

## Persuading the People in the Roman Participatory Context

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Communication is central to a republican political system worthy of the name: if the people have votes that can decide major issues of their own governance, then these votes must be informed by adequate prior discussion and deliberation in order to fulfill this role. What constitutes “adequate” will depend crucially on the role voters are expected to play: the requirements for truly autonomous self-governance worthy of the name would be far more stringent than those implied by a narrow, elitist version of popular input (much like that of contemporary representative “democracies” and republics) restricted more or less to a periodic choice of leaders to represent us in political decision-making that actually takes place elsewhere. This touches immediately therefore on a basic question that pervades this chapter as a whole, that is: What kind of role *was* in fact implicitly envisioned for Roman citizens not of the senatorial order? For the moment we shall note simply that certain practices surrounding public deliberation clearly imply that Romans in the last two centuries BCE did have a conception of at least a minimal standard of adequate deliberation. Before a legislative proposal’s fate was sealed by a vote or a veto it was expected to be read out and discussed by some of the leading men of the Senate over a period of roughly three weeks in open, public assemblies (*contiones*)—not just current magistrates, but other senators as well (*privati*) who might possess even greater personal authority (on Roman assemblies, see Mouritsen, Chapter 9). After these discussions the final vote would also be immediately preceded by a final set of speeches both “pro” and “con,” with emphasis again on the advice of *privati*. Since all legislation had to be passed by the Roman people, quite a lot of open, public deliberation of this minimal standard was built into the political system.

As in all classical polities, oral communication was central to the functioning of Rome’s Republic. Not that the written word was neglected: magistrates’ edicts were written out on whitened boards, and the text of a law was usually (perhaps always) required to be posted “where it could be read rightly from the ground” (Crawford 1996: 19–20),

apparently around the Rostra in the Forum or on the Capitol. Yet the primacy of the spoken word in a world of limited literacy and no news media is clear enough. We have just noted that proposed laws had to be presented to the people orally over three successive market-days from their formal promulgation, and magistrates' edicts seem to have been written down above all as a *safeguard*, so that those who were not present when they were read aloud in a public meeting could learn of their content (Morstein-Marx 2004: 8, 70, 249–251). So in the civic context speech-making was a key manifestation of political leadership and a fundamental enactment of political authority.

Up to about the middle of the second century BCE, traditional methods of training the scions of the political elite appear to have sufficed in the rhetorical realm: hearing Rome's great men speak in assemblies or trials, observing deliberations of the Senate from the forecourt of the Curia, perhaps also attending the general's council during military service. But as Roman senators came into closer contact with the Greek intellectual world in the course of the second century, and coincidentally their own domestic politics broadened to reach wider segments of a growing urban population and even distant communities of citizens in Italy who might come to the city for a vote, some members of this elite seized upon the rule-based technical skill of academic rhetoric refined in Greece from the days of the Sophists and Aristotle. Such training was originally available only from Greek tutors and thus demanded fluency in the Hellenic tongue as well as considerable family resources, putting it "safely" beyond the reach of the merely ambitious. But by 92 BCE the rise in demand for training in the *ars rhetorica* had induced some teachers of rhetoric to open schools offering tuition in Latin, vastly increasing access to what might now be seen as a merely technical skill. This was regarded by traditionalists as an intolerable incitement to "shamelessness" (*impudentia*: Cic. *De orat.* 93–94)—or social mobility—and a backlash came in that year in the form of a sharply disapproving edict from the censors L. Crassus and Cn. Domitius which probably induced both the "Latin rhetoricians" and their pupils temporarily to take a low profile. This strong pronouncement makes clear what was at stake for the nobility; but if rhetorical training were indissolubly linked to a broad Hellenic education, which was available to a relatively privileged few, then its social and moral effects could be managed in the interests of the elite. In fact, the Latin rhetorical schools must soon have reopened, but advanced rhetorical training under Greek masters in Rome and sometimes abroad (Athens or Rhodes) became a common form of preparation for aspiring members of Rome's political elite in the time of Cicero. The privileged access to formal rhetorical training that senators and *equites* enjoyed must have continued to play a large role in maintaining their ideological dominance over Roman public life, though it surely also loosened the grip traditionally held by the nobility (a narrow subset of the senatorial order) on recruitment to high office.

## I Typology, Venues, Audiences

Political speech was ubiquitous in the Forum, the great quasi-rectangular square, ringed by temples and the most storied hills of Rome, that constituted the topographical center of republican public life. A visitor in the 50s BCE must have stood a good chance of joining the rings of spectators (*corona*) around one or more criminal trials in session in different sectors of the Forum featuring some of the leading men of the state as defendants, plaintiffs, or counsel. (See David 1992: 44–45 for a speculative but interesting attempt

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to locate the courts within the Forum.) The judicial business of the Forum might have to compete with a magistrate addressing a public meeting from the Rostra in front of the Senate House. If the House was meeting that day, our imaginary visitor would have had difficulty approaching the densely crowded forecourt of the Curia to hear what was being said, but if he was patient the presiding magistrate and others might well emerge to report publicly from the Rostra on the nature of any decree. Although the growth of the scale of public business had largely banished commerce to the periphery of the ancient square by the second century, “artisans and shopkeepers” are often mentioned as the denizens of the Forum, and one can easily suppose that the endemic under-employment of an ancient metropolis gave the orators who performed there a regular audience, sometimes converted by indignant speakers into a riotous crowd. Great political controversies, legislative proposals of wide public interest, or indeed star performers such as Cicero and popular heroes such as Publius Clodius drew considerably greater and more diverse crowds to hear speakers in the Forum, and often to respond loudly with their own voices and hands (*clamor, admurmuratio, plausus*).

Political activity in the Roman Republic was oriented around two poles: the Senate and People of Rome (Senatus Populusque Romanus—SPQR—according to an ancient formula, whose order, incidentally, could be inverted). The dyadic structure of the state was reflected also in oratory, since speeches delivered before the Senate and before the people naturally differed to accommodate their differing audiences and rhetorical setting, with obvious effects upon the style of argument and ideology characteristic to each.

The orator’s “greatest stage” was the *contio* or public meeting (Cic. *De orat.* 2.338), which merits special prominence for our purposes because it constituted the crucial point of discursive exchange between individual senators and the citizenry and thereby performed the crucial function of stitching together a potentially divided community. Most important, it was in *contiones* that magistrates seeking to further a legislative campaign needed to make their case to audiences of citizens who, whatever their numbers and precise constituents, could claim to embody at that moment “the Roman people.” At times of high political excitement, tribunes might summon “daily *contiones*” and virtually live on the Rostra (Cic. *Brut.* 305–306), especially when they were seeking to rally public support in order to overcome resistance located in the Senate.

All magistrates had the right to summon a *contio*, but in practice tribunes held more than half of all the meetings whose presiding officer is recorded (Pina Polo 1996: 52); consuls come a distant second in frequency, usually acting in their capacity as (in effect) the executive arm of the Senate rather than as oppositional critic, as was more frequently the role of tribunes. The presiding magistrate could speak himself or hand “his” *contio* over to another, usually a senior senator of high authority who did not currently hold a magistracy (*privatus*) but whose opinion would hold great weight with the citizenry. Another variant of the practice occurred when the presiding magistrate “invited” an adversary to defend his position before a *contio*; to judge from known examples, in which the audience is typically hostile, this was actually a kind of pressure tactic rather than an idealistic concession to fairness in debate. These relatively informal meetings were not restricted to speech-making: an enormous variety of public announcements and legal acts were required, or expected, to take place before a *contio* for the sake of publicity. But the *contio* was so closely identified with public speeches that the word came to denote both the meeting itself *and* a speech delivered at such a meeting.

Audiences of *contiones* were self-selected, and as such can be shown to have been often quite partisan, usually in favor of the magistrate who summoned the meeting. The possibilities enjoyed by the magistrate for strategically manipulating the makeup of the audience were enhanced by the fact that public meetings were not called far in advance—typically for the same day, it seems. This, together with thoughtful reimbursement of expected supporters for time lost from their daily pursuit of life's necessities, could produce a crowd which was much more likely to applaud or echo the magistrate's words (or those of his allies) than drown them out or shout them down. This was symbolically useful for at least two reasons above all. Contional audiences claimed to stand in for the Roman people as a whole: thus their responses, positive and negative, were apt to be interpreted by interested politicians as clear signs of the will of the *populus Romanus* itself (see also Tatum, Chapter 15, on the role of the people). If on the other hand one did not like what they "said," then one could of course deny their representativeness, as famously did Scipio Aemilianus when he responded to the shouts of a crowd angered by his assertion that Tiberius Gracchus may have been justly killed by denouncing it as a rabble of foreign-born war-captives, and thus not really Roman at all (Malcovati 1976: 31–32). A second reason why conspicuous audience responses were useful is that they might have a kind of bandwagon effect influencing future "turnout" for further *contiones* and voting assemblies, making a legislative debate more and more one-sided until there was only one surviving contender in the Forum. The rarity of occasions on which a legislative proposal was actually *voted down* is, in my view, a measure of the strength of this tendency.

There has been some debate about the social makeup of contional audiences. It does seem clear (as is indeed implied by the foregoing) that it varied widely, so that phrases in the ancient sources such as *plebs contionalis* should not be understood as attesting to the uniformity of audiences but simply refers to the fact that crowds in the business center of a city where employment was sporadic were somewhat distinctive, with "artisans and shopkeepers" making up a regular and recognizable constituent. Depending on circumstances, these men might constitute a minority or a majority of a given *contio*—which of the two, we are rarely in a position to judge from the evidence. (In the nature of things, this was probably rarely clear even to eyewitness observers.) However, a view recently espoused would make the contional audience one that was on the whole "well-to-do," with time on its hands and no need to be more productively occupied (Mouritsen 2001: 38–62). This seems highly unlikely, however, given the tendency of all of our sources to treat these audiences as "popular" in social terms and expressive of views that often diverged sharply from those of the Senate and the most respected elements of the social hierarchy (Morstein-Marx 2004: 122–123; Jehne 2006c: 229–232).

Estimates of the size of audiences at public meetings must remain very rough. No one counted, and size itself was often a tendentious issue, as also today, when the media report divergent partisan estimates of the size of demonstrations. Calculations based on the capacity of the available space to the south and east of the Rostra have ranged from 6,000 to 20,000, but this can give only a broad sense of the order of magnitude since so little is actually known about the actual dimensions and details of the use of the available space. It is important to understand that the audience at a public meeting stood, and nothing prevented it from drifting away if its attention were not held. A speaker in a *contio* had to get to the point quickly, not drone on, and if he wanted to propel

action he was well advised to seize his listeners' attention with strong emotionalism, frequently by arousing fear and indignation. Since ordinary citizens were excluded from direct observation of senatorial debates (see below) that often were the subject of a *contio*, or had already dealt with matters that were the subject of a *contio*, a speaker often was a mediator of communication between Senate and people. This allowed him to characterize senators in a certain light and to represent himself as also a peculiarly authoritative guide in the people's deliberations. This position astride the main line of communication between Senate and people was a valuable source of power both for individual senators who temporarily controlled access to it and, of course, for the political elite as a whole, which collectively monopolized this crucial node.

The rhetorical setting of the Senate, a body of some 600 men from the time of Sulla (half that number previously), was very different. Senatorial audiences were much smaller: a meeting of 400 was considered "full" (*frequens*). These few hundred, wealthy men all, had ostensibly devoted their lives to public affairs (the *res publica*) and consequently had a strong corporate sense, especially at their core, the nobility. Here, then, the audience consisted of the speaker's own rivals for honor, indeed normally many superiors, and the speaker's place in the hierarchy was reinforced by protocol which dictated that ex-consuls spoke first (consuls-elect if the annual election had already been held), then ex-praetors and so on, down to back-benchers who were not expected to speak—the *pedarii* or "foot-men," so called (according to the most widely accepted etymology) because their main function was to show support for others of superior rank by walking to join them at their benches. The distinctive character of the council was reinforced by its sitting in an enclosed space: the Curia in the Forum or one of the temples in the area of the great square, most often the Temple of Concord near the Rostra, the Temple of Castor in the upper Forum, and the Temple of Jupiter Best and Greatest on the Capitol. This was an aspect in which the senatorial setting was sharply differentiated from the other venues of Roman political oratory: onlookers were not allowed, and debate took place shielded from the people's monitoring gaze—though not entirely protected from expressions of popular feeling such as shouts and uproar that could penetrate the walls and the open door of the meeting-place (see Cic. *Cat.* 4.14–17 and, more explicitly, App. *B. civ.* 2.130–132).

In a senatorial debate, of course, not all spoke at any length. The clear order of hierarchy according to which the consul (or other presiding magistrate) called upon members of the House seems to imply a clear expectation that the opinions of those near the top of that hierarchy, with the longest experience of public affairs, were expected to set the parameters of subsequent debate. Even so, proper speeches were normally reserved for proposing a motion; otherwise, one usually expressed agreement in a few words with what another had said and resumed one's seat. Thus, even at the top of the hierarchy, many of the ex-consuls would simply agree with a given motion rather than deliver a speech seconding it. In a meeting of several hundred, to accept the consul's invitation to speak was in itself to assert a claim on the attention of one's social superiors and peers, some of whom still awaited their turn to address the issue. A speaker was therefore well advised to be brief, even though unlike the *contio*, his audience was seated and more or less captive.

Interestingly, despite these pressures upon those lower down in the hierarchy of status, debate in the Senate was probably not as top-heavy as the procedural rules seem to imply (Ryan 1998). In one famous debate about which we are unusually well informed, that

on the punishment of the so-called "Catilinarian conspirators" of December 5, 63, all fifteen men of consular rank had assented to the motion for the death penalty proposed by the first speaker, a consul-elect, when C. Julius Caesar, only a praetor-elect, stood to propose life imprisonment instead. (On the terms of Caesar's proposal, see now Pelling 2011: 165–166.) Caesar's speech so stirred the House that the consul-elect humiliatingly backed away from the obvious meaning of his own motion. But that is not all. Caesar's proposal continued to garner support as the consul called upon those of lower rank in sequence, until a mere *tribune-designate*, M. Porcius Cato, revived the original motion and delivered a memorable oration that swung the Fathers overwhelmingly back to the death penalty (Sal. *Cat.* 50–53; cf. Cic. *Att.* 12.21.1). The depth of this debate was doubtless exceptional, but it shows both that those relatively low in the hierarchy of *dignitas* were by no means robbed of a voice and also that the Curia was a place for genuine debate that could change minds, in contrast to what appears generally to have happened in the *contio*.

Speeches in public meetings and in the Senate were central to the deliberative process of the Republic, but forensic oratory in the various criminal "courts" that were laid out in the open air around the Forum represented the pinnacle of the rhetorical art, with its various "stars" such as Marcus Cicero or Quintus Hortensius who would draw substantial crowds ringing (thus: *corona*) the jurors' benches and the magistrate's tribunal (see also Williamson, Chapter 11). Quite apart from the illustrious orators involved, these cases typically concerned the lives and reputations of senators and *equites*, not uncommonly leading men of the state, and the charges, including electoral bribery, political violence, and extortion from allies, were often intensely political in their background and nature. (See, for instance, Cicero's defenses of Roscius of Ameria in 80 BCE, Sestius in 56, or Milo in 52.) For such speeches one must envision *two* distinct audiences: the primary audience of well-to-do, though only partly senatorial, jurors (from 70 BCE, jurors were drawn equally from senators, *equites*, and a somewhat unclear group of well-off citizens called "tribunes of the treasury"), but also a secondary, mixed, audience of citizens who made up the *corona* and at times (depending no doubt on the nature of the case) might behave rather like a contional audience. The secondary audience of forensic speeches must inevitably have influenced jurors' decisions as they cast their vote under its gaze, perhaps even harassed by its shouts (Ascon. 40C). While the sentiments expressed in forensic orations were clearly designed chiefly to appeal to the senatorial, equestrian, and other well-off jurors, who alone directly decided the defendant's fate, they could hardly be entirely hidden from the ears of a wider public. This must in turn have had some effect on what a speaker ventured to say. The interruptions that spoiled Cicero's delivery at the trial of Milo (Ascon. 41–42C etc.) and, on the other hand, his lowering of his voice at the trial of Flaccus so that the surrounding *corona* could not hear his anti-Semitic remarks (Cic. *Flac.* 66), offer a sense of such pressures, though they also suggest that a speaker would after all say what needed to be said to further his case among the judges rather than be deterred by an impassioned crowd of spectators. He might even gain stature and sympathy by standing firm (Cic. *Q. fr.* 2.3.2).

Examples of speeches of all three types survive among the fifty-eight extant orations of Cicero, the sole rhetorical corpus that survives from the period, and numerous short "fragments" of speeches by others have been preserved in the works of other authors (Malcovati 1976). Although published orations cannot be regarded as verbatim records of the delivered speech, there is general agreement that they provide an accurate picture



of the effective use of rhetoric in their implied context and thus may be used to inform us about actual rhetorical practice in the various types of setting that are represented. (Manuwald 2007: 54–58 offers a recent summary of this much-discussed problem.) The greater part of Cicero's surviving orations are forensic, as befits the prominence of the genre in rhetorical training, but there are also nine published *contiones* and twenty senatorial speeches (including twelve out of the fourteen *Philippics*). When assessing or interpreting a given speech or passage it is crucially important to keep clearly in mind the distinctiveness of these different venues, with their differing audiences. Before the Roman people assembled in front of the Rostra, Cicero will praise the Gracchi and fit himself into a tradition of "Friends of the People," championing the cause of land redistribution, deploring the duplicity of some senators who say one thing from the Rostra and another in the Curia, and declaring his readiness to cross swords with the powerful in his zeal to defend the people's interest as they choose to define it by their response to his arguments. In the Senate and the courts, on the other hand, Cicero declares that the Gracchi were justly killed for their manipulative use of state largesse to amass personal power, regards land redistribution as at best merely demagogic bribery, and sees the consensus of all "respectable" citizens (*boni*), meaning in practice those who constitute or take their cue from the *auctoritas* of the Senate, as the bedrock of resistance to aspiring "tyrants"—that is, the long string of popular heroes beginning with the Gracchi and reaching down to P. Clodius in Cicero's own day.

The very fact that Cicero could actually maintain two such divergent, even contradictory personae in the two main venues for public deliberation is in itself extremely important and worthy of our closer attention. This was possible only because of the high degree of "insulation" that protected senatorial speech: the general public was, as we have seen, shut out of meetings of the Senate and therefore unable to monitor directly proceedings in what was therefore for them a mysterious locus of power. True, senators frequently did not form a united front, and in opposition to the official public announcement of the Senate's transactions (normally in a *contio* immediately following) any magistrate had the right to summon a public meeting in order to provide an alternative, perhaps even subversive, version of what had transpired outside the public gaze. Yet there were strong disincentives against breaking ranks with one's senatorial peers quite so dramatically (it did not bode well for future hopes of collaboration), so this seems to have happened relatively rarely. Moreover, there was no guarantee to the public that the information such a discordant voice conveyed was in fact the truth rather than self-serving cant seeking to exploit public indignation. Citizens in the *contio* were not fools, and knew well—and were sometimes warned by *other* speakers—not to be duped by those who pretended to be *populares*, "Friends of the People," but in fact sought only self-aggrandizement. This was in fact a perfectly reasonable concern, as we shall see.

The result, then, was a grave lack of transparency at the very heart of the Republic that heavily influenced the whole process of public deliberation in a quite distinctive way. When combined with the fact that longstanding tradition and cultural norms of respect for *dignitas* ("worthiness" or stature) and *auctoritas* ensured that in open, public deliberation, those who spoke were senators while ordinary citizens were reduced strictly to listening and reacting to what they heard, one can readily see how the balance of "communicative power" was tilted heavily toward senators and toward the collective perspective of the Senate.

## 2 The Problem Exemplified: Cicero against the Agrarian Law

A particular case may provide a helpful illustration of the core problem. As a consul taking up his duties at the beginning of 63 BCE, Cicero immediately faced the challenge of a land reform bill proposed by one of the tribunes for that year, P. Servilius Rullus (on this episode, see also Tatum, Chapter 15; on land distribution in Roman history, see de Ligt, Chapter 21). Land redistribution schemes had been a continual source of political controversy since Tiberius Gracchus in 133 BCE, and it seems clear that the growth of indebtedness and poverty, both urban and rural, that followed the civil war and further violent disruptions of the Sullan era (88–78 BCE) made demand for an agrarian bill particularly acute at this time, quite apart from the fact that Gnaeus Pompey's victorious army was soon to return from the east with a reasonable expectation of long-deferred rewards for their service. Rullus' bill was drafted carefully to avoid old, polarizing pitfalls such as forced purchase or even confiscation, and modern scholarship has tended to vindicate the measure as a serious and well-considered effort at much-needed land reform (Gruen 1974: 389–394). Perhaps Cicero's "popular" persona thus far, and his interest in staying on the right side of Pompey, induced Rullus to think that the consul would not put up a fight, or might even be supportive of moderate land reform, as indeed he was to represent himself in the event. As a rule, conservatives had in the past found that public argument against land reform was pretty much useless and resorted instead to obstructive measures to stop or undermine them (below), so Rullus may have not have expected much of a contest in the sphere of public deliberation, despite Cicero's renown as an orator.

If that was his thinking, however, he was woefully mistaken. Cicero came out swinging even on the celebratory first day of his consulship, delivering sharp, detailed denunciations of the measure both in the Senate and immediately afterwards in a *contio* (Cic. *Leg. agr.* 1–2). Rullus tried to rebut the consul's objections in his own public meeting by painting him as the front man for those who had profited from Sulla's expropriations, but Cicero simply threw the charge back at him (Cic. *Leg. agr.* 3)—and in the contional audience, who was to say? Rullus' bill began to stall, and a tribune signaled his readiness to deliver the *coup de grâce* by means of a veto. We do not strictly know whether the proposal limped along to go down in defeat at the polls or whether in the face of inevitable failure it was simply withdrawn, as was customary. Either way, it is probable that Cicero's powerful rhetorical counter-attack over several *contiones* was in fact the deciding factor.

If so, then the nature of Cicero's rhetoric against the bill in his *contiones* is worth examining more closely, since it was evidently successful with its audiences. We should note first of all that Cicero starts by claiming in strikingly bad faith that he was in truth a *consul popularis*, a consul who, exceptionally, did not shun the people's gaze but was in fact eager to come before them and consult their wisdom at the Rostra (Cic. *Leg. agr.* 2.6–10). Nay more (he says), he was an ardent supporter of agrarian laws—provided, of course, that they were in fact honestly intended to aid the Roman people. However, *this* was no agrarian law in the true sense but a confidence scheme, a trap designed to seduce good, upstanding citizens into handing over dictatorial power to a shadowy, anonymous clique to be headed by Rullus himself (*Leg. agr.* §§10–15)! He promises to demonstrate the truth of this shocking assertion and disarmingly pledges to follow his audience's own



conclusions if he fails to convince them (*Leg. agr.* §16). There follows an overpowering, apparently point-by-point demolition of the bill as tendentiously selective and relentlessly distorted as it is voluminous and detailed, containing a multitude of explicit quotation from the text of the proposal itself that gives the impression of incontrovertible accuracy while leaving the overwhelming mass of the bill altogether unremarked.

Some highlights of Cicero's rhetorical strategy of misinformation might be noted (if that does not seem too redolent of his own tactics on this occasion). Cicero makes much of the idea that Rullus was in fact robbing the Roman people of their prized right of suffrage by stipulating that the land commissioners would be elected by just short of a majority of the voting-units ("tribes") selected by lot, (*Leg. agr.* §26). In fact this was the traditional procedure used for election of the chief pontiff and recently extended to all priesthoods; it may have been intended to contain bribery, and anyway can hardly have been used by Rullus to impose his will on the tribes. Cicero goes on to predict that Rome and indeed the whole Roman Empire were going to be subjugated for five long years to the domination of the ten commissioners thus elected, "tyrants in the city," whose powers would be arbitrary, unrestrained even by any right of appeal (*Leg. agr.* §33). Yet, as emerges elsewhere, their *imperium* (power of command) would be merely propraetorian, ranking therefore under the (regularly elected) consuls and praetors. As one scholar has drily noted, "A land commission was not really a suitable instrument for ruling the Roman Empire" (Sumner 1966: 576). Cicero tries mightily to exploit some of the provisions of the law that seem in fact to have been designed to put the strife of the Sullan era firmly in the past to suggest that the whole scheme was designed to bail out the bankrupt beneficiaries of Sulla's victory who were eager to unload their ill-gotten swamps and deserts. (Sulla's name was clearly hated among the urban plebs of Rome, so this was potentially a promising path to take; but two could play at that game, as Cicero found out at Rullus' own *contio* [*Leg. agr.* 3].) Cicero also spends a considerable part of his speech arousing suspicion that the law was also in part a cunning plot to seize in advance all of the fruits of Pompey's new conquests so that the great man, currently riding a wave of popularity for his victories over the pirates and Mithridates, would be insultingly deprived of any say in their disposition. This invidious "anti-Pompey" interpretation seems to have "had its origin solely in Cicero's fertile and inventive brain" (Sumner 1966: 578), although of all Cicero's misrepresentations and diversions this one has had the most success among modern scholars.

Yet Cicero "won" this debate, a result that seems to speak volumes about the pathologies of mass public deliberation in republican Rome. Arguing in bad faith is of course common enough in any rhetorical setting, modern as well as ancient. The key point, however, is whether within a particular institutional context the temptation to do so (strong as it is for an interested party) is on the whole adequately restrained by transparency and therefore by the risks and potential costs of being "found out" and revealed. Only in the face of such risks and costs can self-interested parties to debate be obliged to address the common good (however imperfectly), whatever the true motivational springs of their action. Here, to put it simply, Cicero could successfully argue in bad faith because he could get away with it. That he *could* get away with it was in turn a product of the effective exclusion of the people from the alternative, but equally important, site of political speech, and of the traditions of deference to authority that this very fact engendered.

If Cicero could get away in this way with playing the *consul popularis*, the advocate of agrarian laws and of the people's *commoda* (benefits/interests) generally, then this

relieved him of any need to contest the principle of agrarian distribution explicitly and directly, which would after all have led him onto very unfavorable terrain. Hence what I have called the “ideological monotony” of contional rhetoric: the outright avoidance by speakers in public meetings, even the strongest opponents of “popular” politicians, of any unambiguous sign that they adhered to a contrary, “optimate” vision of the public good (as in fact they often did) when they spoke to the Roman people from the Rostra. This does not imply that the competitive dynamic that so characterized republican politics was somehow suppressed in public deliberation under a warm glow of consensus, a notion that a glance at most extant *contiones* would immediately dispel. Rather, those whose political positions put them at a serious disadvantage in the popular forum of the *contio* still had a choice of viable strategies available to them that allowed them to avoid exposing their real views to public scrutiny and criticism. They could forfeit political argument altogether and resort instead to forms of obstructionism (veto threats or filibusters, for example) that were designed to turn the tide of public opinion by ultimately provoking their opponents to a seeming violation of republican norms, such as Tiberius Gracchus’ abrogation of Octavius’ tribunate, or Caesar’s strong-arm responses to Bibulus and Cato. Or, like Cicero, they could pretend to agree with the “popular” goals of their opponents while raising a drumbeat of doubts about their opponents’ motives, typically construed as tyrannical aspirations, thereby moving the basis of the argument onto the plane of personal trust and *dignitas*. Since those leading the “anti-popular” side of a contest were typically consuls or leading men in the senatorial hierarchy (*principes civitatis*), they had passed many tests of popular trust in the sequence of elections that got them where they were; tribunes, on the other hand—typically the ones to push a popular agenda—were relatively young, untested faces on the political scene, even if they did sometimes bear a noble name (the Gracchi, for example, or Publius Clodius for that matter). This move to an *ad hominem* plane of argument (in rhetorical terms, to “ethical” [*ethos*] in preference to “logical” proof [*logos*]) was therefore a very congenial one, far better than attempting to meet popular arguments for land distribution head-on in a naturally popular venue like the *contio*. And it could work, as Cicero demonstrates in the agrarian debate of 63.

### 3 The Rhetorical Construction of Ideology

Roman public oratory, above all in its largest venue, the *contio*, played a central role in verbally articulating the fundamental norms and values of the Republic and propagating them among the citizenry. It may fairly be viewed as the crucible in which “republican ideology” was forged. Since the speakers were (overwhelmingly) senators, this privileged position in the line of communication both buttressed the traditional authority of political elite and gave them the means to shape that ideology in ways that served their collective interest. Contional oratory, despite the disingenuous, ingratiating aspects just noted, is clearly marked by the aristocratic tenor of Roman republican values: the great emphasis on the *dignitas* of morally superior individuals, the conception of election as an *honor* awarded by the grateful citizenry in exchange for outstanding *virtus* in the service of the Republic, a tradition of deference to the *auctoritas* of men better qualified and better placed than the common citizen to discern what was truly the public good. It is hard to imagine that this relatively coherent ideological system could have come to dominate

public speech before popular audiences if the senatorial order had not enjoyed a privileged place as speakers within the communicative hierarchy.

It is tempting therefore to apply the Marxist theorist Antonio Gramsci's concept of "cultural hegemony," according to which a ruling class exploits its authoritative position to persuade the "subaltern" (subordinate) orders of the essential and universal rightness of its own class-based moral and political perspective (Gramsci 1971 and 1975; Ives 2004 is helpful). The subaltern class, on this view, is not mindless or bereft of its own morality based on its concrete experience of life; yet the power of ideological production that can be mobilized by the dominant class is typically overwhelming, so that (if only by default) the subaltern ends up "voluntarily" collaborating in his own subjugation. The complementary (though not overtly Marxist) view of sociologist Steven Lukes clarifies how such ideological power can be employed to narrow the range of possibilities for deliberation in an interested way (Lukes 2005). According to Lukes, power has three notable "dimensions": outright control of another's actions is its bluntest and most blatant form, but power may also be exerted to control the agenda (thereby limiting the parameters of debate and possible outcomes) and further, more insidiously, to *shape in advance* the preferences that will determine any subsequent choice. It can be plausibly argued that Roman mass oratory did important work in Lukes' second and third dimensions to limit the self-determination of the Roman people despite the fact that *institutionally speaking* they possessed ultimate sovereignty over the Republic through their rights directly to elect all magistrates, to pass all legislation, and to judge or authorize all criminal trials. (Millar 1995: 94 indeed provocatively described the republican "constitution" as a "direct democracy"; but cf. Hölkeskamp 2010: 12–22.)

Yet this cannot be the whole story. "Dominant ideology" theses have a reductive tendency even if they are not utterly flawed. (See Scott 1990 for a bracing attack on Gramsci, Morstein-Marx 2012 and 2013 for an attempt to find a balanced position with specific application to the late Republic.) A historian in any case always must attend to specific local conditions. In the Roman context, then, we might ask why there was an "ideological monotony" of a broadly popular stamp in the *contio* if members of the senatorial elite could pretty much say whatever they wanted. Obviously the discourse of the *contio* was *in some sense* a negotiated compromise between speaker and audience, between elite and mass, even if, as I have argued, the balance of communicative power was tilted significantly toward the ones doing the speaking. Even if one views the *contio* as an occasion designed to construct the impression of a unanimous Popular Will, it becomes all the more important for the audience to respond actively with applause (*plausus*) and cries (*clamor*) of support (or hostile to the opposition). Various techniques were clearly used by orators to prompt such manifestations (*significationes*) of the "judgment and will of the Roman people" (Cic. *Sest.* 106–112)—bribery, claquers, and rhetorical devices for eliciting vocal audience response such as "call-and-response," anaphora, tricolon, and antithesis (Morstein-Marx 2004: 128–150)—yet the degree of control an orator could thus exert over audience responses was hardly total. Following the political scientist James C. Scott, we need also to be alert to the possibility that the picture of political leadership and rhetorical mastery that our sources convey may itself be a congenial ideological artifact, an idealizing construct meant to instruct, to inspire, and to hide unpleasant truths about the reality of domination beneath the benign surface of the "public transcript."

With weighty considerations pulling us in both directions, a relatively concrete, empirical test of plebeian docility in deliberation may help us to reach a balanced perspective

on the phenomenon. When the deliberating was over and the voting assembly met, how obedient were the Roman people to the collective wisdom of the Senate? For pragmatic reasons, the question is best turned around: How “insubordinate” were the Roman people, that is, how often did voters *reject* the majority will of the Senate? The number of such “successful assertions of popular sovereignty” may be somewhat surprising: a *minimum* of 32 to 36 cases over the ninety-odd years that span the late Republic (expanded slightly to begin with the passage of the *lex Gabinia* in 139). That is, the popular assembly exercised its full sovereignty by *rejecting* the clear sentiment of the majority of the Senate on a legislative proposal on average more than once every three years—rather more frequent, on the whole, than the modern analog of “throwing the bums out” in an election. Indeed, if we set aside as unrepresentative the periods of unaccustomed legislative quiescence in the 90s followed by civil war and Sullan repression down to 70 BCE, the rate increases to about once every other year, with some periods (104–99, 70–66, 61–52 BCE) reaching an average frequency of roughly once a year. All of this reveals a higher degree of popular “insubordination” than one might have supposed simply on the basis of elite domination of political rhetoric. Evidently Roman voters, and therefore (one must suppose) Roman audiences, were more resistant to the authority of the collective will of the elite than a model based on Gramscian “cultural hegemony” alone would suggest.

We must recognize, of course, that all these examples of “successful assertion of popular sovereignty” were also simultaneously examples of successful leadership by individual magistrates willing to break ranks with their colleagues in the Senate by “playing the popular card” (Yakobson 2006: 392–396). Such was the competitive dynamic in Roman republican politics that a strong popular demand was apt to stretch senatorial solidarity to the breaking point. An ambitious individual senator might be induced by popular pressure to take up a cause that set him at odds with the will of the majority of the Senate and of its most authoritative leaders. Plutarch’s account (*Ti. Gracch.* 8.10) of how popular graffiti on the “walls, porticoes and tombs” across the city provided the strongest stimulus of all to Tiberius Gracchus is a particularly interesting example of how a political agenda might be imposed on a member of the political elite rather than the other way around. Sometimes, as also in the case of the Gracchi (or Scipio Aemilianus, or Caesar) senators who thus crossed over to the “popular” side (however temporarily) were nobles from the core of the aristocracy. In such instances, then, with such men of the nobility as their leaders, audiences and voters could presumably enter into direct conflict with the collective will of the Senate without being unduly anxious that what they sought was in any serious sense “seditious” or contrary to the traditions of the Republic (Yakobson 2010: 288–291). As a matter of fact, even “sedition” could be justified in traditional terms, citing the ancient Secessions of the Plebs as historical precedents for a necessary defense of the freedom of the Roman people (Cic. *De orat.* 2.197–203; *Corn.* 1.48).

It is equally important to observe that popular “insubordination” remained within certain broadly defined limits. Even the fiery tribunician harangues re-created by Sallust in his histories (esp. *Jug.* 31; *Hist.* 3.48) turn out on closer examination not to be attacks on the hallowed institution of the Senate but on the allegedly unworthy cliques (*pauci potentes*, the “powerful few”) who “dominated” it at any one time. Despite the impressive institutional powers of the people and a conception of popular sovereignty, before the Caesarian civil war no proposal was even made, so far as we can tell, to alter significantly the foundations of the political system and to make it a more effective and transparent

instrument of the will of the people. (Contrast the incremental but irresistible expansion of the suffrage that has taken place by a self-generating process in the U.S. and U.K. from the nineteenth century to the present.) This fact must be explained by the control exerted by members of the elite over ideological production, above all in the form of political speech, as we have seen. All *popularis* "agitation" still remained within the parameters of an essentially paternalistic vision of republican governance, according to which leading senators were normally understood to advise what was best for the people on the basis of their superior experience and insight, while being at the same time susceptible to sometimes sharp "correction" when necessary by the people themselves, whose simple common sense on exceptional occasions reasonably prevailed over senatorial *auctoritas*. (This is, for example, more or less just what Cicero himself says while advocating as praetor acceptance of the popular Manilian Law, which would confer additional powers on Gnaeus Pompey, over the authoritative objections of two pillars of the Senate, Quintus Hortensius and Lucius Catulus [*Leg. Man.* 51–60].) The paternalism that is characteristic of the republican ideology of the *contio* was tempered in practice by productive discord emanating from below in a manner reminiscent of Machiavelli's famous observations in his *Discourses on the First Decade of Livy* (1.4).

Certain broad similarities link the institutions in Rome and Greece that generated the forms of public rhetoric examined in this chapter and the last. Deliberation took place in mass assemblies that preceded decision by voting by the (male) citizen body, and this took the form of orations by authoritative, well-practiced speakers who took on the role of faithful counselors of the people. Here the popular audience—however randomly or studiously a particular audience was constituted on a given occasion—impersonated the Roman people, and by its responses to speakers on the Rostra inevitably conditioned to some extent what could successfully be said to it. Speeches in the law courts reinforced dominant political ideology and to a significant extent policed the behavior of the political elite, helping to ensure its conformity to ideals of service to the community. Even the Roman tradition of funeral oratory, the *laudatio funebris* performed at aristocratic obsequies (see Polyb. 6.52.11–54.3, and Flower 1996), which on its face differs so sharply from the Athenian funeral oration in its glorification of distinguished ancestry and its focus on the individual family rather than the *polis*, also served the function of stimulating the citizenry to virtue in the service of the Republic (so at least Polybius). It is true that nothing surviving from Athens corresponds to the relatively closed setting of the Roman Senate, and this is clearly important. Yet it could also be argued that *oratory* in the Senate was actually fairly constrained, and therefore the least important of the major rhetorical genres of republican Rome.

When we turn to how the speeches construct the relationship between elite speaker and popular audiences we seem to have moved into a rather different civic world from that of Athens or other democratic Greek states. Roman senators can say all manner of ingratiating things to the people—praising their practical intelligence, claiming to be prepared to carry out whatever role they wished to impose, rhetorically subordinating themselves entirely not merely to their *interests* but to their *wishes*—but in fact the rhetorical stance they assume toward a popular audience is broadly characterized by authority. This authority is in turn constructed on the basis of eminent men's privileged insight into the often deceptive political realm and, if possible, an illustrious record of prior service to the Republic, perhaps bolstered by the achievements of their ancestors. As in Athens, Roman speakers might be subjected to heckling and uproar, spontaneous or organized,

even physical intimidation (Sal. *Ing.* 34.1; Dio 36.39.3, Plut. *Pomp.* 25.9), but it is impossible to imagine a senator being tried for giving bad advice to the people, as an Athenian *rhētōr* might be (Roisman, Chapter 16). Despite the privileged position held by senators in the communication of political information, however, it was not impossible in the late Republic, or even particularly rare, for the Roman people to reject the collective wisdom of the Senate by the use of their ballots. A steeply hierarchical speech-situation did not suppress all plebeian autonomy and agency: Roman republican rhetoric was still recognizably the rhetoric of a republic.

## REFERENCES

- Berry, D.H. 2000. *Cicero: Defense Speeches*. Oxford.
- Blom, H. van der, 2010. *Cicero's Role Models. The Political Strategy of a Newcomer*. Oxford.
- Connolly, J. 2007. *The State of Speech: Rhetoric and Political Thought in Ancient Rome*. Princeton.
- Crawford, M.H., ed. 1996. *Roman Statutes*. BICS suppl. 64. 2 vols. London.
- David, J.-M. 1992. *Le patronat judiciaire au dernier siècle de la République Romaine*. BEFAR 277. Rome.
- David, J.-M. 2006. "Rhetoric and Public Life." In Rosenstein and Morstein-Marx 2006: 421–438.
- Dominik, W. and J. Hall, eds. 2007. *A Companion to Roman Rhetoric*. Oxford and Malden, MA.
- Dugan, J. 2005. *Making a New Man: Ciceronian Self-Fashioning in the Rhetorical Works*. Oxford.
- Fantham, E. 2004. *The Roman World of Cicero's De Oratore*. Oxford.
- Flower, H.I. 1996. *Ancestor Masks and Aristocratic Power in Roman Culture*. Oxford.
- Gildenhart, I. 2011. *Creative Eloquence: The Construction of Reality in Cicero's Speeches*. Oxford.
- Gramsci, A. 1971. *Selections from the Prison Notebooks of Antonio Gramsci*. Ed. Q. Hoare and G. Nowell-Smith. New York.
- Gramsci, A. 1975. *Quaderni del Carcere*. Ed. V. Gerratuna. 4 vols. Turin.
- Gruen, E.S. 1974. *The Last Generation of the Roman Republic*. Berkeley and Los Angeles.
- Gruen, E.S. 1990. *Studies in Greek Culture and Roman Policy*. Berkeley and Los Angeles.
- Hölkeskamp, K.-J. 1995. "Oratoris maxima scaena: Reden vor dem Volk in der politischen Kultur der Republik." In M. Jehne, ed., *Demokratie in Rom? Die Rolle des Volkes in der Politik der römischen Republik*. *Historia Einzelschriften* 96. Stuttgart, 11–49.
- Hölkeskamp, K.-J. 2010. *Reconstructing the Roman Republic: An Ancient Political Culture and Modern Research*. Princeton.
- Hopwood, K. 2007. "Smear and Spin: Ciceronian Tactics in *De Lege Agraria II*." In J. Booth, ed., *Cicero on the Attack: Invective and Subversion in the Orations and Beyond*. Swansea, 71–103.
- Ives, P. 2004. *Language and Hegemony in Gramsci*. London.
- Jehne, M. 2006a. "Methods, Models, and Historiography." In Rosenstein and Morstein-Marx 2006: 3–28.
- Jehne, M. 2006b. "Römer, Latiner und Bundesgenossen im Krieg. Zu Formen und Ausmaß der Integration in der republikanischen Armee." In M. Jehne and R. Pfeilschifter, eds., *Herrschaft ohne integration? Rom und Italien in republikanischer Zeit*. Frankfurt am Main, 243–267.
- Jehne, M. 2006c. "Who Attended Roman Assemblies? Some Remarks on Political Participation in the Roman Republic." In F. Marco Simón, F. Pina Polo, and J. Remesal Rodríguez, eds., *Repúblicas y ciudadanos: Modelos de participación cívica en el mundo antiguo*. Barcelona, 221–234.
- Kaster, R.A. 2006. *Cicero: Speech on Behalf of Publius Sestius*. Oxford.
- Lintott, A. 2008. *Cicero as Evidence: A Historian's Companion*. Oxford.
- Lukes, S. 2005. *Power: A Radical View*. 2nd edn. New York.
- Malcovati, H. 1976. *Oratorum Romanorum fragmenta liberae rei publicae*. 4th edn. 2 vols. Turin.



- Manuwald, G. 2007. *Cicero, Philippics 3–9*. 2 vols. Berlin.
- May, J., ed. 2002. *Brill's Companion to Cicero: Oratory and Rhetoric*. Leiden.
- May, J. and J. Wisse. 2001. *Cicero: On the Ideal Orator*. Oxford.
- Millar, F. 1986. "Politics, Persuasion and the People before the Social War (150–90 B.C.)." *JRS* 76: 1–11.
- Millar, F. 1995. "Popular Politics at Rome in the Late Republic." In I. Malkin and Z.W. Rubinsohn, eds., *Leaders and Masses in the Roman World: Studies in Honor of Zvi Yavetz*. Leiden, 91–113.
- Morstein-Marx, R. 2004. *Mass Oratory and Political Power in the Late Roman Republic*. Cambridge.
- Morstein-Marx, R. 2012. "Political Graffiti in the Late Roman Republic: 'Hidden Transcripts' and 'Common Knowledge.'" In C. Kuhn, ed., *Politische Kommunikation und öffentliche Meinung in der antiken Welt*. Stuttgart, 191–217.
- Morstein-Marx, R. 2013. "'Cultural Hegemony' and the Communicative Power of the Roman Elite." In C. Steel and H. van der Blom, eds., *Community and Communication: Oratory and Politics in Republican Rome*. Oxford, 29–47.
- Mouritsen, H. 2001. *Plebs and Politics in the Late Roman Republic*. Cambridge.
- Pelling, C. 2011. *Plutarch: Caesar*. Oxford.
- Pina Polo, F. 1996. *Contra arma verbis: Der Redner vor dem Volk in der späten römischen Republik*. Stuttgart.
- Rosenstein, N. and R. Morstein-Marx, eds. 2006. *A Companion to the Roman Republic*. Oxford and Malden, MA.
- Ryan, F.X. 1998. *Rank and Participation in the Republican Senate*. Stuttgart.
- Scott, J.C. 1990. *Domination and the Arts of Resistance: Hidden Transcripts*. New Haven.
- Smith, C. and R. Covino, eds. 2011. *Praise and Blame in Roman Republican Rhetoric*. Swansea.
- Steel, C. 2006. *Roman Oratory*. Greece & Rome. New Surveys in the Classics 36. Cambridge.
- Sumner, G. 1966. "Cicero, Pompeius, and Rullus," *TAPA* 97: 569–582.
- Tan, J. 2008. "Contiones in the Age of Cicero," *CLAnt* 27: 163–201.
- Yakobson, A. 2006. "Popular Power in the Roman Republic." In Rosenstein and Morstein-Marx 2006: 383–400.
- Yakobson, A. 2010. "Traditional Political Culture and the People's Role in the Roman Republic." *Historia* 59: 283–302.

## FURTHER READING

For elaboration and details of the arguments sketched in brief above, see Morstein-Marx 2004, 2012, and 2013. Millar 1986 opened the debate about the implications of mass oratory for the character of the Roman Republic, which may be traced further in Hölkeskamp 1995, Pina Polo 1996, Mouritsen 2001, Jehne 2006a, Tan 2008, and Yakobson 2010. On Cicero's strategies of misinformation in *On the Agrarian Law* 2, see also Hopwood 2007, Lintott 2008: 137–142, and, less pessimistically, Yakobson 2010: 297–300. An excellent sketch of the central place of oratory in public life is offered by David 2006. On rhetorical education in the Republic, see also now the contributions by Stroup, Corbeill, and McNelis in Dominik and Hall 2007; on the censorial edict of 92, Gruen 1990: 179–192 is stimulating. May 2002, Steel 2006, and Dominik and Hall 2007 offer useful entrées to Ciceronian or Roman oratory in general, while Fantham 2004 is an informative introduction to Roman rhetorical culture by way of Cicero's rhetorical dialogue *On the Ideal Orator*. The fully annotated translation of that work by May and Wisse (2001) provides an intriguing look into the orator's laboratory. Further investigation of late republican rhetorical culture might proceed through the stimulating recent books by Dugan 2005, Connolly 2007 (especially strong on links to modern republican political theory), van der Blom 2010, Gildenhard 2011, and a conference volume edited by Smith and Covino (2012). For a taste of the thing itself, Cicero's

*On the Agrarian Law 2* and *In Support of the Manilian Law* are thought-provoking samples of the rhetoric of the *contio*, but one or two tribunician orations imaginatively re-created by Sallust (*Iug.* 31; *Hist.* 3.48) should be thrown in for seasoning. Senatorial oratory might be well represented by Cicero's *Fourth Catilinarian* and *On the Consular Provinces*, while his defense speeches for Sestius (Kaster 2006) and for Milo (Berry 2000) are politically charged examples of forensic oratory.