁹
- 91/90 *Lex Varia* (establishing the *quaestio Variana*)³⁰
- ? 88 ? Sulpician law transferring the Mithridatic command to Marius³¹
- 75 *Lex Aurelia* restoring future career to tribunes³²
- 70 *Lex Pompeia Licinia* restoring powers of the tribunate³³
- 70 *Lex Aurelia* restoring mixed juries³⁴

²⁷ I have not included the popular abrogation of Caepio's command or the institution of the inquest into the fate of the gold of Tolosa because the paltry scraps of evidence we have on these matters say nothing of senatorial opposition, and it seems possible that the senate's leaders prudently stood aside so as to avoid tainting themselves in the matter. Regarding Caepio's and Mallius' ultimate conviction (cf. below, n. 48), while it may be impossible to separate out the evidentiary strands pertaining to a *rogatio* relevant to the trials and the trials themselves (see *MRR* 1.563–4, Rotondi (1912), 325–30, and Gruen (1968b), 164–8), the circumstances do appear to reveal indirectly that there was significant resistance from within the senate. Note that two tribunes were allegedly prevented from vetoing a certain *rogatio* connected with the trial, and, apparently in the same incident, Aemilius Scaurus was injured (*Cic. de Orat.* 2.197). Broughton apparently identifies the *rogatio* as Saturninus' *maiestas* law; there seems otherwise to be no clear testimony to overt senatorial resistance to that measure.

²⁸ Possibly formally overturned by the senate; in any event disregarded: De Libero (1992), 90–2.

²⁹ Apparently overturned: De Libero (1992), 90 n. 22. I have been unable to decide about the *lex Duronia* of 97 BC (?), which *V. Max.* 2.9.5 presents in a way that suggests some contention between leading senators (the censors) and the tribune; yet the fragment seems more humorous than inflammatory. For discussion of this fragment, see Russell in this volume.

³⁰ Drusus' legislation—even the laws of what was traditionally a 'popular' character—is not included because of his claim to be simultaneously standing for the senate (*Cic. de Orat.* 1.24; *Mil.* 16, *D.S.* 37.10; *Vell.* 2.13; *Liv. Per.* 70–1). Thus the *populus-senatus* opposition becomes impossibly blurry in this year.

³¹ In fact I am disinclined to include this item, since the law on redistributing the 'new' citizens was certainly not 'popular' in the normal sense and Sulpicius and Marius appear to have depended heavily on the reallocated 'new citizens'. Upon Sulla's return, the law was in any case overturned: De Libero (1992), 90 n. 21. On the same grounds I exclude the Cinnan *rogatio* of 87 BC; see further Morstein-Marx (2011). Similarly, I leave aside the short-lived Manilian law of 66 BC on freedmen's votes, which does not seem to have depended on the votes of the (formally constituted) *populus Romanus* (see *D.C.* 36.42.3).

³² The *plebs* at this time was deprived of its usual means of applying pressure (legislative powers of tribunes), so the fact that popular pressure was able to impel a consul from *media factione* to break ranks with the nobility in this way helps to show that its force was not derived solely, or largely, from tribunician *potestas*. This seems to be a particularly compelling example of 'bottom-up' prompting, even if the legislative initiative formally had to come from a magistrate: Yakobson (2010), 296.

³³ I infer from the history of unsuccessful agitation for the restoration of tribunician powers through the 70s BC, and especially the attested hostility of the nobility to Cotta's restoration of a political future to tribunes in 75 BC, that the lack of strong, open resistance in the senate in 70 BC was almost certainly a consequence of resignation or intimidation. cf. *Cic. Ver.* 44.

³⁴ On the strength of *Cic. Corn.* I F53 Crawford, with *Asc. Corn.* 78–9C.

- 67 *Lex Gabinia* (piracy command)³⁵
 67 Cornelian laws³⁶ on a) legal exemptions granted by the senate,³⁷ and
 b) praetorian edicts,³⁸
 67 *Lex Roscia* on equestrian seating in theatres³⁹
 66 *Lex Manilia* (transferring the Mithridatic command)
 61 *Lex Fufia* setting up court for Bona Dea sacrilege
 59 Julian agrarian laws⁴⁰
 59 Vatinius Law on Caesar's province⁴¹
 58 Some laws of P. Clodius,⁴² especially those a) regarding execution of
 Roman citizens *iniussu populi*,⁴³ and b) on grain distribution⁴⁴

³⁵ A *lex Gabinia* reassigning command in the Mithridatic War (rather than 'merely' the provinces Bithynia and Pontus: Kallet-Marx [1995], 314, with n. 93) from Lucullus to a consul seems virtually certain to have been passed over at least some significant senatorial opposition on behalf of Lucullus, but explicit testimony is lacking. So too in the case of the Gabinian law against lending money to foreign ambassadors, an issue which indeed met strong senatorial resistance when advocated by Cornelius; but this law might conceivably belong in 58 BC rather than 67 BC (Gruen [1974], 251–2).

³⁶ It is tempting also to include the Cornelian bill on bribery, which forced the consuls to pass a stricter law on the subject, because it was the popular pressure represented by the bill that forced the senate to push the consuls to offer a compromise bill that was successful. However, since the bill did not itself pass it does not meet the fundamental criterion for inclusion.

³⁷ Included because of the history of the dispute despite the fact that Cornelius' compromise version passed the senate without further overt resistance: Asc. *Corn.* 58–9C, D.C. 36.39.2–40.1.

³⁸ Asc. *Corn.* 59C: *aliam deinde legem . . . , etsi nemo repugnare ausus est, multis tamen invitit tulit, ut praetores ex edictis suis perpetuis ius dicerent.*

³⁹ See n. 54.

⁴⁰ Dio (38.7.4–6) notes Caesar's passage without opposition of long-delayed laws revising the tax-contract of Asia and ratifying Pompey's eastern arrangements, but makes clear that the lack of overt resistance was merely prudential. Still, in the absence of good testimony (but see Cic. *Att.*) 2.16.2 [SB 36] I leave these possible cases aside.

⁴¹ On the assumption that at least some of the strong-arm tactics attributed to Vatinius were employed in the passage of the *lex Vatinia*; but see Gruen (1974) 440, n. 152.

⁴² Whether there was significant senatorial opposition to individual items of Clodius' legislation is often unclear, once one makes allowance for the partisan nature of Cicero's later denunciations. A further complication is that Clodius was capable of intimidating the senate (below, n. 43) and thus preventing serious opposition, as well as the ability of the consuls, early beneficiaries of Clodius' legislation, to keep a lid on things. It is precisely our considerable knowledge of circumstantial detail in Clodius' case that permits us in this instance to rely rather more on reasonable inference rather than insisting on explicit reference to significant senatorial opposition. I have been extremely cautious in admitting only two specific Clodian measures. Tatum (1999), 125–33 makes a good case for the relatively uncontroversial nature of the *lex Clodia de obnuntiatione*, despite Cicero's fulminations.

⁴³ In fact no very overt resistance to this law was actually forthcoming from the senate (D.C. 38.16.3, App. *BC* 2.15, Plu. *Cic.* 31.1 mention only symbolic support for Cicero), but the sources make clear that this was partly for prudential reasons, partly because the consuls discouraged action. Thus it seems naive to assume that this law was not generally seen as a sharp check upon senatorial *auctoritas*. See Tatum (1999), 153–5; I have suggested that the 'senators' Hortensius and Curio attacked by the Clodiani were the sons of the homonymous senior consulars (Morstein-Marx [2004], 166 n. 23).

⁴⁴ There is again no explicit evidence to open opposition by the senate, but Cicero's bitter criticisms as well as Asconius' reference to the law as *summe popularis* (*Pis.* 8C) appear to justify inclusion. See Tatum (1999), 119–25.

- ? 55 ? *Lex Trebonia* (provinces of Pompey and Crassus) and *lex Pompeia Licinia* on Caesar's province⁴⁵
- ? 52 ? Law of the 10 Tribunes⁴⁶ (Caesar's privilege)

The first thing to note is that the Roman *populus* was far from docile in this period: the list contains at least thirty-six reasonably well-attested instances, or thirty-two if we again take a rather conservative view and drop a few questionable ones that I have marked with a query. (A further three were annulled or disregarded by the senate after the fact; this points to another possible strategy of senatorial resistance, but its very rarity is equally noteworthy.)⁴⁷ Averaged over the ninety years covered by the list, these thirty-odd instances amount to a rate of one example every three years or so—rather more frequent therefore than what might be seen as the analogous phenomenon in modern politics: an election that 'throws the rascals out'. However, the pace of the phenomenon is not a steady one across these nine decades: one immediately notes virtually a blank slate for a generation in the middle (99 BC to 70 BC), which means that for the rest of the ninety-year period the frequency of SAPS is actually much higher (more like once every two years). And within that wider norm, there are clear segments of higher intensity: the earlier third of our timeline has a Saturninian peak between 104 BC and 99 BC averaging close to one SAPS *per year*.⁴⁸ This high rate is again roughly equalled between the restoration of the tribunate in 70 BC and P. Clodius' tribunician laws in 58 BC, with notable peaks from 70 BC to 66 BC and again for several years after the return of Pompey, and a discernible trough of quietude during Pompey's absence (66–61 BC). Since the extended period of relative popular quiescence that runs from 99 BC to 70 BC was dominated by nearly a decade of civil war and a basic, if short-lived, rewriting of the rules of political life by Sulla, the disappearance of notable popular legislative victories over senatorial resistance stands out as an exceptional interruption of the norm.

Stepping back now for a moment to look at the phenomenon as a whole, I must say that these data make the term 'oligarchy' appear even less applicable

⁴⁵ To be sure, it is not entirely clear whether these bills, promoted by the consuls and openly opposed only by Cato, Favonius, and some tribunes, were seen by voters as opposed by the majority of the senate. Dio (39.33.2–3) suggests that the bills were backed by a significant senatorial coalition (cf. Cic. *Att.* 4.9.1 [SB 85], Plu. *Cat. Mi.* 43.1).

⁴⁶ Caes. *Civ.* 1.32.3 implies strong senatorial opposition, but since ten tribunes co-sponsored this bill and it enjoyed the public support of 'right-thinking men' like Cicero it is probably not a terribly strong candidate for inclusion as a SAPS.

⁴⁷ Above, n. 16.

⁴⁸ This peak might be extended earlier if we threw in the numerous condemnations of important commanders and other senators for treason or incompetence, e.g. Opimius and three other consulars in 109 BC, Caepio and Mallius in 103 BC (Alexander [1990], 26–9, 33–4). cf. above, n. 27.

to the late Republic than I had previously thought, even though the aristocratic elements of the system undeniably remain impressive—in particular, the continued prestige and authority of an ostensibly ‘meritocratic’ nobility so well sketched by Karl-J. Hölkenskamp.⁴⁹ I am also less impressed than I once was with the Roman people’s ‘depth of obedience’ (‘Gehorsamstiefe’ in Egon Flaig’s word).⁵⁰ On the contrary, these findings suggest (rather in the manner of Scott) that the often deferential *plebs* that greets us in the pages of Livy or Cicero may be more a legitimating ideological construct of elite texts than a real phenomenon of political practice, where the legislative assembly proves to be far from ‘obedient’, and the power of the people, as expressed by its votes, much more than a constitutional formality. Not just in theory but in surprisingly frequent practice, the popular assembly was able to overcome the authority of the senate in significant controversies in which central principles of public life were in play, including, be it noted, not merely material ‘goodies’ which a Cicero would dismiss as demagogic *largitio* but also the very balance of popular rights and senatorial authority (more on this in a moment).

Second, the data must tell us something important about the deliberative process that preceded these votes. Passage of a bill is ‘where the rubber hits the road’, as the phrase goes, and if the ‘steeply hierarchical communication-situation’ of the preceding *contiones* so often did not suffice to bring about a satisfactory result from the standpoint of the senate’s leaders, then it seems that plebeian audiences had greater powers of resistance to the accumulated authority of the *patres* and their *principes* than some of us (including myself) have tended to attribute to them. No doubt it is true that a steeply hierarchical communication-situation characterized the *contio*. This, together with the political elite’s monopoly of authorized speech, must have given them a privileged position in deliberation and over ideological production. And yet, even while these advantages appear to be undeniable, our data show that surprisingly often the Roman *plebs* did *not* do whatever the majority of the elite, for all their ‘cultural hegemony’ and ‘communicative power’, thought they should do. Part of the reason may well be the fact that such legislative acts of popular resistance to senatorial authority were always led by *individual* members of the elite—often lower-ranking members in terms of personal *dignitas* (tribunes) but not infrequently nobles themselves (such as the Gracchi). Thus there were cross-currents of authority, and it was perfectly

⁴⁹ Hölkenskamp (2010), esp. 76–124.

⁵⁰ Flaig (2003), 13, often embraced by Hölkenskamp (2010) (e.g. 52 and 98–9), and sometimes given quite a strong twist (e.g. 89: [the republican aristocracy’s] ‘permanent demand of strict obedience, docility, and discipline, deference and respect on the part of the *populus* at large’). In my earlier work I was too quick to write in a similar vein myself (Morstein-Marx [2004], e.g. 281, 287).

possible for voters to feel that support for such a person could not be 'revolutionary'.⁵¹ However, the political isolation of such 'class traitors' must have been quite clear: those who voted for Tiberius Gracchus' agrarian bill (not to mention Gabinius' piracy law) must have known very well that they were setting themselves against the collective authority of the senate.

Let us pause a moment here to look at the broad content of those proposals that passed despite meeting significant senatorial resistance; for the kinds of bills imposed by the *plebs* upon the senate may give us a sense of the parameters of the ideological core of autonomous plebeian resistance to elite hegemony. Sorting the SAPS by what appear to me to be their most notable 'family resemblances' in content and apparent intent, I find that they fall quite comfortably into three (naturally interrelated) broad groups:

- (1) *Laws that constrained the senate's discretionary power* (especially those that reassigned command of major wars or punished senatorial corruption, crimes, or incompetence—not always easy, to be sure, to distinguish from group (3) below): 14 (almost *one half* of the total)⁵²
- (2) *Laws that created or (ostensibly) restored material benefits to the plebs*: 10 (roughly one third of the total)⁵³
- (3) *Laws that defended fundamental popular rights and powers*: 7 (roughly the remaining quarter).⁵⁴

These categories, it may be noted, correspond nicely to Sallust's famous description of the opposition between the slogans *iura populi* and *senatus auctoritas* that characterized Roman political life after the restoration of the

⁵¹ Yakobson (2010), 286–93.

⁵² *Lex Sempronia iudiciaria*, *lex Peducaea*, *lex Mamilia*, *lex Manlia*, *lex Cassia* of 104 BC, law on the trial of Caepio, *lex Varia*, *lex Aurelia* of 70 BC, *lex Gabinia*, the two *leges Corneliae*, *lex Manilia*, *lex Fufia*, *lex Vatinia*. A prominent subgroup in this category consists of the various laws overturning the senate's assignment of military commands; another, those laws appointing special prosecutors or judicial boards to try major offences. I also include in this category the two laws revising the composition of criminal juries, whose popular appeal I would ascribe to the expectation that they would help to discipline the senate.

⁵³ *Lex Sempronia agraria* of 133 BC, *lex Sempronia frumentaria*, colonial law of 118 BC, Saturninus' two agrarian laws and grain law, *lex Titia*, Julian agrarian laws, *lex Clodia frumentaria*. (Saturninus' laws in this category appear to have been annulled or disregarded, along with the *lex Titia*.)

⁵⁴ The *lex Gabinia* of 139 BC, *lex Cassia* of 137 BC, *lex Papiria*, *lex Maria*, *lex Aurelia* of 75 BC, *lex Pompeia Licinia*, *lex Clodia* on execution of Roman citizens. I distinguish these from those grouped in category (1) above inasmuch as these laws focus on defending or enhancing (popular) powers and rights rather than restricting (senatorial) powers. The distinction seems to be defensible, although in practice the boundary is fuzzy and the underlying motivation in the two groups was probably broadly identical. I have left aside one further law (*lex Roscia*) as an outlier, inasmuch as it seems to have been essentially honorific and was directed exclusively at the *equites*, a small subgroup of the *plebs* with clearly distinct interests.

tribunate in 70 BC,⁵⁵ as well as the emphasis on *commoda populi Romani* that constitutes a common strand of contional rhetoric.⁵⁶

The contents of this ideological core may not be exactly surprising, but I think they gain their proper significance when it is noted that these proposals represent *successful* uses of the popular vote against significant senatorial resistance: that is, these proposals were backed by sufficient will to mobilize a decisive turnout, despite the relatively high cost of Roman voting in terms of time and trouble, and to overcome whatever potency the ‘cultural hegemony’ of the senatorial elite could muster. These broad families of legislative ideas appear therefore to delineate the contours of a distinctive plebeian ideological space—not the only and not necessarily the most cherished political values of the Roman *plebs*, but certainly the ones over which conflict most often arose with the elite and also where intensity of conviction was sufficiently high to bring frequent success in such conflicts. In this context, it is worth stressing again that the voting population was successfully mobilized not merely, or indeed not mostly, by what might be dismissed as largesse like agrarian and grain laws; this category is in fact outnumbered by a ratio of roughly 2:1 by more austere political initiatives regarding the balance of institutional rights and powers between senate and people.⁵⁷ This seems to bespeak a plebeian voting population that is relatively engaged and significantly politicized, that is, one that is able to mobilize effectively to pursue larger political ends than ‘merely’ the improvement of the material conditions of their existence.⁵⁸

The relative coherence of this ideological core, together with its strength against elite opposition, suggests that the Roman *plebs* did possess a significant degree of ideological autonomy in the face of the ‘cultural hegemony’ of the elite. (If these examples of successful popular legislation were inspired at the most fundamental level by the strategic desires of *politicians*, then surely they would exemplify a great deal less ideological coherence.) This is a particularly interesting point in the context of the debate over the various forms of the ‘trickle-down’ theory of ideology: ‘false consciousness’, the ‘dominant ideology thesis’, and so on. And from attributing some degree of ideological autonomy to the Roman *plebs* it is but a small step to attribute to them a corresponding degree of agency. This invites a Scott-style sceptical critique of our sources (Cicero to Dio), who might be supposed to have constructed for themselves and their readers a congenial representation of elite leadership that has tended

⁵⁵ Sal. *Cat.* 38.3: *quicumque rem publicam agitavere honestis nominibus, alii sicuti populi iura defenderent, pars quo senatus auctoritas maxuma foret, bonum publicum simulantes pro sua quisque potentia certabant.*

⁵⁶ Morstein-Marx (2004), 222–3.

⁵⁷ Adding together my categories (1) and (3) on the grounds given in n. 54.

⁵⁸ cf. Jehne, in this volume, who however stresses the attraction of status-recognition as an incentive to participate in the *contio* rather than an instrumental interest in successful collective action.

to obscure what must have been a very dense network of messages moving also from social bottom to top, signalling plebeian demands and prompting political action by ambitious senators prepared to respond to such demands in exchange for popular support or, as they would have put it, *honor* and *existimatio*. The claim that 'the popular will of the Roman people found expression in the context, and only in the context, of divisions within the oligarchy' may be broadly true, but risks tautology, since such divisions seem often to have been prompted precisely by popular demands.⁵⁹ A precious glimpse of how the process might work is provided by Plutarch's reference to the graffiti on 'porticoes, walls and tombs' which he insists was the greatest stimulus to Tiberius Gracchus.⁶⁰ But that is the subject of another paper.⁶¹

There were clearly limits, however, to what the *plebs* was prepared to force upon the senate—or, more precisely, what one member of the elite who was willing to break ranks with his peers might desire to force upon an unhappy senate by means of the power of the popular vote. As 'insubordinate' as the *populus Romanus* seems to have been on the ideological terrain I have just roughly outlined, completely absent from our list are institutional reforms that would have had the potential to alter fundamentally the republican political system in a more democratic direction. We might contrast the way in which in the US and Great Britain the incremental extension of the franchise over the nineteenth and twentieth centuries decisively set the course toward the gradual democratization of our respective political systems, without the end result apparently having been in anyone's mind at the beginning of the process.⁶² Despite the existence of the necessary formal powers and a tradition of populist politics, little more than some slightly provocative tinkering was ventured with elements of the political system as a whole (such as Gaius Gracchus' transfer of the courts from senatorial to equestrian juries); no bill was even *proposed* to make the election of consuls more democratic by eliminating the wealth-classes of the Centuriate Assembly (at most, Gaius

⁵⁹ North (1990a), 18, with Morstein-Marx (2004), 282–3. I should have noted in fairness there that North does indeed make the necessary qualification but evidently does not think it undercuts his point.

⁶⁰ Plu. *TG* 8.

⁶¹ Morstein-Marx (2012); see also Yakobson (2010), 296.

⁶² The British Reform Act of 1832 increased the electorate to roughly one in seven of adult males; the Second Reform Act of 1867 enfranchised all male householders, including the working class, more or less doubling the electorate. These were followed by the Ballot Act of 1872 (secret ballot), the Third Reform Act of 1884 (extending the suffrage to agricultural workers in the countryside), and the Representation of the People Acts of 1918 (universal manhood suffrage at age 21), 1928 (women), and 1969 (lowering the voting age to 18). In the US, the abolition of property requirements for suffrage among white males was an incremental process undertaken by the states in the 1800s; ex-slaves were given the vote by the 15th Amendment (1870), but poll taxes and other devices used to discourage black voters were not abolished till 1964–5 (24th Amendment and the Voting Rights Act). Women won the vote by means of the 19th Amendment in 1920, and the voting age was lowered to 18 by the 26th Amendment in 1971.

Gracchus may have proposed mixing up the centuries in elections, as is claimed in Sallust's *Letter to Caesar*,⁶³ nor was it ever suggested that the senate should be reduced in effect to a Greek-style *Boule* by direct popular election and the imposition of limited terms, and so on.⁶⁴

Despite the popular autonomy and power copiously demonstrated in the cases we have reviewed, which would seem to offer the potential for development of the political system itself in a democratic direction, the Roman *plebs* never seems to have been mobilized to pursue such an end. This seems paradoxical and calls for an explanation. We need to ponder both the supply and the demand side to this equation. The fact that such a step was never even proposed, despite the powerful competitive impulses in the Roman elite, must be due in part to the assumption that few voters would actually support this kind of 'democratization'. (In a highly competitive system like the Republic, a demand for some initiative seems pretty certain to generate at least some supply of it.) But it is also easy to imagine that the silence of the *rostra* about these kinds of possible initiatives also has something to do with the fact that in the *contio*, it was the elite who did the speaking. Some magistrates were clearly prepared to break ranks with their peers to gain competitive advantage within the system; no one, it seems, was prepared to break ranks with his peers to shift significantly the paternalistic foundations of the Republic from which he himself benefited, and expected some day to benefit further.⁶⁵

An analysis of contional speech and rhetoric illustrates the ideological limits of fully public discourse. In the *contio*, an 'ideological monotony' reigned,⁶⁶ meaning not that all speakers sounded and behaved interchangeably when they climbed onto the *rostra* (some struck an aggressively invidious pose against the authority of senatorial leadership, others sought to soothe popular indignation) but that 'a nakedly "optimat" stance was in straightforward contradiction with the *contio* as a rhetorical setting',⁶⁷ thus driving those

⁶³ *Sal. Rep.* 2.8.1–2.

⁶⁴ The extension of the franchise to all Italians was indeed a remarkably broad expansion of rights that would actually be used (more on this in a future paper), but this seems not to have produced any very appreciable democratic momentum, above all because it was a lateral rather than downward extension.

⁶⁵ cf. Christian Meier's conception of the late Roman Republic as a 'Gefälligkeitsstaat' and the lack of an apparent 'Alternative': brief orientation in English, with further references, in Jehne (2006a), 8, and Morstein-Marx and Rosenstein (2006), 627–8.

⁶⁶ Morstein-Marx (2004), 204–40. Yakobson (2010), 293–300 and Tan (2008) qualify my findings somewhat, though it should be noted that both actually appear to accept the existence of 'ideological monotony'. Tan however argues that this is essentially a function of who summoned *contiones* (men he designates as *populares* outnumber *optimates* by a ratio of 3:1). To my mind, he errs in treating those labels as reliably determinate and informative (contrast now Robb [2010]) and gives too little attention to the fact that that dichotomy was impossibly blurred or even suppressed in the *contio* (next note).

⁶⁷ Morstein-Marx (2004), 239. Tan's statistics and discussion in effect corroborate the point: (2008), 181.

who opposed popular initiatives such as those we have reviewed here either to use the copious obstructionist tactics available to them to block such legislation (the veto, unfavourable auspication, *ex post facto* annulment) without having to articulate an unambiguously 'optimate' counter-argument,⁶⁸ or to argue in bad faith against such measures while pretending to be the 'true *popularis*' (as does Cicero in the *de lege agraria* speeches). In the public discourse of the *contio*, therefore, a broad consensus on fundamental republican values and principles reigned rather than conflict—an ideological consensus that might be described (given its venue) as broadly *popularis*, but since no ideological alternative was expressed in the fully public sphere it might better be described as 'contional' or even simply 'republican'. This was not anti-senatorial as such. Aggressive populist attacks on 'the senate' prove upon examination not to be directed against the institution, hallowed and untouchable even in popular discourse, but against the (allegedly) unworthy senators that dominated it *in the present*: a rabble-rousing and quite inflammatory tribune like Memmius can claim that it is the corrupt *pauci potentes*, not he, who have betrayed the *auctoritas senatus*.⁶⁹ A basic reverence for *dignitas* and *auctoritas*, concepts that evidently underpin a fundamentally paternalist conception of politics, appears to have been presupposed.⁷⁰ Broad consistency seems to have prevailed between the political assumptions of mass and elite regarding the overall legitimacy of the senate as an institution and the desirability of maintaining its authority, or the reverence shown to ideas of reciprocity of public service and honour (*merita in rem publicam* and *dignitas/honor*) that may justly be described as aristocratic assumptions regarding the deference due to individual members of the elite possessed of dignity and authority. All of these conservative sentiments that express what seems most distinctive about the Roman Republic appear to have been consensually shared between *populus* and *senatus*, despite the not-infrequent popular victories in legislative contests between the two.

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An ideology of popular sovereignty, then, appears to coexist with that of elite paternalism. On the one hand, then, our data show that the Roman *plebs* in the late Republic was a real power where its *commoda* and *iura* were clearly at stake, one possessed of a significant degree of autonomy and agency and relatively frequently (on average, every one to three years) mobilized successfully to assert its perceived interest against a powerful and authoritative political elite. On the other, it shows no inclination to push the boundaries of its core interests to include institutional reforms that would fundamentally alter the balance of its power vis-à-vis the senate and provide a decisive

⁶⁸ For these, see Burckhardt (1988), De Libero (1992); cf. Morstein-Marx (2004), 176–7.

⁶⁹ Morstein-Marx (2004), 231–2. cf. Sal. Jug. 31.25: *hosti acerrumo prodita senatus auctoritas, proditum imperium vestrum est*.

⁷⁰ Morstein-Marx (2004), 258–66. Also Jehne, in this volume.

impulse toward democratization of the Republic, toward the realistic envisioning and incremental creation of an 'Alternative'.

An interesting text that illustrates nicely the coexistence of these apparently contradictory tendencies is the passage in Cicero's published *contio* *On the Manilian Law* where he deals with the opposing arguments presented by the important consulars, Quintus Hortensius and Quintus Catulus (51-68).⁷¹ Cicero courteously acknowledges that these are men of enormous *auctoritas* which has often had weight with the people and should continue to do so. Yet he adds that their *auctoritates*, their 'authoritative opinions', should in the present circumstances be set aside and the people should reach their own conclusions on the basis of the facts and logic.⁷² After all, in the previous year when the Gabinian Law was being debated along similar lines, had their *auctoritas* been accorded greater weight than the Roman people's own security and correct reasoning about the facts, then Rome's empire would have been lost.⁷³ By their correct judgment of Pompey in the previous year, the Roman people had actually demonstrated *its own auctoritas*.⁷⁴ Even so, after Cicero leads the Roman people in a (perhaps more apparent than real) factual and logical dismantling of Hortensius' and Catulus' *auctoritates* as being in effect now refuted by circumstances, he still thinks it useful to close the matter by listing a whole series of influential consulars who now support the Manilian Law (presumably having changed their minds themselves on the basis of the outcome of the Gabinian Law): 'Be assured that we think we are able to respond by means of these men's *auctoritates* to the arguments of those who oppose the law.'⁷⁵

What I think is most noteworthy here is how Cicero has his cake and eats it too by recommending autonomous popular decision-making without actually undermining the general principle of deference to paternalistic *auctoritas*. He treats the *auctoritas* of leading senators as an extremely important factor in weighing a decision, and appears to think it was important not merely to convince his audience that the last time round their own autonomous

⁷¹ See Jehne, this volume, and Steel (2001), 114–30, 173–81. In my view, Cicero is not actually 'sidestepping' (Steel) the objections of Hortensius and Catulus but actually rebuts them quite effectively by arguing that their position (which he treats as identical with that against the Gabinian Law) had, despite all their merits as advisers of the People, been definitively refuted by the results of the Gabinian Law. At (2004), 265, I emphasized exclusively the reverence for *auctoritas* evinced by the passage. On this passage see also Yakobson (2010), 287–8, and Yakobson (2009), 49–51.

⁷² *Man.* 51.

⁷³ *Man.* 53, cf. similarly 56. Strictly speaking, these last points are made only against Hortensius, but the introductory passage (§51) suggests that the grounds for rejection of both *auctoritates* are essentially the same, and the anecdote about Catulus' question during the Gabinian debate at §59 reinforces this idea.

⁷⁴ *Man.* 63.

⁷⁵ *Man.* 68.

decision-making was superior to these men's advice, but also to reassure them that what he argued was also supported by the *auctoritates* ('authoritative opinions') of an even greater number of important consulars. Yet he also carves out a legitimate space for rejection of authoritative senatorial opinion by the Roman people on the basis of *res* and *vera causa*: the case of the *lex Gabinia* is held to vindicate such 'correction' of authoritative senatorial opinion on a matter that deeply concerned the urban *plebs*.⁷⁶ In other words, what is implicitly offered here is a theory of elite paternalism (represented by the notable reverence for the *auctoritates principum*) properly correctible when necessary (not infrequently, in fact, as our statistics show) by an autonomous assertion of popular sovereignty. 'Insubordinate' self-assertion when the *plebs* considered its material conditions of existence or its traditional rights threatened could coexist with general adherence to the paternalistic assumptions of elite leadership if the function of such 'insubordination' was to serve as a check—an often salutary one—upon senatorial hegemony.

This makes the relationship between conflict and consensus complementary rather than contradictory. I suggest that from the perspective of Cicero's implied audience at the *de lege Manilia contio*, the successful passage of the Gabinian law would have *validated* the basic principles of the republican system (understood in this manner) *despite* the fact that it had to be passed against influential senatorial opposition.

Antonio Gramsci (the originator of the conception of 'cultural hegemony') actually knew very well that the masses were not simply 'brainwashed' by the dominant ideology of the ruling class and proposed in a long essay in the *Prison Notebooks* a 'divided consciousness' among subaltern classes who have indeed their own, autonomous 'conception of the world' based on their lived experience, but translate it into political action only on rare, explosive instances, while under normal circumstances they are too heavily influenced by the elements of dominant ideology that possess enormous cultural prestige and authority.⁷⁷ Gramsci's ideas of an autonomous subaltern 'conception of the world', and of a 'divided consciousness' reflecting the inroads upon this

⁷⁶ Note that the *lex Gabinia* was 'over-determined' in terms of our categories making up the plebeian ideological core, since it concerned the grain supply in the first instance but also senatorial assignment of major commands.

⁷⁷ Gramsci (1971), 323–43 (in the original: [1975], 11§12). For some words in defence of Gramsci against Scott (1992), esp. 70–107, see Morstein-Marx (2012). On the whole, it must be said that Scott assimilates Gramsci's complex views too closely and reductively to a generally discredited notion of 'false consciousness' as a kind of brain-washing. (cf. e.g. Gramsci [1971], 327 in the preceding essay, and Ives [2004], 78, 81, 151.) For his part, Gramsci the Sardinian revolutionary was perfectly aware of the kind of 'hidden arts of resistance' that Scott tends to glorify—and found them relatively trivial, in the absence of ideological enlightenment. In a paper of 1919 he noted that for the peasantry of Sardinia and Italy, 'Class struggle was confused with brigandage, with blackmail, with burning woods, with the hamstringing of cattle, with the

autonomous conception made by the claims of a hegemonic class seems at first glance to fit our phenomenon well. Yet the differences between our scenarios also seem important. For one thing, Gramsci's exception seems here to be pretty much the norm. Also—and I think this is quite interesting—in our cases the two dynamics seem to coexist or even complement each other: fairly regular, and sometimes quite sharp, conflicts between *populus* and *senatus* on the more contested parts of the ideological terrain somehow do not appear to have significantly eroded consensus on broader institutional matters and fundamental political values which amounted to a traditional ideology of paternalistic leadership.

There is a tendency to consider the senate as *the* source of legitimacy in the Republic, a premise from which it would follow that to oppose the senate was to erode the legitimacy of the Republic. On the contrary.⁷⁸ As David Beetham emphasizes, participation in voting—especially in a rather burdensome voting procedure like the Roman—was in itself a legitimating act,⁷⁹ and when crowned with success as frequently as we have found, such votes appear likely to have conferred legitimacy *on the Republic as a whole* because they demonstrated that the political system was reasonably responsive to intensely held plebeian demands.⁸⁰ The act of *voting*, after all, as opposed to outright mutiny and rebellion, is an expression of implicit faith in a political system even while it may involve rejection of (currently) dominant political authority: the kind of mass voting that was presumably demanded in order to overcome strong senatorial opposition, then, must have conferred legitimacy not only on the immediate outcome but indirectly on the system itself. Far from viewing such assertions of effective popular sovereignty against senatorial authority as indications of the breakdown of republican consensus (an ideal that may belong to the mythical Golden Age), they might be viewed as evidence that the Republic functioned as a republic should. And so long as those plebeian demands remained within the traditional terrain of defending its political rights and basic economic needs, and did not extend to reforming the paternalist institutional structure of the system as a whole, plebeian 'insubordination' did not represent a breakdown in the system but was integral to the functioning of the system itself: a vital check on the paternalist tendencies that

abduction of women and children, with assaults on the town hall—it was a form of elementary terrorism, without long-term or effective consequences' (Gramsci [1977], 84).

⁷⁸ Morstein-Marx (2009), esp. 115–17, 135–9; (2011), 276–7; cf. Wiseman (2009).

⁷⁹ Beetham (1991), esp. 18–19, 90–7.

⁸⁰ At Morstein-Marx (2004), 286, I wrote that 'the late Republic produced relatively few benefits to the Roman *plebs* in the form either of material assistance or of reforms to the political system itself making it more responsive to pressure "from below"'. The first part of my claim needs some qualification (Yakobson [2010], 301–2): the grain dole in particular should not be depreciated.

otherwise prevailed.⁸¹ Conflict on one level therefore did not actually threaten elite hegemony at another level, but (somewhat paradoxically) consolidated its long-term stability.

Historians have often seemed to presume that the Republic was (or was supposed to be) a *consensual* system rather than a *competitive* one driven forward by tensions between differentiated elements. There is a common-sense tendency to think this about any successful state. But Machiavelli may have been right: it may have been division and discord, not concord, that made the Republic strong.⁸²

⁸¹ Yakobson (2010), esp. 300–1, with somewhat different arguments and phrasing.

⁸² *Discorsi*, 1.4: ‘I must say that it appears to me that those who condemn the disturbances between the nobles and the plebeians condemn those very things that were the primary cause of Roman liberty, and that they give more consideration to the noises and cries arising from such disturbances than to the good effects they produced . . .’ (tr. Julia and Peter Bondanella). Machiavelli’s point bears a general resemblance to Polybius’ teaching on the virtues of the mixed or balanced constitution; yet the emphasis is quite different, stressing the productive qualities of persistent *discord* rather than the natural mechanism it provides for the restoration and maintenance of *concord* (as in Plb. 6.18). See McCormick (2003), 626–30 for a stimulating discussion of Machiavellian discord.

