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Electoral abuse in the late Roman Republic

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Electoral Abuse in the Late Roman Republic

by

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A thesis submitted in partial fulfillment
of the requirements for the degree of
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List of Abbreviations

<i>Amer. Hist. Rev.</i>	<i>American Historical Review</i>
<i>AJPhil</i>	<i>American Journal of Philology</i>
<i>CJ</i>	<i>Classical Journal</i>
<i>Cl. Ant.</i>	<i>Classical Antiquity</i>
<i>C Phil.</i>	<i>Classical Philology</i>
<i>CR</i>	<i>Classical Review</i>
<i>CQ</i>	<i>Classical Quarterly</i>
<i>G&R</i>	<i>Greece & Rome</i>
<i>Harv. Stud.</i>	<i>Harvard Studies in Classical Philology</i>
<i>JRS</i>	<i>Journal of Roman Studies</i>
<i>P&P</i>	<i>Past & Present</i>
<i>RRC</i>	<i>Crawford, Roman Republican Coinage</i>
<i>SCI</i>	<i>Scripta Classica Israelica</i>
<i>Syd.</i>	<i>Sydenham, Coinage of the Roman Republic</i>
<i>TAPA</i>	<i>Transactions of the American Philological Association</i>
<i>TAPhS</i>	<i>Transactions of the American Philosophical Society</i>

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Electoral Abuse in the Late Roman Republic

Howard Troxler

ABSTRACT

Escalating abuse of elections was a hallmark of the collapse of the Republic that governed at Rome for nearly 500 years before it was swept away and replaced by emperors and Empire. The causes of the Republic's fall are well-explored, but electoral abuse was one of the *agencies* by which it was brought low – a “how” that helps explain the “why.” The abuse of regular electoral form, practiced by all parties, inured the Romans to further and ever-widening abuse. In the end their elections – and the Republic – lost both meaning and independence. This is a controversial claim that falls within the modern debate over the significance of the late-Republican turmoil and just how “democratic” the system was at all.

A review of the primary source accounts shows a pattern of abuse that clearly accelerated over the final century, until the turning-point of the 60s and 50s B.C., a morass of elections delayed, canceled, marred by violence, ruined by bribery or prearranged by bargain. We can categorize these abuses and examine their effect on societal attitudes and subsequent practice. After 50 B.C. control of the state passed to Caesar and then the second triumvirs, who used these precedents to do as they pleased. In

the end Augustus “restored” the Republic by restoring its old forms – with an unspoken different meaning. It was no coincidence that Augustus paid showy respect to the Republican voting assemblies, the voting-places and the annual election rituals.

The escalating abuse of elections inculcated in the Romans the idea that their constitution and the rule of law had no intrinsic value by themselves, but existed only as tools in the service of power and desired goals. With the rule of law battered into submission, the Republic all the more easily succumbed to the rule of men. The fall was brought about not by external armies or revolution, but by the Romans’ own tacit agreement that their rules could be bent and broken as needed. For the Romans, at least, the argument that “the ends justify the means” proved to be the antithesis and the undoing of constitutional government.

Part One: Introduction

Electoral Abuse as Effect and Cause

The Republic that governed at Rome for nearly 500 years with annually elected magistrates was wracked in its dying years by an unprecedented degree of electoral abuse. The yearly ritual of choosing the state's leaders became a crass spectacle of delay, of manipulation, of mass bribery, of corrupt deal-making and of violence. To be sure, there had always been electoral irregularities. But as the Republic moved toward collapse in the mid-first century B.C., these abuses occurred more regularly in thickets and multitudes. Abusive tactics were employed eagerly by all sides and parties, with each group justifying its practice by the offenses of the other. The Romans recognized the damage they were causing and railed at each other for it, but they were unable or unwilling to stop. Each episode served to justify the next. In the end, the forms and purposes of the ancient constitution no longer mattered. Once the state fell under the personal control of the despots, Caesar and the Second Triumvirate, they had ample precedent to do with the elections as they pleased. When Augustus emerged as the ultimate victor, the key to his consolidation of power was his "restoration" of Republican forms, and the elections in particular. So it was the abuse of elections that helped put the

Republic in its sickbed, and it was the Augustan pretense of “restoring” them that helped supply the Republic’s death-blow.

This certainly is not a claim that electoral abuse “caused” the failure of the Roman Republic. Centuries of learned scholars have spent lifetimes on *that* question. The usual suspects for driving the Republic to collapse include the breakdown of social consensus, renewed class struggle, land-hunger by the masses, plebeian armies loyal to ambitious warlords, the problems of Italian citizenship, weak and reactionary senate leadership, and the wanton willfulness of the tribunes – to name a few.¹ Yet the nexus at which the interests of all these rival groups came together was the annual elections, the core of the Roman political identity, the heartbeat of the *res publica*. Their machinations to delay, pre-ordain, purchase or bully those elections became one of the agencies by which the state was driven off the cliff – one of the “hows” of the story. In so doing, they also made electoral abuse one of the “whys,” as it became a causal factor in its own right. Electoral abuse inured the Romans to their weakened constitution, made alternatives more conceivable, emboldened and enabled the despots, and gave Augustus and his supporters a ready platform. Thus escalating attacks on electoral form were both an effect, and one of the many causes, of the Republic’s march toward chaos.

¹ To name a few examples from authors quoted in this paper: For the rise of the knights, generals and Italians, L.R. Taylor, *Party Politics in the Age of Caesar* (Berkeley: University of California Press, 1949), 17; for the Senate’s inaction creating a “crisis of credibility” in the constitution, J. Von Ungern-Sternberg, “The Crisis of the Republic,” in *The Cambridge Companion to the Roman Republic*, ed. H. Flower. (Cambridge: Cambridge University Press, 2004), 96; for personal hatred as opposed to structural causes for the civil war, A.K. Goldsworthy, *Caesar: Life of a Colossus* (New Haven: Yale University Press, 2006), 379. A good shopping-list of causes is found in P.A. Brunt, *The Fall of the Roman Republic and Related Essays* (Oxford: Clarendon Press, 1988), for instance, mismanaged provinces and the Italian problem, 69; conflict between senatorial class and *equites*, 72; failure to control the army, 77; weakness of the senate, 79-81.

This contention that electoral abuse “mattered” is not at all a dry and dusty fact – it is controversial. Two trends in the modern debate surrounding this issue are relevant. The first is whether the late Republican political convulsions truly contributed to a “fall” of the state at all. Some, notably E.S. Gruen, argue that the Republic remained reasonably stable until the end, and that the first-century political turmoil was well within the bounds of flexible Republican practice. In Gruen’s view it took the brute force of civil war and the armies of Caesar and Cn. Pompeius Magnus to topple an otherwise sturdy government. A second line of the modern debate, led by F. Millar and others, challenges the older orthodoxy that the Roman state was not really “democratic,” but rather that the voting assemblies and the *plebs urbana* were pawns in a controlling patron-client system. This debate, too, bears heavily on the significance of electoral abuse. If the whole electoral mechanism was a sham and everybody knew it, then election abuse meant considerably less than if meaningful constitutional institutions were under attack.

After a look at these modern debates, we need to set some ground rules for defining “abuse,” because “abuse” is a charged and subjective term. The question is not whether the Republicans abused their elections by *our* standards, but whether they abused them by *their* standards. To say that the Roman Republican electoral system was more “flexible” than our own is an understatement – imagine a U.S. president declaring on the morning of Election Day that he has suddenly decided to postpone the affair indefinitely! So we need to know what was “normal” and what was not, and how to gauge when the normal practice crossed into abuse. Then we can survey the general categories of electoral abuse in our source accounts and see how they escalated. Such categories include (1) elections

delayed or canceled, (2) violations of the laws concerning ages and terms of candidates, (3) cynical manipulation of the state religion, (4) the effect of violence and gangs, (5) bribery and electioneering, (6) electoral cabals and prearranged results, (7) usurpation of constitutional roles, and (8) violations of process as well as other miscellaneous abuses. We will see how all of this reached a boiling-point in the climactic years 70-50 B.C., how the Romans recognized their abuses, accepted them and then cited them to justify further violations, and how the despots trampled the remainders of the constitution and determined the elections and magistracies by their whim. Lastly, we will see how Augustus cannily “restored” the forms of Republican elections and glorified them as part of the pretext by which he gained supreme power. Whether the old Republic had fallen or been pushed, it was surely broken, and the career talent of Augustus was to get to everyone to agree (or to pretend) that he had fixed it.

The Modern Debate

In 1974, E.S. Gruen published his *Last Generation of the Roman Republic*. A major theme of the book is summed up in his conclusion: “Civil war caused the death of the Republic – and not vice-versa.”² Gruen saw the political events of the Republic’s final decades within a context of overall stability, despite the occasional ruckus coming from the streets. He surveys the consuls elected during the 70s and 60s B.C. and finds considerable continuity from the Sullan era; the Pompeians do not manage to wrest away

² E.S. Gruen, *The Last Generation of the Roman Republic* (Berkeley: University of California Press, 1974), 504.

control of the state nor to repeal (not yet, at least) the Sullan constitution. Gruen downplays the significance of the first triumvirate of Caesar, Pompey and M. Licinius Crassus, an arrangement which he calls largely a modern construct, and likewise the renewal of that pact at Luca in 56. Gruen further argues that during the 50s the first triumvirs, despite their portrayal as a malevolent power pushing levers behind the curtain, had little actual influence over the elections, with the glaring exception (proving the rule) being the arranged consulships of Pompey and Crassus in 55.³ As for the constitutional climax of the decade – the bizarre sole consulship of Pompey in early 52 – Gruen is not at all perturbed, saying that the innovation had legitimate roots in the Republican dictatorship.⁴ Along similar lines, Gruen argues that the frequency of bribery prosecutions in the last decades does not prove an increased frequency of bribery itself, since the prosecutions often had political motives. To him the episodes of political violence so often attested in our sources were typical of pre-industrial societies, were usually staged anyway, and did not reflect a desire to tear down the government (“It would be a mistake to equate turbulence with revolution”). Even the Catilinarian crisis of 63 “did not shake the foundations of the state.” To Gruen the government was in no real danger of toppling; the conspiracy of Catiline, in fact, strengthened awareness of a common interest in stability.⁵

³ For Sullan continuity in the 70s, see Gruen, *Last Generation*, 126; for his views on the consuls of the 70s and 60s, 140; for the significance of the triumvirate as largely a modern construct, 90; for the overstatement of Luca, 101; for the relative continuity of elections in the 50s, 141.

⁴ Gruen, *Last Generation*, 153.

⁵ For bribery trials as politically motivated, see Gruen, *Last Generation*, 160; for his argument on the role of violence, 405; for his view on the Catalinarian conspiracy, 431.

Others closer to the present day have followed Gruen. K.M. Girardet in 1996 concurred in blaming the dynasts and not a systemic weakness: “Nein: die römische Republik ist nicht ‚gescheitert‘, sie ist systematisch und zielgerichtet zerstört worden.”⁶ A. Yakobson, in his influential recent work on Republican elections, held that violence, bribery and other irregularities did not overly affect the outcome of affairs until late in the Republic.⁷

But the evidence for instability in the late Republic is considerable, as we will see in detail in the category-by-category survey of electoral abuse. Gruen forces his argument in several places. He and his successors must vie against a historiographic tradition that goes back to our original sources. For good reason, Roman history textbooks unanimously begin their chapters on the fall of the Republic in 133 B.C. Velleius Paterculus beats them to the punch by nearly two millennia with his observation that after the death of Tiberius Gracchus the rule of law gave way to power, civil disagreement turned to violence, and wars were fought for profit rather than for rightful cause.⁸ Even if we allow for Cicero’s histrionics, the *corpus* of his work shows his awareness of the fraying of the state. Sallust, admittedly, was prone to complaining about his times, and oversimplified a complex problem as a bipolar struggle. But he perceptively assesses the demoralizing effects of total victory over Carthage and Rome’s achievement of unchallenged superpower status:

⁶ K.M. Girardet, “Politische Verantwortung im Ernstfall: Cicero, die Diktatur unter der Diktator Caesar,” *AHNAIKA: Festschrift für Carl Werner Müller zum 65. Geburtstag am 28. Januar 1996* (Stuttgart: Teubner, 1996), 249. For another argument on stability, see K.-J. W. Welwei-Bochum, “Caesars Diktatur, der Prizipat des Augustus und die Fiktion der historischen Notwendigkeit,” *Gymnasium* 103 (1996), 477-97.

⁷ A. Yakobson, *Elections and Electioneering in Rome. A Study in the Political System of the Late Republic* (Stuttgart: Franz Steiner Verlag, 1999), 113.

⁸ Vell. 2.3.3: *Inde ius vi obrutum potentiorque habitus prior, discordiaequae civium antea condicionibus sanan solitae ferro diiudicatae bellaque non causis inita, sed prout eorum merces fuit.*

And so the nobles began to take advantage of their status, and the people abused their liberty in wantonness, and each man led himself into robbery and pillage. In this way the whole was divided in two, and the state between these extremes was torn to pieces.⁹

The modern scholarship also is overwhelmingly in favor of “decline” and we will see in each category that the authors who specialize in that subtopic – bribery, violence and so forth – conclude that the abuses become more frequent and more serious at the end. P.A. Brunt, in his own *Fall*, concludes that the Republican constitution simply could not withstand the pressure when all players in the system wielded their obstructive powers to the utmost. The senate was blind to the pressures that resulted from imperial expansion and the Italian problem, while the *equites*, the plebs, the peasantry and the soldiers ripped the state apart.¹⁰ L.R. Taylor¹¹ recognizes the pressures coming from the knights, the Italians and the army warlords, as does D. Shotter.¹² In support of the argument that there were structural forces behind the rise of electoral abuse in the late Republic, H. Mouritsen argues its cause was increasing competition for power and status.¹³ A.W. Lintott, despite an overall argument in favor of constitutional flexibility, admits that the abuse of form had an effect: the “conflict and near-anarchy” of the last years typified “a loss of credibility in institutions traditionally regarded as authoritative – the senate and the

⁹ Sall. *Iug.* 41.5: *Namque coepere nobilitas dignitatem, populus libertatem in lubidinem vortere, sibi quisque ducere, trahere, rapere. Ita omnia in duas partis abstracta sunt, res publica, quae media fuerat, dilacerata.* The author’s translation.

¹⁰ Brunt, *Fall*, 81.

¹¹ Taylor, *Party Politics*, 17.

¹² D. Shotter, *The Fall of the Roman Republic* (London: Routledge, 1994), 97.

¹³ H. Mouritsen, *Plebs and Politics in the Late Roman Republic* (Cambridge: Cambridge University Press, 2001), 126.

higher magistracies in the city.”¹⁴ In another work, Lintott further acknowledges the role of procedural abuse in the collapse with a telling comment: “Moral failure did in fact contribute to the overthrow of the Roman Republic but it lay in the *choice of means* rather than the choice of ends.”¹⁵ This debate, then, between the stability or instability and the effects of constitutional abuse looms over our discussion of irregularities in the elections.

A second relevant theme in modern scholarship concerns the degree to which the Republic was really “democratic,” in the sense that the voting assemblies and the plebeian population had a say in affairs. The traditional view of late 19th- and early 20th-century scholars, particularly T. Mommsen and M. Gelzer, was that Republican Rome was an oligarchy with the citizen assemblies effectively controlled by patron-client relations. The consensus was that Polybius had been duped when he enthusiastically described Rome’s “mixed constitution” as one of checks and balances among monarchy (the magistrates), aristocracy (the senate) and democracy (the assemblies).¹⁶ In 1939, R. Syme characterized the Augustan transformation as an oligarchic revolution, and he propounded a much-quoted dictum:

In all ages, whatever the form and name of government, be it monarchy, republic or democracy, an oligarchy lurks behind the façade, and Roman history, Republican or imperial, is the history of the governing class.¹⁷

¹⁴ A.W. Lintott, *The Constitution of the Roman Republic* (Oxford: Clarendon Press, 1999), 213.

¹⁵ Lintott, *Violence in Republican Rome* (Oxford: Clarendon Press, 1968), 208. Emphasis supplied.

¹⁶ Polybius’ well-known constitutional analysis is set out in the sixth book of his Roman history. Polybius, *The Rise of the Roman Empire*, trans. B. Radice; intro. F.W. Walbank (London: Penguin Books, 1990).

¹⁷ R. Syme, *The Roman Revolution* (Oxford: Clarendon Press, 1939), 7.

This patron-client model for Republican politics became the orthodox view, and many subsequent scholars such as Taylor and H.H. Scullard agreed. Taylor, before her later work on Republican voting assemblies, stated flatly that at the annual elections, “nobles and senators determined the outcome under the system of personal commendation.”¹⁸

Orthodoxy is created to be challenged. In the latter 20th century new generations of Republican scholars argued there is simply too much evidence that the power of the *populus Romanus* was real and discretionary, that it mattered a great deal in the outcome of contested elections and debates, and that rather than commanding the masses, the nobles had to court popular favor to win elections and support for their causes. Foremost among these latter-day scholars is F. Millar, whose works from the 1980s onward explored the importance of oratory and mass opinion and showed the lengths to which the candidates and nobles went to seek popular favor. Millar states:

Far from being a tightly controlled, “top-down” system, the late Republic was on the contrary a very striking example of a political system in which rival conceptions of state and society, and rival policies, as regards both internal structures and external relations, were openly debated before the crowd in the Forum.¹⁹

Because election to the magistracies constituted admission to the senate, Millar sees the popular assemblies as the grantor of status, not its servant. True, the *fasti* of consuls show an overwhelming preference for aristocrats, but Millar and several others replied that these lists merely show a customary deference to noble status, and the preference of the

¹⁸ Taylor, *Party Politics*, 75.

¹⁹ F. Millar, *The Crowd in Rome in the Late Republic* (Ann Arbor : University of Michigan Press, 1998), 7. See also his work from the 1980s onward on the democratic nature of the Republic in *The Roman Republic and the Augustan Revolution*, H. M. Cotton and G. M. Rogers, eds. (Chapel Hill, N.C.: University of North Carolina Press, 2002).

crowd for a certain political pedigree in their choice of candidates.²⁰ R. Morstein-Marx agreed in 1998: “There is no reason why this should not have come about by the free exercise of the vote, as is implied, for example, by popular leaders’ criticism of the People for perpetuating their ‘slavery’ by means of their own votes.”²¹ Brunt concurs that a “splendid lineage” could be a fine asset in competitive elections.²² G. Hopkins and K. Burton, in an interesting analysis of the Republican aristocracy, point out that the argument for control by the “nobility” ignores the rise and fall of individual families, and show that surprisingly small percentages of men of consular rank either descended from, or were ancestors of, consuls in the immediately surrounding generations.²³

Yakobson’s 1999 *Elections and Electioneering* points out that the mass-scale bribery depicted in ancient sources would hardly have been necessary if elections were a foregone conclusion. He concludes: “Polybius knew what he was talking about after all.”²⁴ E. Deniaux, in a study of the use of urban space in the Republic, notes the array of spectacle, the necessity of physical presence and direct appeal to voters, and the role of oratory and entertainments associated with forming public opinion, all of which involved the whole city: “Tout ceci permet de renforcer l’hypothèse d’une forme de communication

²⁰ Millar, *Roman Republic*, 133. Even in the U.S. system, voters have favored more than one candidate from certain well-known families, including Adamses, Roosevelts, Kennedys, Bushes and Clintons.

²¹ R. Morstein-Marx, “*Res Publica Res Populi*,” review of A. Yakobson, *Elections and Electioneering in Rome*, *SCI* 19 (2000), 229. Morstein-Marx specifically cites Sallust’s speech of Macer (*Hist.* 3.48.6), castigating the people for their choices.

²² Brunt, *Fall*, 28.

²³ G. Hopkins and K. Burton, “Political Succession in the Late Republic, 249-50 B.C.,” in *Death and Renewal* (Cambridge: Cambridge University Press, 1983). For the rise and fall of *gens*, see p. 38; for the statistics on consular descendants, 32.

²⁴ Yakobson, *Elections and Electioneering*, 233.

écrite dans la campagne électorale romaine. Ces quelques remarques imposent donc l'idée d'une participation de la ville entière à la préparation des élections."²⁵

Our primary sources contain many indications that elections involved the free expression of popular will. Cicero informs us that a consular candidate in 65 B.C. loses by only a few centuries, the voting units in the consular electoral assembly, indicating a split decision (*paucae centuriae ad consulatam defuerent*). In a letter Cicero approvingly notes that one of Milo's assets as a consular candidate for 52 B.C. is popular appeal. In a defense oration Cicero commiserates with his fellow leaders of the state that they must be "tossed about by the waves and storms of popular favor."²⁶ The younger M. Porcius Cato provides a negative example: by refusing to kowtow to the electorate in the usual fashion in 52 he failed to win office.²⁷ Speaking most directly the point is the *Commentariolum Petitionis* attributed to Q. Cicero, a sort of "pocket manual" for candidates, stressing the importance of remembering names (*nomenclatio*), manner (*blanditia*), persistence (*adsiduitas*), generosity (*benignitas*), a public buzz (*rumor*), and impressive manner (*species in re publica*).²⁸ We even know of the modern-sounding gaffe of a consular candidate who makes an unfortunate joke after shaking the callused hand of a working man; the angry reaction spreads throughout the city and he is defeated.²⁹

25 E. Deniaux, E. "De l'ambito à l'ambitus: les lieux de la propagande et de la corruption électorale à la fin de la République," in *L'urbs: espace urbain et histoire (Ier siècle av. J.-C. – IIIe siècle ap. J.C.)*, (Rome: Actes du colloque international organisé par le Centre National de la Recherche Scientifique et L'École Française de Rome, 8-12 mai 1985), 304.

²⁶ See *Brut.* 237 for the close vote; for Milo's popular appeal, *Fam.* 2.6.3; for being subject to public opinion, *Planc.* 11;

²⁷ *Plut. Cat. Min.* 49-50; *Dio* 40.58.

²⁸ This summation is from R. Morstein-Marx, "Publicity, Popularity and Patronage in the *Commentariolum Petitionis*," *Cl. Ant.* 17 (1988), 41-53.

²⁹ *Val. Max.* 7.5.2.

So successful have been the arguments of Millar and his colleagues that a counter-reformation has arisen. If Rome was not a top-down oligarchy, neither was it exactly the Athenian democracy – the democratic argument, these scholars reply, goes too far in downplaying the important role still played by the senate and the *nobiles* and the restraining influences of tradition, religion and culture. Mouritsen points out that participation in the actual democratic process was limited both by the physical aspects of the city and by the distances of the growing empire. The *contiones*, or public debates, that Millar and others cite as examples of the rough-and-tumble democracy were quite often merely staged events. Mouritsen notes there are only a handful of documented cases in which a voting assembly rejected a legislative proposal once it had been put forth.³⁰ In a 2000 article, K.-J. Hölkeskamp criticizes Millar for focusing too narrowly on the legislative and electoral machinery while ignoring the considerable unwritten *gravitas* of the senate and the moral authority of the *mos maiorum*. Hölkeskamp sees the electoral assemblies more as a tool used to allot power among the elites.³¹ J.A. North, in a much-quoted passage, cautions that the semblance of competitive elections lasted only as long as there were divisions within the elite, and quickly disappeared once a single despot (or triumvirate) took power: “The moment that competition ceases... voters’ opinions can all too soon lose their importance to those holding power.”³²

³⁰ For Mouritsen’s argument on the staged nature of the *contiones* see *Plebs and Politics*, 52; for his views on the physical limitations on participation, 32.

³¹ K.-J. Hölkeskamp, “The Roman Republic: Government of the People, by the People, for the People?” Review of F. Millar, *The Crowd in Rome in the Late Republic*, SCI 19 (2000). For his “machinery” argument, see 212-213; for his view on the assembly as a power-distribution device used by elites, 219.

³² J.A. North, “Democratic Politics in Republican Rome,” *P&P* 126 (Feb. 1990), 21.

On balance, however, the evidence shows that the will of the electorate played more of a role in the affairs of the Republic than allowed in the rigid patron-client model. The leaders of Rome were chosen by the people, answered to them, strove to persuade them, catered to them, entertained them and bribed them. There was some freedom of choice in the elections and some unpredictability as to their outcome. All of this supports the conclusion that the elections were, indeed, the centerpiece of the Roman political process. Yakobson makes a vital point: “It was precisely because the people’s prerogative – their suffrage – was real rather than specious, because it gave them a real (albeit limited) stake in the system, that the people accepted the Republican political system as legitimate.”³³ The elections mattered to the citizens immensely – and so therefore did the battering of the electoral process that presaged the end of the Republic. Millar gets the last word, with a rhetorical flourish:

Was all this a charade managed from above – the election of over fifty office-holders a year, the declaration of war and the voting on treaties, the passing of legislation, the trials of office-holders and private citizens?³⁴

Problems in Defining ‘Abuse’

Every year was an election year in the Republic. After the expulsion of the kings, which occurred in 509 B.C. according to legend, Rome was typically governed by annually elected magistrates. These magistrates included two consuls with supreme

³³ Yakobson, *Elections and Electioneering*, 229.

³⁴ Millar, *Roman Republic*, 150.

military command and collegial authority, a varying number of praetors, aediles and quaestors with lesser functions, and the tribunes of the plebs. In addition to these annual officers, a pair of censors served five-year terms, with power to revise the citizenship rolls and to regulate the membership of the senate and public contracts. In times of crisis during the early and middle Republic, the government could suspend normal operations and appoint a dictator, whose authority superseded the regular magistrates. But the dictator was usually named to address a specific problem; his term was limited and the institution of the dictatorship served its purpose without being overly abused.³⁵ Lastly, in the event that the terms of sitting magistrates had expired without new elections to replace them, the senate could name an *interrex*, a temporary magistrate to preside over new elections.

The magistrates were elected by the popular assemblies, the *comitia*:

* The *comitia centuriata*, organized by military “centuries,” which elected the consuls, praetors and censors. Because this assembly represented the Roman people under arms, in the act of granting *imperium* to their commanders, it met outside the *pomerium* on the Campus Martius.³⁶

* The *comitia tributa*, in which the population was divided into 35 voting “tribes,” in theory corresponding to geography, to elect the aediles and quaestors.

³⁵ Two exceptions from the early and middle Republic do not concern our discussion of latter-day elections. In earlier practice the consular power was sometimes subdivided amongst a set of military tribunes. Livy’s Book 3 also tells the colorful story of the board of 10 (*decemvirs*) appointed to revise the laws but ultimately forced to step aside after abusing their position.

³⁶ Gellius, *NA* 15.27.5: *Centuriata autem comitia intra pomerium fieri nefas esse, quia exercitum extra urbem imperari oporteat, intra urbem imperari ius non sit. Propterea centuriata in campo Martio haberi exercitumque imperari praesidii causa solitum, quoniam populus esset in suffragiis ferendis occupatus.*

* The *concilium plebis*, which was essentially the tribal assembly *sans* patricians.

This council sat as a plebeian body to elect the tribunes of the people, with a tribune presiding.³⁷

All of these assemblies also had legislative authority, although the tribal assembly and the *concilium plebis* were the primary lawmaking bodies.

These assemblies were not “democratic” or “republican” bodies in the sense that we use the terms today. The centuriate assembly, elector of the senior magistrates, was weighted by property qualifications according to a census. This practice dated from the time of the kings, and votes weighted for wealth seemed perfectly natural to the Romans – after all, who better to judge the affairs of the state, than those with the most at stake? Because the classes voted in descending order, the centuries of the *equites* (the “knights”) and the first two of the five property classes often were enough to carry the day.³⁸ Furthermore, censuses were conducted irregularly or not at all, causing the makeup of the centuries to be more and more unreflective of true conditions. No census was taken between 86 and 70 B.C., even as the nature of the citizenship changed dramatically in the wake of the Social War. When Pompey and Crassus finally had a *lustrum* conducted during their consulship of 70 B.C., to break the hold of the old guard, the voting-rolls

³⁷ The best modern summation of the far-and-wide evidence on the nature and workings of the *comitia* remains L.R. Taylor, *Roman Voting Assemblies from the Hannibalic War to the Dictatorship of Caesar* (Ann Arbor: University of Michigan Press, 1966). Also see the meticulous work of G.W. Botsford, *The Roman Assemblies from Their Origin to the End of the Republic* (New York: Cooper Square Publishers, 1968). The fourth of the Republican assemblies, the *comitia curiata*, plays little role in our discussion of electoral procedure.

³⁸ The extent of the upper classes’ control has been the subject of fresh debate as well. Yakobson, *Elections and Electioneering*, 20, asks whether the gap between richest and poorest, and the voting-bloc solidarity of the upper classes, was as pronounced as traditionally assumed. See also Yakobson, “*Petitio et Largitio*: Popular Participation in the Centuriate Assembly of the Late Republic,” *JRS* Vol. 82. (1992), 44.

were nearly doubled.³⁹ It was the only census conducted between the dictatorship of L. Cornelius Sulla and Augustus.⁴⁰

Representation also was unequal even in the “popular” assemblies, the *comitia tributa* and its alter ego, the plebeian council, which used as their voting units the 35 tribes of the Roman people. Each tribe had one vote, with the contest decided as soon as a majority of 18 out of the 35 possible votes had occurred. But tribal membership was not equally assigned: The masses of the city were crammed into four urban tribes, with the propertied classes comfortably spread out among the other 31. This was a source of long-standing tension between the classes. Livy with a disdainful sniff tells us that the fourth-century censor Appius Claudius caused an uproar by distributing freedmen among the rural tribes, contributing to the election of a particularly disruptive aedile. In 304 the next censors restored these “the lowest of the low” to their grubby station in the urban tribes.⁴¹ During the period with which we are concerned, on the last day of 67 B.C., the tribune Gaius Manilius brought through a bill that again distributed the freedmen amongst the tribes. On the following day the senate immediately declared it invalid.⁴²

The state calendar could be manipulated to block assemblies or reschedule them for politically opportune reasons. Because there were laws that barred the consideration of legislation for a certain period before an election, and laws governing the minimum time allowed between the proposal of a law and its passage, the calendar was a familiar

³⁹ Livy *Per.* 98.

⁴⁰ Plut. (*Crass.* 13) says that Crassus as censor in 65 “literally accomplished nothing at all.”

⁴¹ Livy 9.46.

⁴² Dio 36.42.2-3. For discussion of the unequal assignment of voters to tribes, see especially L.R. Taylor, *The Voting Districts of the Roman Republic; The Thirty-Five Urban and Rural Tribes, Papers and Monographs of the American Academy in Rome*, 20 (1960); see also Taylor, *Voting Assemblies*, 64; Brunt, *Fall*, 24.

tactical tool for late Republican politicians. The *comitia* could meet only on the *dies comitiales*, those dates permitted on the Republican calendar, numbering about 195 days of the year.⁴³ That number could be further reduced. The magistrates could sometimes control affairs merely by extending or rescheduling festival days. The Romans took the prohibitions of their calendar seriously: The date of every known meeting of the *comitia* from the years 189 to 49 occurs on a day that was *comitialis*.⁴⁴ A calculated delay could be used to discourage turnout or to drive away voters who had expressly traveled to the city for the assembly, since some delays required the lapse of three market-days (*trinundinum*), a minimum of 17 days.⁴⁵ Yet another factor was the decision to insert, or not to insert, the intercalary month required to keep the Republican calendar in sync with the physical year.⁴⁶

On the day of an election, the presiding magistrate -- typically a consul for the centuriate assembly, a consul or praetor for the tribal assembly, and a tribune for the plebeian council -- wielded immense power and influence over the proceedings.⁴⁷ One of these powers was control of who appeared on the ballot in the first place, since candidates

⁴³ A.K. Michels, *The Calendar of the Roman Republic* (Princeton, N.J.: Princeton University Press, 1967), 31.

⁴⁴ Michels, *Calendar*, 45.

⁴⁵ F.B. Marsh, "The Gangster in Roman Politics," *CJ* Vol. 28, No. 3 (Dec. 1932), 171.

⁴⁶ Examples of calendar manipulation: Cic. *Q Fr.* 2.5.2, praising the consul Lentulus for extending the Latin Festival to occupy the remaining comitial days; *Sest.* 33 on the attempt by Clodius to expand the number of legal meeting-days (*ut omnibus fastis diebus legem ferri liceret*); Dio 40.62.1 on Cicero angling to prevent an intercalary month so that the electoral terms (and thus his promagistracy) would not be prolonged; Plut. *Mar.* 85, on a festival extended to block a vote on a citizenship bill. L.R. Taylor (*Party Politics*, 80) suggests that the extravagant thanksgivings voted to Caesar during his Gallic triumphs could have been intended to reduce the opportunities to pass legislation favorable to him.

⁴⁷ See Taylor, *Party Politics*, 71, and *Voting Assemblies*, 104-5, for a discussion of the power of the presiding magistrate.

had to make a valid application (*professio*).⁴⁸ The presiding magistrate also could simply call the whole thing off by announcing unfavorable auspices. In 55 B.C., Pompey, presiding as consul and unwilling to have the uncooperative Cato as praetor for the next year, abruptly heard thunder and stopped the vote after the early returns were going Cato's way.⁴⁹ Lastly, when not enough voters of a particular tribe were present, the presiding magistrate could reassign voters on an *ad hoc* basis.⁵⁰

The key point to remember is that all this was the “normal” Republican practice and was not considered abusive in itself, a conclusion based on the Romans' own attitudes toward these routine manipulations. In his 1999 book on the Republican constitution, A.W. Lintott notes that the political system was fluid and flexible and not easily subjected to proof that it had been “violated.” He says of the system that it:

was not something fixed and clear-cut, but evolved according to the Romans' needs by more means than one. It was also inevitably controversial: there were frequently at least two positions which could be taken on major issues.⁵¹

With all its warts, the Republican system served as a functioning government for nearly five centuries. So when we use the term “electoral abuse” to describe the events of the

⁴⁸ See Cic. *Leg.* 43 on the duties and powers of the presiding magistrate; also Asc. 89C. For examples of presiding consuls controlling the slate: Livy 24.7.10 for the year 215, when the presiding consul stopped the vote after early returns and demanded that the voters elect better commanders versus Hannibal; Livy 37.47.6 on M. Lepidus Aemilianus rejected by Fulvius in 190; App. *Pun.* 112 on Scipio's rejection as consul for 147, although the people forced his election anyway; Val. Max. 3.8.3 for 67, when Piso refused to acknowledge the candidacy of Palicanus; Asc. 82C, for the rejection of Catiline's *professio* for 65; Cic. *Dom.* 112 for the switch of Appius Claudius' candidacy from aedile to praetor in 58 with the consul's consent; Dio 39.27 for the rejection of the candidacy of Pompey and Crassus as consuls for 55. For skepticism about Cicero's claim on Appius in 58 see C.F. Konrad, “Notes on Roman Also-Rans,” in J. Linderski (ed.), *Imperium Sine Fine: T. Robert S. Broughton and the Roman Republic* (Stuttgart: Steiner, 1996) 103-143.

⁴⁹ Cic. *Q Fr.* 2.8; Plut. *Cat. Min.* 43; *Pomp.* 52.1-2.

⁵⁰ Cic. *Sest.* 109.

⁵¹ A.W. Lintott, *The Constitution of the Roman Republic* (Oxford: Clarendon Press, 1999), 7.

final years of the Republic, it means something beyond *our* judgment of what is “unfair” about these practices according to our own, anachronistic standards. The problem of defining abuse is further complicated by the fact the Romans had no written constitution, making it more akin to the modern British system than to the formal document employed by the U.S., where an act or law is unconstitutional precisely when the Supreme Court declares it to be so. Hence the problem as posed by C. Nicolet: “la limite entre ce qui est permis et ce qui est défendu, ce qui est normal et ce qui est exceptionnel.”⁵²

Nevertheless, the Republic was governed by a sturdy combination of legislation, legal precedent and, most important of all, the *mos maiorum*, literally, the ways of those Romans who had come before. It does not do justice to that term to describe it merely as the “customs” of the Republic, because the phrase to the Romans carried a profound shared political and cultural weight.⁵³ The fact that no written document had “created” the senate, the assemblies or the elections, nor the ancient restrictions concerning *imperium* and the *pomerium*, made no more difference than the fact the Queen of England’s job is not “created” by a piece of paper, nor that the monarch’s powers and roles have changed considerably over the centuries. We get a sense of the moral force carried by the *mos maiorum* when Cicero uses its authority to chastise Lepidus in the Thirteenth Philippic:

Does it become virtuous men to do every thing which it is in their power to do? Suppose it to be a base thing? Suppose it to be a mischievous thing? Suppose it be absolutely unlawful to do it? ...

⁵² C. Nicolet, *Le métier de citoyen dans la Rome républicaine* (Paris, 1976), 322.

⁵³ See Lintott, *Constitution*, 4-6, for a discussion of the significance of the *mos maiorum* in the government of the Republic.

But it is not lawful for any one to lead an army against his country, if indeed we say that that is lawful which is permitted by the laws or by the usages and established principles of our ancestors. For it does not follow that whatever a man has power to do is lawful for him to do; nor, if he is not hindered, is he on that account permitted to do so. For to you, O Lepidus, as to your ancestors, your country has given an army to be employed in her cause. With this army you are to repel the enemy, you are to extend the boundaries of the empire, you are to obey the senate and people of Rome, if by any chance they direct you to some other object.⁵⁴

It was this government of laws (*leges*), precedent (*institutum*) and the *mos maiorum* that came under systematic assault in the Republic's final years. As we will see, the Romans themselves recognized violations of these principles as unconstitutional.

We might then establish three levels of classification in our quest to define "abuse": (1) those things which were explicitly contrary to law – and the source accounts will give us many examples; (2) those which were not explicitly forbidden, but which were without precedent, and were recognized as contrary to the spirit of the constitution; (3) those which had precedent, or technically might have fallen within the scope of Republican practice, yet which were employed by all sides and factions, with each claiming its actions to be justified, with a frequency and a cynical motive far removed from their original purpose. In the end, like acid, this abuse corroded the confidence the Romans had in their government, and left it without honor, without faith, and vulnerable to the subsequent depredations that it would be forced to endure.

⁵⁴ Cic. *Phil.* 13.14.

Part Two: Electoral Abuse and the End of the Republic

Categories of Abuse

At the outset it should be said that the attempt to classify electoral abuse by rigid categories is somewhat artificial. Considerable overlap exists among the categories. Violence, for example, is the most commonly attested abuse in the late Republic, but it frequently is the partner of other violations, or serves as an accelerant to propel one level of abuse to the next degree. Likewise, an election cabal might employ both bribery and delay to achieve its goals. The most useful approach is to break down the evidence by theme and then put it back together again in a chronological review.

1. Failure to Hold Elections

The simplest way to avoid an undesirable election result was not to hold the election, or at least to delay it in hopes of attaining more favorable circumstances. Failure to hold elections was not entirely without precedent. For example, in 184 B.C. the state decided not to elect replacement praetors.¹ But after Sulla, the practice becomes more frequent and brazen, beginning with Lepidus in 78 B.C., who refused to hold elections at all and demanded a second consulship for himself. In early 77, still with no new consuls elected,

¹ Livy 39.39.1-15.

an *interrex* had to be appointed to preside on an interim basis. “You ask for a second consulship,” an opponent named L. Marcius Philippus orated against Lepidus in the senate, “as if you had ever given up your first.”²

Such usurpations were relatively few, however – until the ensuing two decades, when electoral delay arrives upon the scene as a regular and increasingly cynical tactic. The trend cannot be denied. There was an electoral delay or an attempted delay for the years, 67, 63-61, 59, and then an annual series of delays in 57-52. In 67, elections for the following year’s magistrates were delayed for the first time since Lepidus because of a struggle over legislation concerning electoral bribery. The people had demanded such a law; the senate deemed it unacceptable and bade the consuls to ram through an alternative that had to be passed before the elections were held. Violence and tumult ensued.³ Cicero ruefully notes to his friend Atticus that no one knew when the elections would occur, and in his speech to the senate supporting a special command for Pompey, Cicero remarks that he has been chosen by the *comitia* as praetor-elect three times already – the elections had been repeatedly delayed before they could be completed.⁴

If the delay of 67 was employed for mere legislative machinations, the next instance was more serious, and was brought about by Cicero himself as consul in 63. The famous conspirator L. Catalina was a candidate for consul for the following year and was said to be plotting against Cicero’s life. Cicero delayed the elections and confronted Catiline in the senate, making sure to let the public know he had been wearing armor under his garb

² Sall. *Hist.* 1.77: *Alterum consulatam petis, quasi primum reddideris.* The author’s translation.

³ Dio 36.38.39.

⁴ Cic. *Att.* 1.11.2; *Leg. Man.* 2.

because of the threat of violence. When the elections were finally held Catiline was rejected by the assembly, and he embarked on his subsequent, ill-fated designs.⁵

The following year, while Pompey was still in the field in the east, he requested a delay in the elections for 61 so that his legate M. Pupius Piso could stand for office. Pompey requested an additional delay until he could enter the city and canvass for Piso personally (he had to wait outside the city until the day of a triumph.) Having been the beneficiary of several extraordinary dispensations from the law and special commands in his career already, Pompey no doubt thought the request was commensurate with his station. The election was delayed at least long enough for Piso – Dio says it was out of fear that Pompey might otherwise point his army in the wrong direction.⁶ But Plutarch says that Cato drew the line at a delay for Piso and prevailed in his insistence that the elections not be delayed beyond that for Pompey's return.⁷ In a similar vein, the elections were delayed again in 61 while Pompey backed his follower L. Afranius for consul and another bribery bill was being considered.⁸

Delays were becoming more routine, and in 59 delaying the election became a blatant weapon in the bitter rivalry between the consuls Caesar and M. Calpurnius Bibulus. The latter, after being physically attacked during the forced passage of Caesar's agrarian legislation, withdrew to his house for the rest of the year and pronounced all of Caesar's

⁵ Plut. *Cic.* 14; Cic. *Mur.* 51. Sall. *Cat.* 26 has the pre-election machinations, but not the delay.

⁶ Dio 37.44.3.

⁷ Plut. *Pomp.* 44. However, Plutarch (*Cat. Min.* 30) implies that Cato blocked the delay of the election altogether. Gruen (*Last Generation*, 85-86) reckons that the elections were probably delayed for Piso, but not long enough for Pompey himself.

⁸ Cic. *Att.* 1.16.13.

actions to be in violation of the auspices. Caesar cheerfully ignored him.⁹ Yet a consul of Rome could not be entirely neutralized: Bibulus managed to have the elections delayed from July to October, and all the oratory of Pompey and Caesar, who were unpopular at the time, could not turn popular opinion against the delay. In the public's mind, the ends sought by the opponents of the triumvirs justified their means.¹⁰

After Caesar's consulship he left for his new Gallic command in 58 with inoffensive consuls in place and the new tribune P. Clodius Pulcher to make trouble. Clodius put through his own legislative program, got his enemy Cicero temporarily exiled (for having the Catalinarian conspirators summarily executed in 63), and held sway through the use of his newly legalized gangs (*collegia*). But force was met with force, and an opposition led by T. Annius Milo and P. Sestius rose up against Clodius. In 57, Clodius announced his intention to stand for aedile for the following year; Milo managed to forestall the elections, initially until November, while angling against Clodius – again, a delay engineered for sheer political advantage. The situation became ridiculous when there were no magistrates in office to assign jurors. When the elections were finally held on Jan. 20 Clodius finished in first place.¹¹

From this point to the death of Clodius and the sole consulate of Pompey in 52, electoral delays were the annual norm, without exception. With the political tide running against them in 56, Caesar, Pompey and Crassus struck back with the renewal of their pact at Luca, including the agreement that Pompey and Crassus would hold the

⁹ Plut. *Caes.* 14; Dio 38.6; Suet. *Iul.* 20. Suetonius notes that wags began to refer to the year as “the consulship of Julius and Caesar.”

¹⁰ See Cic. *Att.* 2.21 for the delayed elections and the unsuccessful efforts of Pompey and Caesar to sway the public.

¹¹ Cic. *Att.* 4.3; *Q Fr.* 2.2.2; Dio 39.7.4.

consulship in 55.¹² Caesar's avowed critic L. Domitius Ahenobarbus insisted on running for consul anyway, failing to get the hint until his entourage was set upon and a torch-bearer murdered. The triumvirs met legal resistance as well. Their candidacy was rejected by the presiding consul for being too late. But they came up with a resourceful response. A helpful tribune obstructed the elections until beyond the end of 56 so that a more cooperative *interrex* would admit their candidacy.¹³

In 55, according to Cicero, Pompey as consul employed a different tactic: He called an election for aedile suddenly and unexpectedly *early*. Cicero gives Pompey credit for trying to thwart bribery; the more likely reality was that he was trying to forestall bribery for candidates of whom he did not approve.¹⁴ Cato then had his turn against the triumvirs and attempted to delay the entry of the year's duly elected praetors into office for a period of 60 days, rendering them vulnerable for prosecution for bribery. The consuls blocked Cato's measure over the hoots of their opponents in the senate.¹⁵ The following year, *all* the candidates angled for electoral delay, each hoping for his own advantage, some hoping to emulate the triumvirs by stalling for an *interrex* while simultaneously dodging and lodging bribery charges amongst themselves. Not only were no elections held in 54, but no magistrates for 53 were elected until nearly halfway through the year – after which the maneuvering for the elections for 52 began at once.¹⁶

¹² For a more detailed discussion of what happened at Luca, including some modern disagreements, see the section on prearranged election results.

¹³ Cic. *Att.* 4.8[a]1-2; Dio 39.27-31.

¹⁴ Cic. *Planc.* 49.

¹⁵ Cic. *Q Fr.* 2.7.

¹⁶ For the delays of 54-53, Cic.*Att.* 4.17, *Q Fr.* 2.15; App. *B Civ.* 2.3.19; Dio 40.17, 40.45.

As a result there were no elections in 53 for the magistrates of 52. Elections were repeatedly delayed by violence in the city and the tactics of the candidates. The year 52 opened without magistrates and without prospects for acquiring them. In the literal sense of the Greek word, Rome had become an anarchy, a state without “archons.”¹⁷ Following the killing of Clodius on the Appian Way on January 18, and the subsequent violence that led to the burning of the senate-house, the senate desperately concluded that matters were intolerable, and Pompey was appointed sole consul with the consent of the senate as a *fait accompli* – the most irregular “election” of all.¹⁸ With Pompey and the senate now unified, consolidating their position against Caesar as he wrapped up his conquest of Gaul, and with Clodius dead, Milo tried and exiled and the state shell-shocked from the tumultuous decade, there was a merciful lull in electoral disruption, though it was only a calm before the devastating storm to come.

Gruen, in his argument in favor of stability in the late Republic, contends of these delays that “postponement reflects politics, not upheaval... it does not suggest breakdown of order in the late Republic.”¹⁹ Yet the course of events from Lepidus onward shows an accelerating, increasingly frequent and blatant use of electoral delay. As we will see in a later discussion of how the Romans perceived electoral abuse in general, all parties recognized what was happening; they knew its dangers; they protested its application – but then employed it themselves when it was their turn. There was not much hallowed precedent left for Caesar and the second triumvirs to overcome when it was their turn.

¹⁷ An observation by Goldsworthy, *Caesar*, 346.

¹⁸ Sources for the events of late 53 and early 52: Asc. 30-31C, 48C; Dio 40.46; Livy *Per.* 107; Plut. *Caes.* 28, *Cat. Min.* 47, *Pomp.* 54. There is no evidence Pompey’s status was confirmed by an assembly: J. Leach, *Pompey the Great* (London: Croom Helm, 1978), 157.

¹⁹ Gruen, *Last Generation*, 161.

2. Abuse of the *lex annalis* and Successive Terms

Livy celebrates the overthrow of the kings and the establishment of the Republic by emphasizing what he saw as its signal virtue, one which distinguished the new government from that of the hated kings. The elected magistrates were prevented from becoming despots by the simple constraint of their one-year term. He tells us:

Moreover, the first step towards political liberty in Rome consisted in the fact that consuls were annually elected magistrates – in the limitation, that is, not of their powers but of their period of office.²⁰

Besides this, a magistrate could not run for new office while holding his current one, effectively creating a two-year space (*biennium*) between magistracies and overall age limits for the ladder of a political career, the *cursus honorum*.²¹ In the middle Republic, a *lex Villia annalis* was passed upon a tribune's proposal²² setting minimum ages for office, with 30 thereafter as the starting-point for the post of quaestor.²³ This minimum age in combination with the *biennium* effectively set age limits for the rest of the magistracies up the ladder. In addition to these restrictions, a variety of laws re-enacted over the

²⁰ Livy 2.1.

²¹ The age requirements were established as early as a *plebiscitum de consulibus et magistratibus* enacted in 342. For a useful timeline of electoral legislation, see C. Williamson, *The Laws of the Roman People: Public Law in the Expansion and Decline of the Roman Republic* (Ann Arbor: The University of Michigan Press, 2005).

²² Livy 40.44.1.

²³ App. *B Civ.* 100.

course of Republican history as recently at the time of Sulla²⁴ made it illegal for a magistrate to hold the same post twice within 10 years' time.

Even before the late Republic, there were occasional violations of these principles, sometimes by popular demand. In 213, Scipio Africanus responded to objections of the tribunes that he was too young for office with the rejoinder that if the voters wanted him he was old enough.²⁵ In 151, the elder Cato won passage of a *lex de consulatu non interando* reiterating the principle against succession after three successive consulships of M. Claudius Marcellus.²⁶ In 148, P. Scipio Aemilianus returned to Rome to stand for aedile, being too young to run for consul – yet the assembly elected him consul anyway. Appian relates that the consuls protested the illegal act, but the citizens insisted that they “were the judges of the elections, and that, of the laws pertaining thereto, they could set aside or confirm whichever they pleased.”²⁷ In 131, following in the unsuccessful footsteps of Tiberius Gracchus, the tribune C. Papirius Carbo tried but failed to win approval of a measure allowing the tribunes to stand for re-election.²⁸ Nonetheless, C. Gracchus was reelected tribune a decade later: Appian says that by then a loophole had been established; that if there were an insufficient number of candidates for tribune in any given year, the people could return one of the existing tribunes for another term.²⁹

Over the last century of the Republic these irregularities became more common. After the younger Gracchus, the next major exception was Gaius Marius, who bulldozed his way

²⁴ App. *B Civ.* 100.

²⁵ Livy. 25.2.6-8.

²⁶ Livy *Epit.* 41. The legislation is analogous to the amendment restricting U.S. presidents to two terms in office, following the four-term tenure of Franklin D. Roosevelt.

²⁷ App. *Pun.* 112.

²⁸ Cic. *Amic.* 96; Livy *Epit.* 59.

²⁹ App. *B Civ.* 1.3.21.

into the consulship with popular support in 107 to assume command of the wars, then was returned for an unprecedented string of consulships from 104-100. Marius and his supporters cited both the precedent of Scipio and the exigencies of wartime.³⁰ His career included also included a seventh consulship late in his life, during his final struggles versus Sulla, which he held for only 17 days before his death.³¹ In 83, Q. Sertorius opposed the candidacy of the younger Marius for office on the grounds he was only 26 or 27 years of age.³² And we already have seen that Lepidus demanded a second term as consul in 78. Lepidus was thwarted by Pompey, who was given a command to lead an army against him. Lepidus fled and died in solitude and grief.³³

The career of Pompey is a study in the violation of the laws governing magistracies and commands. In fact, the twin pillars of his biography are the extraordinary commands awarded to him in times of crisis by a desperate senate or a clamoring assembly, and the electoral irregularities connected with his magistracies. Pompey's first consulship in 70 required a dispensation from the senate because he had not properly ascended the *cursus honorum*.³⁴ Interestingly, the modern scholarship on Pompey is unanimously approving of this irregularity. A.N. Sherwin-White says the senate was "perfectly competent" to grant the exception, and that after all, the law was not annulled or damaged merely by being violated.³⁵ A. Goldsworthy deems it "absurd" to think that Pompey should have

³⁰ Livy *Epit.* 68-9; Plut. *Mar.* 9, 12, 28; Vell. Pat. 2.126; Cic. *Brut.* 175. The Marian succession was a turning-point: "a far more serious breach of precedent than Gaius Gracchus' consecutive tribunates." Goldsworthy, *Caesar*, 29.

³¹ Plut. *Mar.* 45.

³² Plut. *Sert.* 6.1.

³³ Plut. *Pomp.* 15. Plutarch adds that Lepidus' grief was less over his political and military failures than the news his wife had been unfaithful.

³⁴ Cic. *Leg. Man.* 62; Livy *Per.* 97; Plut. *Crass.* 12, *Pomp.* 21.

³⁵ A.N. Sherwin-White, "Violence in Roman Politics," *JRS* 46, Parts 1 and 2 (1956), 6-7.

been expected to follow the *cursus* after his service to the state.³⁶ R. Seager says that to do otherwise than grant him a dispensation would have been “hardly plausible.”³⁷

Another Pompeian author, J. Leach, finds “a reasonable nature” to Pompey’s arguments for special consideration.³⁸

In the wake of all this, a note of skepticism is in order about the motives both of Pompey and of his grantors. Plutarch reminds us of a more ominous aspect to Pompey’s impending return to Rome in 71:

[I]n all this general desire to see him and to do him honor there were also present feelings of suspicion and of fear; it was thought that, instead of disbanding his army, he might go straight ahead and, by the use of military force and absolutism, make himself into another Sulla.³⁹

Less than a decade after L. Cornelius Sulla’s dictatorship its memory was still fresh. Now Sulla’s protégé, to whom Sulla had given the cognomen *Magnus*, was marching toward Rome with an accomplished and loyal army. This was the Pompey who, when reminded by the Mamertines of Messana of their ancient protections under Roman law, delivered the curt reply: “Stop quoting the laws to us. We carry swords.”⁴⁰ Pompey also had behaved cruelly after defeating Cn. Papirius Carbo, a successor to L. Cornelius Cinna and opponent of the Sullans. After defeating Carbo, a three-time consul of Rome, Pompey had him thrown in chains, dragged before a tribunal over which he personally presided, subjected him to a lengthy and abusive examination that offended all who were present,

³⁶ Goldsworthy, *Caesar*, 94.

³⁷ R. Seager, *Pompey the Great: A Political Biography* (Oxford: Blackwell, 2002), 23.

³⁸ Leach, *Pompey*, 59.

³⁹ Plut. *Pomp.* 21.

⁴⁰ Plut. *Pomp.* 10.

and ordered him off to summary execution, with the victim pleading at least for a private place to relieve his bowels before receiving the sword.⁴¹ True, Pompey had established a reputation as a peerless commander and an excellent servant of the state, but these darker aspects, too, were well-known parts of the picture – and were part of the calculation on whether to deny to the general, marching with his army toward Rome, the prize which he could otherwise easily acquire by the methods of Sulla.

Fortunately for the state and to Pompey's credit he truly preferred acclaim to force, and he won a relieved huzzah for disbanding his army. But perhaps it is not coincidental that the centerpiece of his platform as consul in 70 was a remarkably populist measure – the restoration of the full power of the tribunes, which had been taken away by Sulla, and which had been the subject of intense struggles in Rome ever since. This was a payoff by Pompey to the masses and it would have a profound impact on the brief remainder of Republican history.⁴² “By destroying the chief support of the Cornelian constitution,” Botsford opines, “this measure paved the way to its overthrow.”⁴³

Pompey's second consulship in 55 required other kinds of manipulation but it did not violate the 10-year rule on succession, which had been reconfirmed by Sulla (no doubt because of Marius).⁴⁴ But Pompey's third consulship came only three years later and was delivered by fiat rather than regular election. Almost all of the commentators, ancient and modern, focus on the fact that Pompey was sole consul, an act indeed unprecedented in the history of the Republic, but they ignore the second violation. Again the reviews are

⁴¹ Plut. *Pomp.* 10.

⁴² For the disbanding of the army and/or the restoration of the tribunes, see Plut. *Pomp.* 21-23; Cic. *Leg.* 3.9.22; Sall. *Cat.* 38,

⁴³ Botsford, *Roman Assemblies*, 427.

⁴⁴ App. *B Civ.* 100.

forgiving. Leach states of Pompey without irony: “He had in fact a deep regard for the Roman constitution provided that it could be adapted to suit his own requirements.”⁴⁵

Another Pompeian scholar praises Pompey because he “never became a law unto himself.”⁴⁶ J.P.V.D. Balsdon, writing in 1939 on the eve of world events that would also display the fruits of unchecked power, was more clear-eyed about the precedent:

After 52 things began to move fast. There was little reason why Caesar should not attempt to hold a second consulship a year before his legal time. After Pompey’s third consulship, the *lex annalis* cannot have counted for much.⁴⁷

Again, as we will see, Caesar and the second triumvirs had little worry about trampling on the precedents of age or term requirements for their hand-picked magistrates. Those precedents were already well-trampled.

3. Abuse of the Auspices

Polybius, writing in the mid-second century B.C., defined religion as “the element which holds the Roman state together.”⁴⁸ In the last century of the Republic it was just as often a tool for tearing it apart. Religious justification for the obstruction of elections and legislation grew common and was employed by all parties as a tactical weapon. In due course not even the masses were fooled by the dueling factions’ claims that the gods were

⁴⁵ Leach, *Pompey*, 112.

⁴⁶ H.P. Collins, “Decline and Fall of Pompey the Great,” *G&R* 22:66 (Oct. 1953), 101.

⁴⁷ J.P.V.D. Balsdon, “Consular Commands under the Late Republic, II: Caesar’s Gallic Command,” *JRS* Vol. 29, Part 2 (1939), 180.

⁴⁸ Polyb. 6.56.

on their side. Several scholars have noted the disappearance of the institution of the dictatorship in the Republic's final century. They attribute that disappearance to the rise of two effective substitutes, the first being the so-called "last decree" of the senate, and the other being the use of religious vetoes.⁴⁹ Religion, M. Beard observes, "seems to have become increasingly concerned with issues of control between aristocracy and people."⁵⁰

The principal tactic was the declaration of unfavorable auspices by the augurs and magistrates to block an assembly – or each other – from taking official action on the grounds that the gods had indicated (typically by lightning or thunder) the day was not fit. A greater magistrate could use it against a lesser, or a colleague against his equal.⁵¹ Cicero notes the seriousness with which the Romans took the augur's declaration that affairs must be put off for "another day."⁵² Yet in paying lip service to the state religion, Cicero also reveals its true role in the late Republic by observing that the "immortal gods often use the auspices to put down unjust measures being pushed by the people."⁵³ Given the limited availability of comitial days to begin with, religious veto became part of the calendar manipulations.⁵⁴

The *lex Aelia Fufia*, dating from the mid-second century, was an important change that ushered in the closing chapter. It extended the power of religious obstruction (*obnuntiatio*) beyond the augurs to the magistrates, giving the upper classes an even more

⁴⁹ For arguments on the use of the auspices as a tool versus the people see for example Taylor, *Party Politics*; Botsford, *Roman Assemblies*, 117; W.F. McDonald, "Clodius and the *Lex Aelia Fufia*," *JRS* 19 (1929), 165.

⁵⁰ M. Beard, et. al., *Religions of Rome* (Cambridge: Cambridge University Press, 1998), 135.

⁵¹ For an example of praetor v. tribune, see Cic. *Sest.* 36.78; for a tribune's attempt versus a consul, *Sest.* 37.79.

⁵² Cic. *Leg.* 2.31: *Quid gravius quam rem susceptam dirimi, si unus augur 'alio die' dixerit?*

⁵³ Cic. *Leg.* 3.27: *Saepe enim populi impetum iniustum auspiciis di immortales represserunt.* The author's translation.

⁵⁴ See Taylor (*Party Politics*, 78) on the practical limits on comitial days.

flexible weapon when they opposed a populist measure. R.E. Smith writes that an early test of the power occurred in 100 with the veto of an agrarian bill, after which “thunder and the like become common phenomena in Roman political life, and a further step in the war between tribunes and senate had been taken.”⁵⁵

As we have seen with the previous categories, in the 50s B.C. the abuse of the auspices was taken to new extents, and religious obstruction became the frank and cynical equivalent of a *political* veto. It was no longer necessary to have *seen* the omen; the mere declaration of a magistrate that he intended to “watch the sky” (*de caelo servare*) would suffice.⁵⁶ A pecking-order developed among the magistracies: the greater could obstruct the lesser via the auspices, and could command the lesser from invoking the auspices themselves.⁵⁷ A new stratagem to preempt religious obstruction was employed in the measure for the recall of Cicero in 57, heard in the centuriate assembly, for it came with an extra prophylactic clause against sky-watching.⁵⁸

The decade of the 50s began with the well-known interposition of the consul Bibulus against the legislation of Caesar and the delay of the elections for 58. When a proposal of Caesar’s was due for consideration, according to Dio, Bibulus “sent formal notice to him through his attendants that it was a sacred period and that by the laws he could rightfully take no action during it.”⁵⁹ As Beard observes, Caesar ignored the veto but he did not “get away with” his defiance scot-free. His legislation faced repeated assaults afterward on the grounds it was unconstitutional, indicating that religious obstruction might be

⁵⁵ R.E. Smith, “The Use of Force in Passing Legislation in the Late Republic,” *Athanaeum* 55 (1977), 153.

⁵⁶ Botsford, *Roman Assemblies*, 115.

⁵⁷ Gell. 13.15 for the analysis of the pecking order.

⁵⁸ Cic. *Sest.* 129: *Ne quis caelo servaret.*

⁵⁹ Dio 38.7.

resisted, but it still carried some weight. Beard defines the issue as whether Bibulus acted improperly by trying to cast his veto *in absentia*, or whether he could be excused because he was acting under threat of violence.⁶⁰ The effects of Bibulus' veto lasted for years, as the basis for later attacks upon the *lex Vatinia*, the legislation promulgated during Caesar's consulship that awarded him Gaul as his proconsular province.⁶¹

The triumvirs personally handled the transfer of Clodius from patrician to plebeian status so he could stand for tribune in 58. With typical audacity Clodius rearranged the laws on religious obstruction in his own favor. He engineered a change in the *lex Aelia Fufia*, although the exact nature is disputed. No later authority accepts the claim of Cicero (hardly an impartial critic of Clodius) that the *lex* had been repealed altogether.⁶² The most likely interpretation is that to forestall a repeat performance of Bibulus' tactics, Clodius changed the law to require the physical presence of the obstructing magistrate. This theory makes sense in the light of subsequent events.⁶³ Clodius also appears to have tried to expand the allowable meeting-days for the *comitia* to all *dies fasti*.⁶⁴

⁶⁰ Beard, *Religions*, 127-128. R.E. Smith contended there was "no doubt" the entire Caesarian program was illegal because of this: Smith, "The Significance of Caesar's Consulship in 59 B.C.," *Phoenix* Vol. 18, No. 4 (Winter 1964), 305.

⁶¹ See Cic. *Dom.* 40 and *Prov. cons.* 36 for attacks on the *lex Vatinia*, as well as Suet. *Iul.* 23 and *Ner.* 2.2 (efforts by Ahenobarbus against Caesar's command on the grounds it was awarded contrary to the auspices).

⁶² A claim Cicero makes in *Red. sen.* 11; *Sest.* 11, 15, 33 and 129.

⁶³ T.N. Mitchell, "The *Leges Clodiae* and *obnuntiatio*," *CQ* N.S. Vol. 36, No. 1 (1986), 172-176. For concurrence on the requirement for physical presence, see J.W. Tatum, *The Patrician Tribune: Publius Clodius Pulcher* (Chapel Hill, N.C.: University of North Carolina Press, 1999), 132. Tatum also suggests the change meant that merely announcing the intent to observe the sky was no longer enough. Beyond this, over the decades alternative theories on Clodius' changes have been advanced:

(a) that the veto power was abolished for curule magistrates against the popular assembly, but not augurs or tribunes, A.H. Greenidge, "The Repeal of the *Lex Aelia Fufia*," *CR* Vol. 7 No. 4 (Apr. 1893), 161;

(b) that it restricted the power over legislative assemblies, but not elective, McDonald, *Clodius*, 173;

(c) that it gave the assemblies more power to restrict *obnuntiatio*, as in the recall of Cicero: Balsdon, "Roman History 58-56 B.C.: Three Ciceronian Problems," *JRS* Vol. 47, No. 1-2 (1957), 16.

⁶⁴ So says Cicero in *Sest.* 33; supported by the interpretation of McDonald, *Clodius*, 177.

The year 57 saw colorful applications of the changing philosophy toward *obnuntiatio*. Early in the year Sestius, the anti-Clodian and now tribune, attempted to break up an assembly by announcing to the presiding consul that he was taking the auspices. This did not sit well with the Clodians in the crowd, who, according to Cicero, set upon the tribune with fence-posts, clubs and swords, somehow managing to spare his life only because they believed him to be dead already.⁶⁵ The most dramatic action of the year came in the elections for aedile. Milo announced his intention to block the consul Q. Caecilius Metellus Nepos in the style of Bibulus, by obstructing all available days on the calendar.⁶⁶ Nepos attempted to conduct the elections on the Campus Martius anyway; Milo was on hand to forestall him. After that, they agreed as a matter of mutual convenience to meet in the Forum for the next performance of their two-step. But it was a double-double-cross; Nepos sneaked out of the city to the Campus anyway – only to find Milo there ahead of him.⁶⁷ No wonder the legislation that year in the centuriate assembly for Cicero’s recall contained a prohibition against watching the sky. As to whether the Romans believed any of this actually reflected the will of the gods, the sources are silent.

In 55, it was Pompey’s turn to hear thunder when he blocked the election of Cato as praetor for the following year. The custom to begin the balloting was for a single century

⁶⁵ Cic. *Sest.* 79. A recent commentary on the *pro Sestio* concludes this was a tribal assembly, given that it occurred at the temple of Castor – ironically, the site of Caesar’s violent forcing of his agrarian law versus Bibulus two years previously. R.A. Kaster, *Cicero: Speech on Behalf of Publius Sestius* (Oxford: Clarendon Press, 2006), 292-294. Kaster believes Sestius was trying to break up the assembly as part of the plan to have Cicero recalled, one reason Cicero glosses over Sestius’ motive in the speech. Incidentally, Sestius’ nearly fatal intervention supports the notion that the *leges Clodiae* required a physical presence.

⁶⁶ Cic. *Att.* 4.3: *per omnes dies comitiales de caelo servaturum*.

⁶⁷ Cic. *Att.* 4.3.4-5. McDonald (*Clodius*, 172) notes that this is further evidence the Clodian law now required the in-person exercise of the veto. Botsford (*Roman Assemblies*, 117) comments that by this point all sides were exploiting religion for their purposes: “Their behavior was a sign of both religious and political disintegration.”

– the *centuria praerogativa*, chosen by lot – to cast its ballot first. Pompey invoked the auspices as soon as the first century returned for Cato and P. Vatinius (Caesar’s useful tribune) was elected in Cato’s stead.⁶⁸ Pompey’s opponents judged that turnabout was fair play: In the debate later that year over the *lex Trebonia* awarding Pompey and Crassus their post-consular commands, opponents occupied the senate-house overnight so as not to be prevented from attending the remainder of the debate in the Forum the next day. Trebonius locked the doors to keep them inside; at the next day’s assembly Cato and other opponents scaled each others’ shoulders to try to make themselves heard as they announced their *obnuntiatio*. The crowd wounded several of them and, according to Dio, “killed a few.”⁶⁹ Again, it should be stressed, the populace did not seem to fear incurring the wrath of the gods, which demonstrated the devalued currency in which religious obstruction was now trading. Crassus finished off the year by thumbing his nose at various augurs, omens, prophecies and intercessions as he departed early for his doomed command in the east.⁷⁰ The ensuing year 54 was marked by delays in the elections amid charges and countercharges of bribery and angling for an *interrex*, and a veto against conducting the election was interposed as well.⁷¹

Clearly, by the late 50s the religious obstruction of elections was being used routinely for political means. We might even detect a change in attitudes as the decade progresses. The opponents of Caesar at least were able to mount some credible claim that his

⁶⁸ Plut. *Pomp.* 52, *Cat. Min.* 42; Cic. *Q Fr.* 2.8. Even one of Pompey’s defenders admits this was “flagrant abuse”: Leach, *Pompey*, 145.

⁶⁹ The account given in Dio 39.35; see also Plut. *Cat. Min.* 43.

⁷⁰ Plut. *Crass.* 16; Cic. *Div.* 1.29; *Att.* 4.13.2; Dio 39.39; App. *B Civ.* 2.3.18. There is some disagreement over whether some of the omens and imprecations attributed in the ancient sources to the opponents of M. Licinius Crassus in 53 actually belonged to those of an earlier Crassus: see A.M. Ward, *Marcus Crassus and the Late Roman Republic* (Columbia: University of Missouri Press, 1977), 285.

⁷¹ Cic. *Att.* 4.17.

legislation had been passed illegally. But in a few years, those who tried to raise such objections were just as likely to be set upon. From both sides of the transaction, by cynically using religion to block elections and unwanted legislation, and by ceasing to accept such vetoes and responding with sneers and violence, the Romans themselves demonstrate that the significance of *obnuntiatio* had changed for them.⁷² One of the modern Pompeian biographers sums up the cynicism of the decade:

It was politics rather than piety which kept the imaginations of tribunes and augurs alert for signs of heavenly displeasure on election days, and it was jobbery rather than justice that swept the candidates in and out of courts on charges of which the accusers were as guilty as their defendants.⁷³

4. Violence and Gangs

Political violence in the late Republic is well-attested in the ancient sources and is the most-explored aspect of its fall in modern literature. The final two decades saw a rise not only in spontaneous violence, arising from urban conditions and popular frustration, but also in directed violence of a more organized variety, particularly during and after the tribunate of Clodius in 58 and his reorganization of the city into *vici* and *collegia*. This organized violence was increasingly directed against the elections in attempts to block the vote, intimidate the assemblies or simply to delay matters for an *interrex*. Violence

⁷² Taylor (*Party Politics*, 82) observes that the use of the auspices had an interesting side effect: elections for aediles and tribunes were more regularly elected, while those of the higher magistrates were more often blocked.

⁷³ P. Greenhalgh, *Pompey: the Republican Prince* (Columbia, Mo.: University of Missouri Press, 1982), 71.

escalated in the 50s, reached a crescendo in 52, then receded briefly before the outbreak of the Civil War.

The mere existence of what Lintott refers to as a “physical element” of Roman politics was not, by itself, abuse.⁷⁴ As he notes, notions involving the use of force were different in the Republican culture than our own; there was an element of “self-help” concerning justice at the level of the individual and the family, and a common understanding that force justified force: *vim vi repellere licet*.⁷⁵ There was a corresponding physical component in the Roman practice of government, from the placement of the curule chairs, to the bench of the tribunes, to the bodily actions of the players – to block something, you did it in person. The drama of the Republic was played out in a physical space and in physical actions, in and in front of the Curia, in the Comitium, in the Forum, at the temple of Castor and Pollux, and on the Campus Martius. In 62, Cato prevented the reading of a proposal to recall Pompey by the simple expedient of clasping his hand over the mouth of the reader.⁷⁶ In 55, as we have seen, Trebonius locked opponents of his measure in the Curia. On several occasions tribunes exercised their right of interposition quite literally, setting their chair in front of the prison, the Carcer, either to prevent someone from being put in, to prevent someone from being let out, or protect someone inside. When the supporters of Caesar and Pompey drove Bibulus from the Forum in early 59, they employed the common tactic of destroying his *fascēs*, the physical embodiment of the consular authority.⁷⁷ “As was to be the case

⁷⁴ Lintott, *Violence*, 70.

⁷⁵ Lintott, *Violence*, 4, 11.

⁷⁶ Plut. *Cat. Min.* 28.1; Dio 37.44; Suet. *Iul.* 15.

⁷⁷ Dio 38.6.

throughout the 50s,” Millar notes, “physical domination of the Forum became a crucial weapon in politics.”⁷⁸

As a result, part of the modern debate over violence in the late Republic deals with whether it was a normal part of life, even in the final years, rather than a harbinger of collapse. Gruen, particularly, contends that the latter period of violence did not reflect an overall instability in the state, because it was largely staged by an organized minority rather than reflecting broad dissatisfaction.⁷⁹ This somewhat misses the point. The defining characteristic of late Republican violence, staged or not, was that it was employed to thwart the operation of constitutional government. The presence of organized *collegia* operating with precisely that goal in mind was no less damaging, and no less a disruption to the elections.

Although it is somewhat artificial to segregate election violence from the rise of violence in general, the evidence for elections still shows the same pattern of escalation. At time of violence surrounding the tribune L. Appuleius Saturninus in 100 it was still a novelty: the murder of the candidate Memmius shocked the state and forced Marius to move against his Clodius-like associate. One result was the killing of Glaucius, an illegal but insistent candidate.⁸⁰ Eighteen years later Sulla, who had seized the state by force, dealt with an unwanted candidate for consul by a similar expedient.⁸¹ With the memory of the Sullan regime still fresh, the state was eager to give Pompey his dispensation from the laws to become consul in 70. In addition to Pompey’s virtues, Plutarch reminds us

⁷⁸ Millar, *Crowd*, 125.

⁷⁹ Gruen, *Last Generation*, 444.

⁸⁰ Cic. *Rab. Post.* 20.27; *Leg.* 2.6.14; *Livy Per.* 69; *Oros.* 5.17.4-10.

⁸¹ *Plut. Sull.* 33.

there was fear of what he might do otherwise with his army.⁸² Violence and murder preceded the consular elections of 67. On the day of the assembly the citizens employed physical threats against the consul C. Calpurnius Piso unless he accepted the candidacy of M. Lollius Palicanus. Further violence ensued on the last day of the year when the tribune C. Manilius forced through his legislation redistributing the votes of the freedmen among the tribes.⁸³

We do not know the extent to which all these earlier instances of violence were “organized,” but the dynamic of violence in the Republic changed dramatically in the 50s with Clodius. The senate had tried to rein in the influence of organized gangs (*collegia*) in the previous decade.⁸⁴ Clodius not only brought about a law permitting their existence, but actively organized the city into new *vici* and *collegia* of his own.⁸⁵ This put him effectively in control of the city: Clodius was now “patron of the urban population,” as Lintott puts it.⁸⁶ A modern survey of the use of rumor and the role of communication in Republican Rome describes the *collegia* as an “information system” that allowed Clodius to put his spin on affairs out to the population.⁸⁷ Soon a network of counter-gangs was organized by Clodius’ opponents, notably Milo and Sestius. Much of the violence of the remainder of the decade was generated between these two poles.⁸⁸

⁸² Plut. *Pomp.* 21.

⁸³ See Dio 36.39.1 for the elections; 36.42 for Manilius.

⁸⁴ Cic. *Planc.* 36-7.

⁸⁵ Asc. 7C; Cic. *Red. sen.* 13.33; *Sest.* 25.55; *Pis.* 8-9; Dio 38.13.1; Plut. *Cic.* 30.

⁸⁶ Lintott, *Violence*, 82.

⁸⁷ R. Laurence, “Rumor and Communication in Roman Politics,” *G&R*, 2nd Ser. Vol. 41, No. 1 (Apr. 1994), 62.

⁸⁸ See Caes. *B Civ.* 3.21 on the counter-gangs.

In 57, Milo responded to Clodian violence by having the elections delayed (Clodius had already announced his candidacy for aedile for 56).⁸⁹ The following year, the senate was outraged at the tactics of Pompey, Crassus and Caesar to have the elections delayed for their rigged consulship. Cato tried to whip up public opinion in the Forum. Clodius, operating on the side of Pompey, stormed the senate and might have been killed by the knights had not an angry mob interceded on his behalf, “bringing fire and threatening to burn his oppressors along with the senate-house if they should do him any violence.”⁹⁰ Thus Clodius was spared and the elections were delayed after all. When the defiant Domitius (at Cato’s relentless urging) refused to withdraw his candidacy, despite the open secret that the consulship for 55 was reserved for Pompey and Crassus, he was set upon in public and one of his torch-bearers murdered. The triumvirs sealed the deal by surrounding the assembly with armed men.⁹¹ When elections were held later in 55 for aediles the violence continued and several deaths resulted; Pompey was unharmed, but the violence came so close to him that his clothes were wet with blood.⁹²

No elections were held in 54 for 53 because of a variety of bribery scandals, and no magistrates took office until late in the year. Immediately the convulsions began over elections for 52, in which Milo was standing for consul and Clodius for praetor. On the voting-day Clodius and his supporters stormed the assembly and were repelled by Milo’s forces. Subsequent attempts to hold elections either were delayed or ruined by violence.

⁸⁹ Cic. *Att.* 4.3.

⁹⁰ Dio 39.28-29.

⁹¹ Events related in App. *B Civ.* 2.17; Cic. *Att.* 4.8[a]1-2; Dio 39.31-32; Plut. *Crass.* 15; *Pomp.* 51-54; *Cat. Min.* 41.

⁹² App. *B Civ.* 2.17; Dio 39.32; Plut. *Cat. Min.* 42; *Pomp.* 53. Plutarch says the sight of Pompey’s bloody clothes sent his loving wife Julia (Caesar’s daughter) into shock and miscarriage.

During the frequent fighting, the consuls were assailed on the Via Sacra and one of them, Calvinus, was even wounded.⁹³ Plutarch describes events:

Often, before an election was over, the place where it had been was stained with blood and defiled with dead bodies, and the city was left with no government at all, like a ship adrift with no one to steer her.⁹⁴

And so the year 52 opened without magistrates. When an *interrex*, Lepidus, could be appointed, supporters of Clodius stormed his home and demanded an election be held before it could next be legally called.⁹⁵ On January 18, 52 B.C., the forces of Milo and Clodius met on the Appian Way and Clodius was killed. His supporters rioted in the Forum; the fires spread from the pyre and burned down the Curia. The conscript fathers had had enough. The senate, with even Cato's consent, appointed Pompey sole consul. Among Pompey's first acts were a series of laws *de vi* that brought matters under control, until the greater violence to come in 49.⁹⁶ Says Lintott: "The transition from fighting in the streets to fighting with armies in the field is essentially one of scale."⁹⁷

It is difficult to see how a rising tide of electoral violence in the late 50s that finally led Rome to delay elections several years in a row, and to abrogate a nearly 500-year-old tradition of dual consulships, can be considered a normal course of events. Violence had become the accepted way of achieving desired ends. In an interesting interdisciplinary

⁹³ See Asc. 30-31C for the violence in general; Asc. 48C and Cic. *Mil.* 40-42 on the storming of the *comitia*; Asc. 48C and Dio 40.46 for the wounding of the consul Calvinus.

⁹⁴ Plut. *Caes.* 28.

⁹⁵ Asc. 43C; Dio 40.48.

⁹⁶ Asc. 31C; Plut. *Cat. Min.* 47; *Pomp.* 54; Cic. *Mil.* 5.13, 6.15, 26.70, 29.79; Dio 40.49.

⁹⁷ Lintott, *Violence*, 1.

study of “collective behavior” in the late Republic, P. Vanderbroeck reaches this conclusion about violence:

Because politicians regularly turned to the people in order to pursue an opposition policy against the senatorial majority, because precedents were constantly established, because violence was accepted as a political means, and because the same behavioral patterns constantly repeated themselves, a conventionalization occurred: collective behavior received a regularized and repetitive character in the political process and deviated from existing norms of accepted collective behavior, such as existed, for example, in the popular assemblies.⁹⁸

Brunt takes note of the fact that the late Republican violence was used across the board and did not originate from a single sector of society.⁹⁹ Lintott agrees that the violence of the period stemmed not from one man’s domination, but from “conflict and near-anarchy” that arose directly from the loss of faith in institutions.¹⁰⁰ Electoral violence in the Republic had become the norm, not the exception. It was perfectly natural that, as Suetonius tells us, the original plan of the conspirators against Caesar was to murder him as he presided over an election.¹⁰¹

⁹⁸ P.J. Vanderbroeck, *Popular Leadership and Collective Behavior in the Late Roman Republic, ca. 80-50 B.C.* (Amsterdam: J.C. Gieben, 1987), 162. Vanderbroeck cites 92 instances of collective behavior known from the sources for the period, 62 of which involved force or violence. In 37 of the 62 cases, some organization behind the violence was involved. For the statistics, see 146, 151.

⁹⁹ Brunt, “The Roman Mob,” *P&P* No. 35 (Dec. 1966), 21.

¹⁰⁰ Lintott, *Constitution*, 213.

¹⁰¹ Suet *Iul.* 80.

5. Bribery and Electioneering Abuses

Bribery and electioneering laws date to the early Republic. Livy tells us that in the year 432, the tribunes passed a law against the practice of candidates of whitening their togas, which was associated with the abuses involved in canvassing for votes.¹⁰² There were laws against bribery passed in 358, 314 and 181, the latter carrying a penalty of 10 years' disqualification from office, and yet further legislation against bribery (*ambitus*) in 151. As these laws continued to be passed until the end of the Republic and even under Augustus, their effectiveness can reasonably be questioned.¹⁰³ The increase in the number of praetors to six in the year 197 only increased the competition for consulships, and hence the role of bribery and electioneering. Marius was accused of bribery; so was Sulla.¹⁰⁴ And yet, in a pattern familiar by now, the abuse of electoral bribery grew worse and worse over the final century, and especially in the last two decades of the Republic. Allegations of bribery surfaced in almost every year between 67 and 50 B.C.¹⁰⁵

As to what precisely constituted the crime of *ambitus*, even the Romans were not always sure. Direct payments in exchange for votes was a clear-cut violation – but candidates always danced around the laws with goodwill payments to ward-healers (*divisores*) and with generous public dinners, games and exhibitions and other

¹⁰² Livy 4.25.3.

¹⁰³ Livy 7.16, 9.26, 40.19; *Per.* 47. The term *ambitus* has a descendant in modern practice: In the ward-heeler tradition of U.S. politics, the distribution of money at the local level to curry the favor of voters and local bosses is known in some regions as “walking-around money.”

¹⁰⁴ Plut. *Mar.* 5; *Sull.* 5. Marius' offense supposedly was having a henchman inside the voting area; he said he was merely thirsty and asking for water. Marius was acquitted. Plutarch says Sulla bought his praetorship, which explains the *bon mot* of the young Caesar when Sulla threatened him with his authority: “Considering that you bought it, you are absolutely right to call it your own.”

¹⁰⁵ For the pressure resulting from more praetors, see A. Lintott, “Electoral Bribery in the Roman Republic,” *JRS* Vol. 80 (1990); for the increased frequency of bribery prosecutions, 8.

extravagance. Cicero as consul in 63 brought about a law forbidding public games and exhibitions by candidates, even well in advance of their announcement for office, unless they had been directed to do so in a will.¹⁰⁶ Lintott, in his survey of Republican bribery, jokes that “bribe” was an irregular verb conjugated thusly: “I take care of my friends, you are recklessly generous, he bribes.”¹⁰⁷ In the present-day debate over just how democratic the Republican system was, advocates for the power of the *populus* cite the necessity of electoral bribery as evidence that the voters had to be courted.¹⁰⁸

The period 67-60 begins with a *lex Calpurnia* against bribery, forced upon the consuls Piso and Manius Acilius Glabrio by the senate as an alternative to a more radical popular measure.¹⁰⁹ The law was used to prosecute the winning candidates of 66, including the younger Sulla; their victories were nullified and new elections were held.¹¹⁰ Catiline, too, was caught up in the law and his first candidacy for consul was blocked.¹¹¹ In 63 Caesar racked up such enormous debts for bribery in his quest to become *pontifex maximus* that he warned his mother on the day of the vote he would come home that evening either successful, or not at all.¹¹² The elections of 63 for 62 were riddled with bribery allegations; in one assessment the candidate Servius Sulpicius Rufus “had the disadvantage of being an honest man” who spent more time trying to prove charges

¹⁰⁶ Cic. *Mur.* 2.3, 3.5, 23.47, 32.67.

¹⁰⁷ Lintott, “Bribery,” 11.

¹⁰⁸ See especially Yakobson, “*Petitio*,” 11 and 35. Yakobson’s argument is based in part on his contention that rich-poor division in the centuriate assembly was not as pronounced as often assumed, hence solving the mystery of why even “rich” men could be bought. Lintott (*Bribery*, 11), trying to square bribery with the previous model of patron-client relations, proposed that bribery was more an attempt to court the middlemen of the system and to enhance the prestige of the *optimates* in competition with each other.

¹⁰⁹ Dio 36.38.

¹¹⁰ Sall. *Cat.* 18; Suet. *Iul.* 9; Asc. 74C, 88C; Cic. *Sull.* 11, 49-50, 81.

¹¹¹ Sall. *Cat.* 18.

¹¹² Suet. *Iul.* 13.

against his rivals than winning election.¹¹³ Crassus is accused by Cicero of bribing the jurors to acquit Clodius in his trial in 62 on charges that he had defiled a religious occasion, and Pompey spent heavily “among the tribes” to win a consulship for his legate L. Afranius in 61.¹¹⁴

The consulship of Caesar in 59 was purchased with the money of his rich running mate L. Lucceius, with a certain Q. Arrius, a partisan of Crassus, as the bagman.¹¹⁵ Unfortunately for Lucceius, the other side managed to split the ticket and bring about the election of Bibulus as Caesar’s colleague, relying heavily on bribery as well – even Cato justified the practice as a necessary evil.¹¹⁶ The first triumvirs took the consulship for Pompey and Crassus in 55 by cabal rather than purchase, but once in office they took measures to make sure bribery occurred only in their favor. They blocked efforts by Cato to delay the inauguration of the elected praetors so they could be prosecuted.¹¹⁷ Cicero says Pompey’s ploy of holding unexpected elections for aedile was meant to forestall bribery, and during the year Crassus brought about his own *lex Licinia* to crack down on electioneering.¹¹⁸ Ward, in his book on Crassus, says it all was calculated and the triumvirs were simply trying to restrict the ability of their opponents to maneuver against them: “They had the resources to circumvent their own electoral ‘reforms’.”¹¹⁹

The year 54 was a veritable Super Bowl of electoral payoffs. All four of the consular candidates were eventually prosecuted and the elections for 53 were delayed well into the

¹¹³ Ward, *Crassus*, 170; Cic. *Mur.* 43-49 for the campaign.

¹¹⁴ Cic. *Att.* 1.14; Plut. *Pomp.* 44. Clodius’ offense was sneaking into Caesar’s home disguised as a woman during an all-female religious observance.

¹¹⁵ Cic. *Att.* 11.1.

¹¹⁶ Suet. *Iul.* 19.

¹¹⁷ Cic. *Q Fr.* 2.7.

¹¹⁸ Cic. *Planc.* 49; Dio 39.37.1.

¹¹⁹ Ward, *Crassus*, 272.

next year. Bribery was so rampant and money flowed so freely that in July 54, interest rates rose in the city.¹²⁰ In early August the cat was out of the bag: one of the candidates, Memmius, confessed to a plot involving a fellow candidate and the sitting consuls to reward the *centuria praerogativa* the sum of 10 million sesterces for its vote.¹²¹ The senate voted for an inquiry; a tribune blocked it; the senate postponed the election while it took its case for an inquiry to the people; a tribune vetoed it again. The senate called the election anyway, resulting in another veto.¹²² Elections for 53 finally were held halfway through that year. For the following election for 52, at least, there would be no need for bribery to determine the winner – the murder of Clodius, riots in the city and the sole consulship of Pompey took care of that. Not surprisingly, one of his first acts after taking power was a widely praised, harsh crackdown on further electoral bribery.¹²³

In its final two decades the Republic tried to restrict the abuses of *ambitus* with legislation in 67, 63, 55 and 52, but the practice continued unabated, if not even more brazenly. “The multiplication of senatorial decrees and laws on corruption,” Brunt concludes, “is alone proof that evil was rampant.”¹²⁴ Gruen argues that the frequency of laws and prosecutions do not signify growing instability:

Can one be sure that the late Republic sinned with greater frequency in this area than did earlier periods? Prosecutions *de*

¹²⁰ Cic. *Att.* 4.15.7; *Q Fr.* 2.14.4.

¹²¹ Cic. *Att.* 4.17, *Q Fr.* 2.15.4, 2.16, 3.1.

¹²² Cic. *Att.* 4.17; *Q Fr.* 3.2.3; 3.3.2. The precise sequence of events of 54 must be inferred from Cicero’s correspondence. For a proposed reconstruction see G.V. Sumner, “The *Coitio* of 54, or Waiting for Caesar,” *Harv. Stud.*, Vol. 86 (1982), 137-138. Sumner speculates that Memmius confessed because he still hoped to gain power via Caesar.

¹²³ App. *B Civ.* 2.23.87; Cic. *Att.* 10.4.8, 13.49.1; Vell. Pat. 2.47.

¹²⁴ Brunt, *Fall*, 426.

ambitu do not prove it. They were generally inspired by politics rather than moral indignation.¹²⁵

But his point that bribery prosecutions “were generally inspired by politics” does not matter – whether the prosecutions were “political” or not, they existed, and disrupted the fabric of the annual elections to the point of abandonment of the constitution.

6. Prearranged Results, Cabals and Conspiracies

The conspiracy of Catiline to take control of the state in the 60s was traced by Sallust back to the corrupting effects of Sulla’s reign.¹²⁶ Sallust blamed Sulla for teaching the post-Marian plebeian army indulgence, greed and degradation, and said that Sullan veterans were among those eager for civil war to erase their debts. Catiline invoked Sulla’s victories in his exhortations to his followers.¹²⁷ While Sallust’s allegations of what some scholars call a “first Catilinarian conspiracy” in 66 are disputed,¹²⁸ at any rate Catiline’s bids for the consulship in 65 and 64 were blocked, and in the elections for 63 he was defeated and began his efforts in earnest.¹²⁹ During this time Caesar and Crassus, too, have been accused of plotting to seize power, but either such a plot did not exist or nothing came of it.¹³⁰ (Gruen contends that Catiline’s conspiracy was not a real threat to

¹²⁵ Gruen, *Last Generation*, 160.

¹²⁶ Sall. *Cat.* 5.6.

¹²⁷ Sall. *Cat.* 21.4, 16.4, 21.4.

¹²⁸ Goldsworthy (*Caesar*, 111) says the first conspiracy did not exist, and Ward labels it an outright fiction. *Crassus*, 145.

¹²⁹ Asc. 94C; Sall. *Cat.* 21-24.

¹³⁰ Suet. *Iul.* 9; Plut. *Crass.* 13.

the state, and in fact made it stronger, by bringing together the leading elements of the *res publica* to oppose him.¹³¹)

Events at the end of the 60s were driving Pompey, Crassus and Caesar into each others' arms. Pompey, on his way back from his eastern victories, was reduced to bribery and arm-twisting from afar to arrange the election of his legate Afranius as consul in the elections of 61 for 60.¹³² After all his service to the state, Pompey was bitter that the senate rejected his proposed settlement of the east and would not provide land for his veterans. Crassus was equally chagrined at his failure to reduce the price of the contract for the tax-farmers who were his clients. Caesar, having completed his term as praetor, was serving in Spain and was desperately eager to achieve his first consulship *suo anno*, as soon as he was eligible by age, befitting his sense of *dignitas*. As a result of the pact, Caesar was elected consul for 59 and his legislative program included relief for his fellow triumvirs.¹³³ According to Cicero, at least some of these measures were passed contrary to the *lex Caecilia Didia* of 98 B.C., which had confirmed the prohibition on considering legislation within a *trinundinum* of the election.¹³⁴ Despite their efforts, however, they were unable to keep Bibulus from delaying the elections for 58, nor to have their preferred candidate chosen. They settled for substitutes, one being Caesar's new father-in-law by a convenient political marriage.¹³⁵

¹³¹ Gruen, *Last Generation*, 431. He finds agreement from another scholar who says that "Catiline's putsch" has gained from Cicero and Sallust "a notoriety in succeeding ages which it does not really deserve." See M. Fuhrmann, *Cicero and the Roman Republic* (Oxford: Blackwell, 1992), 68.

¹³² Plut. *Cat. Min.* 30.5; *Pomp.* 44.3-4.

¹³³ Plut. *Caes.* 46 for the disrespect to Pompey and Caesar's ambition; Dio 38.4 on relief for the tax-farmers; App. *B Civ.* 2.13 for ratification of Pompey's settlement and the tax measure.

¹³⁴ Cic. *Att.* 2.9.

¹³⁵ See Cic. *Att.* 2.21 on Pompey's unsuccessful speech against the delay; *Att.* 2.5.2 on the triumvirs' preferred candidate.

In 56, according to our sources, the three partners renewed their pact in the coastal city of Luca, with a large part of the senate in attendance.¹³⁶ Crassus and Pompey would become consuls in 55 and Caesar's command in Gaul would be renewed for another five years. As we have seen, engineering the election required the delay for the rest of 56 to get rid of an uncooperative consul, and violence to persuade Domitius to drop out, but in the end it was successful.¹³⁷ In addition Caesar's price to his colleagues was to force Cicero to drop any attempt to revisit Caesar's agrarian law, passed during his term as consul in 59. Cicero complied, rationalizing his decision in a letter.¹³⁸ Meanwhile, the consuls over the rest of the year cooked the praetorian elections for 54 and arranged their post-consular commands with the help of the *lex Trebonia*.

For the purposes of our analysis, the significance of Luca is the unusual directness with which control of the state was brokered. The sources do not say that Pompey and Crassus would *stand* for consulships, that they would enter the field of candidates, that they would canvass, but simply that they would *be* consuls for 55. Even the first consulship acquired by the triumvirate, that of Caesar in 59, at least required competition. Pompey had to exert himself for Afranius in 61 for 60; neither could the partners rig the elections entirely as they pleased for 58. But by the middle of the decade they were able to barter the consulship at their own terms.

The importance of Luca, and the degree of control exercised by the triumvirs, is disputed by modern scholars who say either the original sources have exaggerated or

¹³⁶ Plut. *Caes.* 21; *Crass.* 14; Plutarch further reports that there were 200 senators and 120 *fascēs* at the conference: *Pomp.* 51.

¹³⁷ App. *B Civ.* 21.7; Cic. *Att.* 4.8a.1-2; *Q Fr.* 2.4.6; Dio 39.37-41; Plut. *Cat. Min.* 41; *Caes.* 21; *Crass.* 15; *Pomp.* 51;

¹³⁸ Cic. *Fam.* 1.9.

misinterpreted the event. They cite the failure of the triumvirs to control the elections for 57, 56, 54 and 53. W.C. Grummel further says that the elections of 59 demonstrated the dynasts were not in control of the state.¹³⁹ R. Seager describes Luca as “a fantasy” and argues that the effort to which Pompey and Crassus had to go to block Cato’s election in 55 demonstrates their lack of control.¹⁴⁰ J.F. Lazenby says that Dio’s silence about any such deal disproves the “Luca legend” and he constructs his own, speculative alternative motives based on the difficulties Caesar was facing in the war in Gaul.¹⁴¹ Gruen calls the significance of the first triumvirate “a modern construct” and states that it “made no fundamental change in the constitutional structure.”¹⁴²

And yet, the fact that Appian and Plutarch describe Luca – let alone that Cicero describes it with much chagrin in his correspondence – certainly shows that *something* happened there. The argument that the triumvirs failed to control the elections of 57, 56, 54 and 53 entirely overlooks the possibility that they did not need to. After all, in 58 both Pompey and Crassus had gotten what they wanted; there were unthreatening consuls in office and Clodius on hand to fight rearguard actions in defense of the Caesarian legislation.¹⁴³ Their program and Caesar’s command in Gaul was a *fait accompli*. When

¹³⁹ W.C. Grummel, “The Consular Elections of 59 B.C.,” *CJ*, Vol. 49, No. 8 (May 1954), 351. And yet one consul for 58, Gabinius, was inoffensive at best, and the other, Piso, was Caesar’s father-in-law.

¹⁴⁰ Seager, *Pompey*, 127-128.

¹⁴¹ J.F. Lazenby, “The Conference at Luca and the Gallic War,” *Latomus*, XVIII (1959), 72-74. Lazenby is taken to task by another scholar for arguing based on the silence of Dio, who says only (39.26) that Pompey sought an electoral alliance with Crassus. See Colm Luibheid, “The Luca Conference,” *C Phil.* Vol. 65, No. 2 (Apr. 1970), 93.

¹⁴² Gruen, *Last Generation*, 101.

¹⁴³ The extent to which Clodius was a puppet of the triumvirs or his own independent agent also has been the subject of debate. Gruen challenges the view that the triumvirs would have supported Clodius’ *collegia* and other parts of his legislative program, with concurrence from Lintott. But Marsh sees the Clodian violence as a deliberate tool by Caesar to drive Pompey to Luca. See E.S. Gruen, “P. Clodius: Instrument or Independent Agent,” *Phoenix*, Vol. 20, No. 2 (Summer, 1966), 123-130; Lintott, *Violence*, 196; and F.B. Marsh, “The Policy of Clodius from 58 to 56 B.C.,” *CQ* Vol. 21, No. 1 (Jan. 1927), 36.

events turned against them in 56 and Cicero dared to threaten the land law, they took action to remove that threat and took the chance to arrange matters again for the ensuing years – by 54 all three again had the commands they wanted, and they did not have the magistrates (e.g., Cato) they *didn't* want. The argument of Seager that Pompey's *obnuntiatio* against Cato in 55 indicates a lack of control is surely weakened by the fact that Pompey was using it to control the election.¹⁴⁴ Lazenby's speculation that with Caesar under fire in Gaul, Pompey saw a chance to double-cross him, and that Crassus tagged along, has no evidence to support it.¹⁴⁵ Besides, to borrow Lazenby's tactic of arguing based on the lack of evidence, if the triumvirs had tried and failed to impose their will on other elections during the decade, we would have heard of such a noteworthy failure in the sources. Finally, Gruen's observation that the first triumvirs made no "fundamental change" in the constitutional structure is answered by the fact they did not need to. Once it suited their purposes, in 52 for Pompey, and in 49 for Caesar, both proved willing to innovate. If the conspiracy of Catiline showed for Sallust the damage Sulla had done to the Republic, the consulships of 59 and 55 show for us how its electoral mechanism could be brought within the power of willful men.

7. Usurpation of Constitution Roles

Among the various usurpations of constitutional roles in the late Republic were the removal of elected magistrates, abrogation of their power, attempts by the senate to

¹⁴⁴ Seager, *Pompey*, 127.

¹⁴⁵ Lazenby, "Luca," 74.

nullify the assemblies and vice-versa, and finally the abandonment of electoral form altogether with the sole consulship of Pompey. In 133 B.C., Tiberius Gracchus decided to have an obstructing fellow tribune, C. Octavius, removed by a vote of the popular assembly. Plutarch tells the story with drama: after acquiring 17 of the necessary 18 tribal votes, Gracchus stopped the voting and entreated Octavius to relent. When he would not, the deciding vote was cast, and the tribune was physically pulled down from his bench. Plutarch called the removal “neither just nor moderate.”¹⁴⁶ This was an important event, for it introduced the doctrine that office in the Republic had no independent value or authority in its own right – only compliance with popular demands qualified the occupant for continued tenure.¹⁴⁷ “Gracchus’ deposition of Octavius could be assailed as a violation of tribunician sacrosanctity,” Brunt observes, “but he could reply that a tribune who maimed the assembly by robbing it of its freedom to vote was no true tribune.”¹⁴⁸ Vanderbroeck concurs with the significance of the precedent:

The power of the magistrates was no longer accepted or considered legitimate merely on the basis of their election, but only if coupled with proper behavior. If that was not the case, the magistracy was not to be replaced, but the individual, irrespective of possible constitutional implications.¹⁴⁹

The ultimate act of “removal,” of course, came when the *optimates* had Tiberius killed, as well as his brother Gaius a decade later.

¹⁴⁶ Plut. *Ti. Gracch.* 15.

¹⁴⁷ Contrast this to the principled attitude of Cato, who, although he despised Clodius, was dismayed at Cicero’s attacks on the integrity of Clodius’ actions as tribune. Dio 39.22.1; Plut. *Cat. Min.* 40.2; *Cic.* 34.2.

¹⁴⁸ Brunt, *Fall*, 22. Botsford (*Roman Assemblies*, 367) calls it “a sweeping departure from custom.” Another author calls it “unprecedented” but “hardly illegal”: M.H. Crawford, *The Roman Republic* (Cambridge: Harvard University Press, 1993), 109.

¹⁴⁹ Vanderbroeck, *Popular Leadership*, 149.

In 87 B.C., the consul Cinna was removed from office by his colleague and the senate. He went to Capua and stirred up supporters with sentiments which, despite his offenses, were nonetheless reasonable questions about the sanctity of elections: “What need is there that we should solicit the favor of the tribes in the elections hereafter? What need have we of you? Where will be your power in the assemblies, in the elections, in the choice of consuls?”¹⁵⁰ In 67, when the people were demanding a special command for Pompey to relieve the grain supply from pirates (hunger being the best political argument), a tribune named Trebellius stood in the way. But the proposer of the command, A. Gabinius, employed the method Gracchus had used against Octavius. This time, the opponent backed down once the 17th and penultimate vote for his removal was counted.¹⁵¹ And when the consul Piso allegedly was sabotaging Pompey’s anti-piracy efforts, the same Gabinius drew up a measure for his removal as well, but was restrained by Pompey.¹⁵² Five years later, the senate “suspended” the praetor Nepos for pressing Pompey’s recall to Rome. According to Suetonius, Caesar as praetor and one of the tribunes were suspended by the senate as well for pushing “inflammatory” legislation. When citizens angry with his suspension surrounded his house, Caesar calmed them, which won him good will and his reinstatement.¹⁵³ After this spate of removals practiced by tribune against tribune, consul against consul, and senate against magistrate, the attempts abated, but the possibility remained.

¹⁵⁰ App. *B Civ.* 1.8.65. Also for the removal, see Livy *Epit.* 79; Plut. *Mar.* 41; Vell. Pat. 2.20.3.

¹⁵¹ Dio 36.30.

¹⁵² Plut. *Pomp.* 27.

¹⁵³ Suet. *Iul.* 16. Dio 37.43 gives a slightly different account, saying that Caesar was not suspended because he had seen the example of Nepos and restrained himself.

A more indirect route at nullifying the role of elections was to make their winners powerless. One of Sulla's most important changes was to strip the 10 tribunes of most of their powers and their right to seek further office (the latter a measure intended to cut down on demagoguery). Sulla, meanwhile, revived the office of dictator on his own terms, with unlimited power and term, and immunity for his actions.¹⁵⁴ The only check on Sulla was Sulla, who rearranged the state to his liking, murdered his opponents – and then benignly resigned.¹⁵⁵ After a decade of agitation, Pompey and Crassus as consuls in 70 had the full power of the tribunes restored.¹⁵⁶ E. Badian describes the Republican tribunate as a “monster” that acquired its role in the government “by a series of historical accidents.”¹⁵⁷ For the rest of the Republic the elected tribunes and the senate tried to use their powers to circumvent each other. The assemblies seized the power to award the extraordinary commands of the late Republic, which allowed the dynasts to build their personal power.¹⁵⁸ The senate, in turn, claimed the power to declare various acts of legislation invalid, often on the grounds they had been passed by force (*de vi*).¹⁵⁹ Lintott calls this doctrine of annulment “essentially a political weapon of the *optimates*.”¹⁶⁰

¹⁵⁴ App. *B Civ.* 100; Asc. 78C, Plut. *Sull.* 33.

¹⁵⁵ Plut. *Sull.* 35.

¹⁵⁶ Plut. *Pomp.* 21; Vell. Pat. 2.30.4;

¹⁵⁷ E. Badian, “*Tribuni Plebis and Res Publica*,” in J. Linderski (ed.), *Imperium Sine Fine: T. Robert S. Broughton and the Roman Republic* (Stuttgart: Steiner, 1996), 190, 208.

¹⁵⁸ For examples of extraordinary commands for Pompey: against the pirates by the *lex Gabinia*, Dio 36.23-24; Plut. *Pomp.* 25; for the following year vs. Mithridates with “kinglike power” (“Oh, these endless tasks!” he sighed), Plut. *Pomp.* 30; for command to ensure the grain supply in 57, Cic. *Att.* 4.1.6; Dio 39.9; Plut. *Pomp.* 49; for command in the west by the *lex Trebonia* after his consulship of 55, Plut. *Crass.* 15-16; *Cat. Min.* 43; *Pomp.* 52. Also, see for Caesar’s command for Gaul awarded by the *lex Vatinia* in 59, Dio 37.57; Plut. *Caes.* 14; Suet. *Iul.* 22. For Crassus’s command in the east by the *lex Trebonia*, see Plut. *Crass.* 15-16.

¹⁵⁹ For references to annulments, see App. *B Civ.* 1.12.51; Asc. 71-72C; Cic. *Leg.* 3.24; *Mil.* 72; Dio 30.36.2; Oros. 5.8.3.

¹⁶⁰ Lintott, *Violence*, 148.

But annulment was not the senate's only weapon. Increasingly at the end of the Republic it employed the declaration that the magistrates should take care "that the state come to no harm." Caesar describes this as "the extreme and ultimate decree,"¹⁶¹ and in modern usage it is widely labeled as the *senatus consultum ultimum*, as though it were an actual term used in the Republic.¹⁶² To Cicero, employing the decree against the Catilinarian conspirators, it was license for any and all measures, including summary executions.¹⁶³ Lintott observes that the decree becomes a substitute for the dictatorship in the late Republic, with troublesome ambiguity over how much *ius* can be based on *vis* "without ceasing to be *ius*."¹⁶⁴ Goldsworthy agrees that part of the breakdown of constitutional government was caused by the senate's overuse of the last decree.¹⁶⁵

This brings us to the climax of the abuse of the Republican constitution. After there were no elections in 54 because of bribery and violence, after the elections for 53 were not held until halfway through the year, after the elections for 52 were again delayed beyond January 1 and the state had no elected magistrates at all, and after the death of Clodius, riots in the Forum and the burning of the senate-house, the senate resorted to the last decree yet again.¹⁶⁶ Bibulus, that old enemy of Caesar, made the proposal in the senate that Pompey be named consul *sine collega*. Even Cato agreed the times justified it. Pompey was to conduct a levy and to name his consular colleague in two months' time –

¹⁶¹ Caes. *B Civ.* 1.5.3.

¹⁶² Millar, for example, argues that it had no existence as a legal entity. See F. Millar, "Popular Politics at Rome in the Late Republic," in I. Malkin and W. Z. Rubinsohn, eds., *Leaders and Masses in the Roman World. Studies in Honor of Zvi Yavetz* (Leiden, 1995), 92.

¹⁶³ Cic. *Phil.* 5.34.

¹⁶⁴ Lintott, *Constitution*, 90, 113.

¹⁶⁵ Goldsworthy, *Caesar*, 516.

¹⁶⁶ Cic. *Mil.* 72 and Dio 40.49.5 on the decree.

as long it was not Caesar.¹⁶⁷ Pompey quickly drew up legislation to crack down on violence and bribery. The remainder of the short life of the Republic was spent trying to negotiate a compromise between Pompey and the senate on the one hand, and Caesar and his army on the other, to save the state. It did not work.

The modern analysis of Pompey's sole consulship is divided. Fuhrmann calls it "a constitutional freak." Goldsworthy says it violated "the most fundamental principle of this magistracy." Taylor calls it "completely unconstitutional" and "a contradiction of the meaning of the office."¹⁶⁸ In contrast, among the modern authors on Pompey, Greenhalgh calls the arrangement "the essence of statesmanship" and Leach "a most ingenious compromise," while Seager cautions, "The significance of the appointment must not be exaggerated."¹⁶⁹ Defenders of the sole consulship generally argue that it was deliberately crafted to be distinct from a pure dictatorship of either the early-Republican or the Sullan variety. Their argument is that even as a sole consul, Pompey was more constrained than a dictator by the terms of office and other traditional limits on a consul's power.¹⁷⁰ Gruen contends that the measure had healthy Republican roots:

The recourse to emergency government possessed antecedents in Roman history. Indeed the antique institution of the dictatorship had existed for just such purposes; an interlude of authoritarianism until normal processes could be resumed. Pompey alone merited consideration for such a post.¹⁷¹

¹⁶⁷ Asc. 35C; Dio 40.49-50; Livy *Per.* 107; Plut. *Cat. Min.* 47; *Pomp.* 54; Suet. *Iul.* 26.

¹⁶⁸ Fuhrmann, *Cicero*, 120; Goldsworthy, *Caesar*, 347; Taylor, *Party Politics*, 149.

¹⁶⁹ Greenhalgh, *Prince*, 80; Leach, *Pompey*, 157; Seager, *Pompey*, 144.

¹⁷⁰ For an example of this line of argument, particularly on the consul's fixed term of one year, see R.E. Smith, *The Failure of the Roman Republic* (Cambridge: Cambridge University Press, 1955), 116.

¹⁷¹ Gruen, *Last Generation*, 153.

And yet, Gruen's book is named *The Last Generation of the Roman Republic* for a reason. There was simply no precedent for violating the core principle of collegiality of the dual consulship that had existed since the time of the first Brutus nearly a half-millennium before. The true dictatorship had been legitimate, a device *within* the constitutional framework that legally superseded consular authority. Not even the *de facto* monarchy of Sulla had lived up to that name. But the office created for Pompey in 52 was a new animal, a sight unseen in the entire history of the Roman Republic. It struck at the founding principle of the Republican government that had been instituted upon the overthrow of the kings – the principle that no lone man would ever wield unchecked power. The Republic's main bastion against despotism had been seriously weakened.

8. Procedural and Miscellaneous Abuses

We have evidence of a few other procedural and miscellaneous abuses of elections. Voting in elections, legislative assemblies and the courts had been converted from oral to written ballot in the late second century. This had a certain democratizing effect on voter choice, but also drove up the price of bribery. This switch involved the replacement of the oral vote-collectors (*rogatores*) with custodians (*custodes*) of the wax-tablet ballots (*tabellae*) and the collection baskets (*cistae*).¹⁷² It also presented a fresh opportunity for

¹⁷² See Cic. *Leg.* 3.17 on the *lex Gabinia* of 139 creating a secret ballot in elections. See also Taylor, *Voting Assemblies*, and Williamson, *Laws*, for timelines on the secret-ballot legislation between 139 and 107.

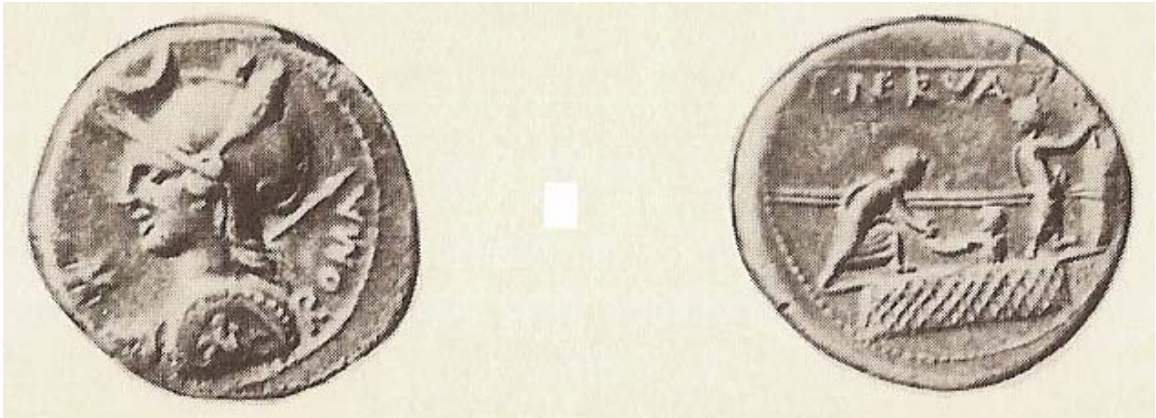


Fig. 1. *Denarius* with reverse depicting a voting scene. Voters receive their ballot and ascend the *pontes* to deposit them. (Late 2nd. cent. B.C.) Syd. 548; RRC 292/1.



Fig. 2. *Denarii* with voting themes on reverse. Top, a voter deposits a ballot marked V (*uti rogas*, or "yes") in a collection basket. Taylor 38; Syd. 935; RRC 413/1. Below, a ballot showing the options A-C (*absolvo, condemno*) used in the public courts. Syd. 917; RRC 428/1.

interference with the process. Marius therefore had the elevated walkways to the ballot-box (*pontes*) narrowed to prevent harassment and to promote privacy of the vote.¹⁷³ Nonetheless, Cicero relates the tactics of the Clodians in 61, in voting on whether to create a special court to try Clodius for the Bona Dea scandal. His supporters occupied the *pontes* and distributed ballots that did not give the option of voting “aye.” The young Cato protested and the *comitia* was delayed.¹⁷⁴

There may have been manipulation of the *centuria praerogativa*, the first unit to cast its vote in the centuriate assembly. It was given great importance by the Romans, roughly akin to our New Hampshire presidential primary. The *centuria praerogativa* was chosen by lot but there are suggestions the lot could have been arranged. Cicero says as much when he notes the choice of a friendly century to cast the first ballot in 59 on Caesar’s measure for relief for Crassus’ tax farmers. One could choose to believe, Cicero said, that the selection was a matter of chance -- or a matter of who was sponsoring the law.¹⁷⁵ Taylor also infers from an inscription known as the Tabula Hebana, which described voting procedure in the early Principate, that two of the four urban tribes were excluded from the lottery for the *centuria praerogativa*. This would have effectively pre-empted a large segment of the population from exercising its influence in an early vote.¹⁷⁶

Besides the incident in 61 involving Clodius, there are only a few indications of fraud, stuffing the ballot box or ballot tampering. One reason might be that the candidates were allowed to name their own *custodes* in addition to those chosen by the presiding

¹⁷³ Cic. *Leg.* 3.17.38; an indirect reference in Plut. *Mar.* 4-7.

¹⁷⁴ Cic. *Att.* 1.14.5: *operae Clodinae pontes occuparent; tabellae ministrabantur ita, ut nulla daretur VTI ROGAS.*

¹⁷⁵ Cic. *Planc.* 35: *utrum id sortis esse vis an eius qui illam ferebat.*

¹⁷⁶ Taylor, *Roman Voting Assemblies*, 92-93.

magistrate. The watchful Cato was among the *custodes* in an election for aedile in the late 50s, representing a candidate who was declared the loser. Cato examined the ballots, found that many had been executed “in the same hand,” and appealed to the tribunes, who reversed the result.¹⁷⁷ Varro portrays a conversation among a group of citizens waiting for election results. One supporter dashes off when he hears that one of the *custodes* representing his candidate has been caught stuffing the ballot-box.¹⁷⁸ Whether such practices were common, or whether they were hardly necessary in an age of violence, manipulation, illegality and bribery, Varro does not say.

Culmination, 69-50 B.C.

The constitutional irregularities of the final century of the Republic lead directly from the Gracchi to Marius, from Marius to Sulla, and from Sulla to collapse. After Sulla there was a marked acceleration of rule-bending, especially in the two decades before the civil war. The trend is clear in those two decades in each of the categories we have surveyed: in election delays or attempted delays (in 67, 63-61, 59, and then annually in 57-52); in abuse of the *lex annalis* and the *cursus honorum*; in the rise of religious obstruction (and the corresponding lessening of compliance with it); in bribery (almost annual prosecutions between 67 and 50, overturning some elections and blocking others altogether); in violence both organized and spontaneous; in power brokered by cabal or conspiracy; and in the usurpation of the constitutional powers of the magistrates.

¹⁷⁷ Plut. *Cat. Min.* 46.

¹⁷⁸ Varro, *Rust.* 3.

After this thematic survey, it is worth making a chronological recap of the climactic two decades:

71 B.C. – Pompey’s army approaches Rome as some in the city fear a coup. He is awarded dispensation from the *cursus honorum* to be consul for 70.

70 B.C. -- Pompey and Crassus are consuls. The restoration of the tribunes’ power opens a new era of constitutional strife. A *lustrum* updates the voting rolls and breaks up the old guard.

67 B.C. – The senate waters down *ambitus* legislation. Elections are delayed. Piso refuses the candidacy of Palicanus and is attacked. The assembly awards commands to Pompey, with violent resistance and threats of removal against a tribune and consul. C. Manilius attempts to redistribute the votes of freedmen, with resulting violence.

66 B.C. – The senate nullifies Manilius’ law on redistributing the freedmen. The winners of the consular elections, Sulla and Paetus, are convicted of *ambitus* and new elections held for replacements. Catiline is blocked from candidacy by bribery charges.

65 B.C. – Catiline’s candidacy again is blocked. This is the date of his alleged “first” conspiracy. Crassus is censor but does little.

64 B.C. -- Catiline loses the elections for 63. Cicero is elected. The senate restricts *collegia*.

63 B.C. – Caesar is elected *pontifex maximus* by bribery. Cicero is consul. Elections are delayed because of the plot of Catiline. The Catilinarian conspiracy ends in violence and executions. Cicero extends the penalties for bribery and restricts public displays by candidates. Bribery allegations in the elections are rampant. Sulpicius, the main accuser, is unsuccessful as a candidate.

62 B.C. – The senate suspends the praetors Nepos and Caesar but Caesar is reinstated. This is the date of the Bona Dea scandal of Clodius. There are riots and disturbances at proposals to recall Pompey. The elections are delayed at Pompey’s request.

61 B.C. – Clodius’ supporters occupy the voting *pontes* to issue rigged ballots on the question of his trial. Clodius is acquitted at his trial amid allegations of bribery. Pompey supports his legate L. Afranius for consul and distributes money “among the tribes.” Elections are delayed for another bill *de ambitu*.

60 B.C. – Caesar, Pompey and Crassus come to a political arrangement. Massive bribery occurs in the consular elections. Cato authorizes counter-bribery as a necessary evil. Caesar and Bibulus are elected.

59 B.C. – This is the year of the consulship of “Julius and Caesar.” Caesar passes his agrarian laws by force. Bibulus attempts a religious veto of legislation for the rest of the year. He delays elections until October. The *lex Vatinia* awards Gaul to Caesar,

58 B.C. – Clodius as tribune legalizes and organizes *collegia* and revises laws on *obnuntiatio*. Appius Claudius Pulcher switches races in the election. Violence occurs over the bill against Cicero. Cicero is exiled.

57 B.C. – Sestius’ *obnuntiatio* is resisted with violence. Cicero’s recall is passed with the provision that *ne quis de caelo servaret*. Milo, Nepos engage in trickery over an election *obnuntiatio*. Political attacks occur against the *lex Vatinia* as invalid. Elections are delayed again by Milo until November. Milo organizes counter-gangs. Pompey is voted a special grain command.

56 B.C. – The triumvirs confer at Luca and renew their pact. The elections are delayed until 55 for the benefit of Pompey and Crassus. Violence and protests occur. The senate puts on mourning garb.

55 B.C. – No magistrates are in office on Jan. 1, requiring the appointment of an *interrex*. Violence ends the candidacy of L. Domitius Ahenobarbus. Pompey, Crassus are elected consuls. Cato tries to block the praetors from taking office. Pompey hears thunder to block Cato’s election as praetor for 54. Sudden elections are held for aedile; Pompey is spattered with blood. A *lex Licinia* is passed to restrict electioneering. A *lex Trebonia* awards postconsular commands to Pompey and Crassus, with violence against an attempted *obnuntiatio*. Crassus departs early, ignoring the auspices and threatening the tribunes.

54 B.C. – No elections are held for consul because of bribery prosecutions and *obnuntiatio*. Massive bribery drives up interest rates. C. Memmius confesses to the plot to bribe the *centuria praerogativa*. Multiple prosecutions occur, with rampant rumors of an impending dictatorship.

53 B.C. – No magistrates are elected until July or August. Widespread violence occurs over the elections for 52; elections are not held this year. Dictatorship is proposed for Pompey, but Cato opposes it. Clodius assaults a voting assembly and is repulsed by Milo. The consuls are attacked in street and wounded.

52 B.C. – No magistrates are in office on January 1. A mob storms the house of the *interrex* to demand an illegal election. Clodius is killed on January 18, with resulting riots at Rome and the burning of the Curia. The senate passes a “last decree.” Pompey is made sole consul at the motion of Bibulus, with the consent of Cato, despite the violation of *lex annalis*.

E. Deniaux concludes that after 70 B.C., the electoral facade of the Republic crumbled: “Il semble que les années 70 marquent dans nos textes une sorte de rupture dans le développement de la brigue électorale.”¹⁷⁹ S. Demougin agrees, contrary to Gruen’s idea that the government remained stable and was ruined only by war: “La décadence progressive et inéluctable des assemblées populaires, comices centuriates et comices tributes, commença bien avant l’ultime guerre civile.”¹⁸⁰ Botsford opines that after the Sullan changes, the promagistracy allowed such a free range to ambitious individuals such as Pompey and Caesar that they began to overshadow the state.¹⁸¹

Gruen bases much of his argument for continued stability in the years 70-50 on the consular lists. His survey of consuls finds that 16 of 18 in the 70s descended from consular families, 17 of 21 in the 60s, 20 of 21 in the 50s. The “blue-bloods” were holding their own against the usurpers. Instead of presaging collapse, the election results of the 50s demonstrate to Gruen “the abiding strength” of a system that was not easily shaken.¹⁸² Gruen is supported by Ward:

¹⁷⁹ Deniaux, 294.

¹⁸⁰ S. Demougin, “Quo descendat in campo petitor. Élections et électeurs à la fin de la République et au début de l’Empire,” in *L’urbs: espace urbain et histoire, Ier siècle av. J.-C. – IIIe siècle ap. J.C.* (Actes du colloque international organisé par le Centre National de la Recherche Scientifique et L’École française de Rome, 8-12 mai 1985), 305.

¹⁸¹ Botsford, *Roman Assemblies*, 418.

¹⁸² See Gruen, *Last Generation*, 127-158, for analysis of the consular lists for these decades.

[I]t is clear that a fairly well-defined optimate group, linked together by birth, marriage, friendship, and loyalty to the Sullan constitution, maintained a strong grip on the consulship that could be broken only by an occasional turn of fortune or by the tenacious efforts of ambitious and resourceful individuals, such as Crassus, Cicero, Pompey, or, as in the elections of 60, Caesar.¹⁸³

And yet, the election of men of consular lineage does not necessarily prove that “stability” prevailed in the state. If we could, we might ask Bibulus about how stable his consulship of 59 was, or L. Domitius Ahenobarbus about 55. There were no “blue-bloods” elected in 54 because *no one* was elected. The same is true of 53 for 52, and then we come once again to the sole consulship. All roads lead to Pompey and Caesar.

Reaction, Acceptance and Rationalization

The Romans reacted strongly to the electoral abuses of the late Republic, which argues against the idea these usurpations were uncontroversial and routine political practice. Roman political leaders recognized the abuses as unusual and unacceptable. They frequently expressed the worry that the constitution was being torn apart. But over time they accepted the new lawless way of doing things, and there are several examples in the Republican’s final years of the *optimates* and the *populares*, the Caesarians and the Pompeians, the patricians and the urban plebs turning to the same methods they had condemned. They consciously rationalized that what they were doing was necessary to preserve the state against the evils of the opposing parties.

¹⁸³ Ward, *Crassus*, 34.

The decade of the 50s began with an interesting turn of popular opinion against the electoral pact made by Caesar, Pompey and Crassus that procured for Caesar the consulship of 59. Cicero, who claimed public opinion was expressed most honestly at public events,¹⁸⁴ relates a spontaneous display of hostility to the triumvirs at a theater performance that year. When Caesar entered, the crowd fell sullen and silent, only to burst into warm applause upon the subsequent entry of Curio, much to Caesar's annoyance. When an actor uttered the line, "By our misfortunes, you are great," the audience erupted with a prolonged ovation – the pun at Pompey's expense being more obvious in the Latin, *nostra miseria, tu es magnus*.¹⁸⁵ Cicero pronounced the state "utterly ruined" to Atticus and said it had traded despots who were popular with the masses and hated by the *boni* for masters now universally hated, and thus a far graver danger.¹⁸⁶ Cicero relates that over the summer of 59 Bibulus continued to enjoy "a wonderful reputation," despite his delay of the elections, while a pitiful Pompey and a frustrated Caesar were unable to move the crowd with their best oratory. Bibulus, meanwhile, hiding in his house, published daily "edicts" against the triumvirs that were posted in the streets and became quite popular with the public, sometimes containing risque references to Caesar's alleged same-sex dalliances with the king of Bithynia as a younger man. Besides the jest about the date being "the year of the consuls Julius and Caesar," Suetonius tells us of another popular witticism that made the rounds in 59:

¹⁸⁴ Cic. *Sest.* 106 describes the three locations he considered the best indicators of popular sentiment: *the comitia*, the *contiones* and the public games. One author notes that as the *comitia* had been less kind to Cicero lately, he was probably more disposed to accept the theater as the "real" *vox populi*: F.F. Abbott, "The Theatre as a Factor in Roman Politics under the Republic," *TAPA*, Vol. 38 (1907), 49.

¹⁸⁵ Cic. *Att.* 2.19.

¹⁸⁶ Cic. *Att.* 2.21.

The event occurred, as I recall, when Caesar governed Rome; Caesar, not Bibulus, who kept his seat at home.¹⁸⁷

In 56, with new attacks pending on the legislation passed under Caesar, the triumvirs renewed their agreement at Luca and had a tribune block the elections for the rest of the year. This resulted in public outrage, rioting and criticism from the consuls, and the entire senate took the unusual step of putting on mourning garb to protest.¹⁸⁸ After Pompey's high-handed dismissal of the assembly to block Cato's election there were violent public demonstrations and proposals to award Cato honors.¹⁸⁹ Crassus, too, was the subject of popular resentment because of the *lex Trebonia* giving him a command in the east, which was popularly recognized as a war arranged for his private benefit. Angry crowds attended his early departure from the city and tribunes and augurs cursed his enterprise; he threatened the tribunes with violence if they did not let him go.¹⁹⁰ As we have seen, public demonstrations and frequent violence accompanied every electoral disruption for the rest of the decade.

When it comes to rationalizing the methods of the opposition, the flexible actions and attitudes of Cato and Cicero are of particular interest. Cato and his supporters used violence to block the recall of Pompey in 62, and as aedile Cato uncharacteristically extended a grain-dole to placate the population.¹⁹¹ In 60, Cato accepted the necessity for a campaign of counter-bribery to offset that of the triumvirs, reckoning it to be a necessary

¹⁸⁷ Suet. *Iul.* 20.

¹⁸⁸ Dio 39.26-29; Livy *Per.* 105; Plut. *Crass.* 15; *Pomp.* 51; *Cat. Min.* 38.

¹⁸⁹ Dio 39.32-35.

¹⁹⁰ Dio 39.39; Plut. *Crass.* 16.

¹⁹¹ Cic. *Sest.* 62; Dio 37.43; Plut. *Cat. Min.* 26, 29; Suet. *Iul.* 16.

evil.¹⁹² In the tumult that led to Pompey's sole consulship in 52, Cato at first opposed the idea of making Pompey dictator, saying "that the laws should not derive their security from Pompey, but that Pompey should owe his to the laws."¹⁹³ Yet he soon acceded in the motion of Bibulus to make Pompey sole consul.

Cicero, for his part, resigned himself to a consular law granting Pompey's grain command, given that the alternative proposed by the assembly would be worse.¹⁹⁴ In his *De Legibus*, Cicero says there is nothing more harmful and less civilized to the state than action carried out by force.¹⁹⁵ But in his defense of Sestius, Cicero recognized that law and justice must at times be defended *against* violence *by* violence. Commenting on Milo and the competition between justice and force, Cicero argues:

He wished to use the first, so that virtue might overcome audacity;
he was compelled to use the other, so that virtue would not itself be
overcome by audacity.¹⁹⁶

To his brother Quintus, Cicero rejoiced that an important precedent for the Republic had been established by Sestius' unanimous acquittal: the use of force against force was justified in the service of the common good.¹⁹⁷

Many thinkers over the centuries have agreed with Cicero's reasoning. But the risk in using force or bending rules in the name of "good" to fight "evil" lies in its practical

¹⁹² Suet. *Iul.* 19.

¹⁹³ Plut. *Cat. Min.* 47.

¹⁹⁴ Cic. *Att.* 4.1.7.

¹⁹⁵ Cic. *Leg.* 3.42: *nihil tam contrarium iuri ac legibus, nihil minus civile et inhumanus, quam composita et constituta re publica quicquam agi per vim nihil tam contrarium iuri ac legibus, nihil minus civile et inhumanus, quam composita et constituta re publica quicquam agi per vim.*

¹⁹⁶ Cic. *Sest.* 92: *altero uti voluit, ut virtus audaciam vinceret; altero usus necessario est, ne virtus ab audacia vinceretur.* The author's translation.

¹⁹⁷ Cic. *Q Fr.* 2.4.1.

application, in the natural tendency of all people to identify their own interests as “the good,” and the slippery slope by which *any* method becomes justified to bring about *any* desired goal. If the other side bribes, we will bribe; if the other sides falsely invokes the auspices, so should we; if our preferred candidate does not meet the rules, we may twist the rules for the greater good. Seen in the worst light, Caesar was a power-hungry warlord who disobeyed the command of the conscript fathers to dismiss his legions. But he had all the pretext he needed after the senate trampled on the vetoes of three tribunes and sent them fleeing the city. He, too, would defend the Republic.

Further Abuses of Caesar and the Triumvirs

Caesar initially pretended to obey electoral forms after taking power in Rome in 49. After being named dictator and claiming the legitimacy of that Republican title, he conducted elections for 48 in which he was chosen consul with a colleague.¹⁹⁸ Caesar was careful to note it was his legal year.¹⁹⁹ But in the offices and honors he arranged for himself he quickly departed from the norm. In 48, he was accorded the power to stand for consul five years in succession.²⁰⁰ In 47, he was made dictator for a year.²⁰¹ In 45 and 44, he was made consul for 10 years, prefect of morals and dictator for life.²⁰² In the extent of his extraordinary powers, Caesar had become a second Sulla.

¹⁹⁸ App. *B Civ.* 2.48; Caes. *B Civ.* 2.21; Dio 41.36.

¹⁹⁹ Caes. *B Civ.* 3.1.1: *is enim erat annus quo per leges ei consulem fieri licet.*

²⁰⁰ Dio 42.20.

²⁰¹ Plut. *Caes.* 51.

²⁰² Dio 43.45.

Caesar's handling of the elections and magistracies grew increasingly irregular. In 49, he "arranged with the commons" that he would name one-half of the magistrates.²⁰³ In 48, he named a succession of consuls and replacement consuls (*suffecti*); only tribunes and aediles were elected.²⁰⁴ In 47, he did not bother to arrange elections until his return from the wars; the magistrates thus chosen served only three months.²⁰⁵ In 46, the only timely election was for Caesar himself; the rest of the magistracies for 45 again were delayed until his return late the following year.²⁰⁶ According to one analysis, 46 was the last year that Caesar did not breach the *lex annalis* in his choice of magistrates and that thereafter the pace of his violations increased.²⁰⁷ On the last day of 45, one of the consuls died suddenly, and Caesar on the spot converted a tribal assembly to the *comitia centuriata* for an *ad hoc* substitution, thus electing a one-day consul.²⁰⁸ Cicero joked bitterly in a letter that the consul was so diligent that he never slept during his tenure.²⁰⁹ Caesar named half the magistrates for 44 and arranged for a suffect consul, Dolabella, although he was not qualified by age.²¹⁰ According to Dio, at the time of Caesar's death he had already arranged the magistrates for 43 and 42 in advance.²¹¹

Caesar had troublesome dealings with the tribunes, whom he had been claimed to be protecting when he crossed the Rubicon. Immediately he offended the people in 49 by turning back the intercession of the tribune L. Metellus, who had protested when Caesar

²⁰³ Suet. *Iul.* 41.

²⁰⁴ Suet. *Iul.* 76.

²⁰⁵ Dio 42.20.

²⁰⁶ Dio 43.33, 43.46; Suet. *Iul.* 76.

²⁰⁷ G. V. Sumner, "The *Lex Annalis* Under Caesar, Continued," *Phoenix*, Vol. 25, No. 4 (Winter 1971), 370.

²⁰⁸ Plut. *Caes.* 58; Cic. *Fam.* 7.30.1; Suet. *Iul.* 76.

²⁰⁹ Cic. *Fam.* 7.30.1.

²¹⁰ Dio 43.51; Suet. *Iul.* 41; App. *B Civ.* 2.122; Cic. *Phil.* 2.79.

²¹¹ Dio 43.51.

cracked into the treasury. He threatened Metellus with death and told him that “war has no use for free speech.”²¹² In 44, in an event that no doubt contributed to the final conspiracy against him, Caesar removed two tribunes whose offense had been to remove the royal diadems placed on Caesar’s statutes. His action led to unrest and a nasty reaction; his choice for suffect counsel was jeered in public (“He’s no consul!”) and angry voters wrote in the names of the deposed tribunes on their electoral ballots.²¹³ Soon after this high-handed act by Caesar, the conspirators removed him by their own extra-constitutional means.

The second triumvirate of Antony, Lepidus and Octavian, a more formal arrangement than the first, was created by a *lex Titia* in 43 as a new supreme power overlaid upon the structure of the constitution. The triumvirs were impatient: The law granting their power was passed without the observance of the *trinundinum*.²¹⁴ Antony soon picked up where his predecessors had left off, blocking the election of Dolabella via his dual roles of presiding magistrate and augur.²¹⁵ The triumvirs also re-stocked the senatorial class, depleted by civil war, by rapidly moving their own supporters through the magistracies with artificial haste. Dio tells us of several electoral abuses: The magistrates for 43 and 42 were chosen in advance, without approval of senate or assemblies. With five days left in 43, the praetors were sent to their provinces and replacements named. With the apparent consent of the triumvirs, one tribune had another removed by plebiscite. In 42, city magistrates were named several years in advance; in 40 suffect consuls and praetors

²¹² Cic. *Att.* 10.4.8; Plut. *Caes.* 35.

²¹³ Suet. *Iul.* 79-80; Dio 44.10; App. *B Civ.* 2.108; Plut. *Caes.* 61; Livy *Epit.* 116.

²¹⁴ App. *B Civ.* 4.7.

²¹⁵ Cic. *Phil.* 2.81-83.

were inserted near the end of the year, and aediles on the last day; by 39 the triumvirate had decided to name all the consuls for the next eight years.²¹⁶ In 38, the triumvirs promised magistracies to the supporters of Sextus Pompey as part of negotiations.²¹⁷ Also in the year 38, there were an astonishing 67 praetors, apparently including the accidental appointment of a slave as quaestor.²¹⁸ The magistracies had become an open joke. Antony was widely mocked for making even a low-born general, once a muleteer, a consul.²¹⁹ It is not clear whether the regular practice was to confirm all these appointments in the assemblies,²²⁰ but there are hints of at least the pretense of elections. Plutarch tells us that Antony was arranging an election when he received the news of Cicero's death.²²¹ In 36, Dio reports a shortage of candidates for aedile, implying an election was held.²²²

Caesar and the second triumvirs had inherited a tattered Republic that was already inured to delayed elections, prearranged results and meaningless auspices. Botsford, in his survey of the history of Roman popular assemblies, tells the rest:

Although Caesar continued to submit his plans to the assemblies for legalization, he rapidly concentrated in his own person powers and functions hitherto exercised by the people; and the triumviri, his successors, after a sham-republican interregnum, constituted in law as well as in fact a three-headed despot.²²³

²¹⁶ Dio 43.51, 46.55, 47.15, 46.49, 47.19, 48.32, 48.35.

²¹⁷ Dio 48.36.

²¹⁸ Dio 48.43.

²¹⁹ Gell. *NA* 15.4.3.

²²⁰ F. Millar, "Triumvirate and Principate," *JRS* Vol. 63 (1973), 51.

²²¹ Plut. *Cic.* 49.

²²² Dio 49.16.

²²³ Botsford, *Roman Assemblies*, 450.

R.E. Smith, writing of Caesar's consulship in 59, interprets that year as the beginning of an organic, decade-long process. "The whole decade," he opines, "must be seen as one vast complex event, whose end was the end of the Republic."²²⁴

Just as important a factor, perhaps, was the sheer passage of time. Eighteen years elapsed from Caesar's crossing of the river in 49 to the naval battle of Actium in 31, where the forces of Octavian defeated Antony and Cleopatra and decided the future of the Roman state. When Octavian came to power it had been nearly two decades since Rome was governed by free elections, and three decades since it had been governed by *stable* elections. This long lapse would be a key to Octavian's success in recreating a government that many Romans had never known, or no longer remembered. "How few were left," Tacitus laments of the age of Augustus, "who had seen the Republic!"²²⁵

²²⁴ Smith, *Consulship*, 303.

²²⁵ Tac. *Ann.* 1.3.

Part Three: The False Restoration

The Idealized Republic

Between his acquisition of sole power in 31 B.C. and his death in 14 A.D., Octavian (renamed Augustus in 27 B.C.) transformed the Roman state from an elective Republic to a Principate under the domination of a single man. The Romans called Augustus the *princeps*, a reassuring throwback to the Republican *princeps senatus*, a term connoting dignity and moral authority rather than monarchical power. We know him instead as the first emperor. Whereas Julius Caesar had failed to hold power because of his offensive trampling of Republican constitutional forms, Augustus succeeded brilliantly by “restoring” those forms. Under Augustus the elections and the electoral assemblies were sanctified by marble and draped with fresh glory. Augustus himself proudly led his clan to the Campus Martius each year to emphasize the ancient ritual

After the upheavals the Romans *needed* to believe in their Republic, and so the restoration was built entirely upon an idealized version of it. In the Augustan literature, Rome was destined by the gods to rule the world because Rome was just and virtuous. Her solemn duty was, as Virgil put it, “to spare the vanquished and subdue the proud in war.”¹ This virtue and hence the justification for Rome's success was derived specifically

¹ *Aen.* 6.853: *parcere subiectis et debellare superbos*. Augustus strikes the same note in *RG* 3.2, saying he preferred to spare enemies rather than destroy them: *conservare quam excidere malui*.

from its form of government – the Republican constitution. Rome's overthrow of its kings early in its own history, and the establishment of a constitutional self-rule, stood at the core of the national self-concept. A century before Augustus, Polybius had written:

There surely can be nobody so petty or so apathetic in his outlook that he has no desire to discover by what means and *under which system of government* the Romans succeeded in less than 53 years in bringing under their rule almost the whole of the civilized world, an achievement which is without parallel in human history.²

Later, in his dissertation on the Republican government, Polybius asserted “that the principal factor which makes for success or failure is the form of a state's constitution; it is from this source, as if from a fountainhead, that all designs and plans of action not only originate but reach their fulfillment.”³ In other words, Polybius credited Rome's success specifically to its form of government. The Romans took Polybius and their idealized Republic to heart, just as Americans two millennia later would approvingly weave the more flattering parts of Alexis de Tocqueville into their own self-concept.

Livy picked up the theme of Republican virtue in his monumental history of Rome. “My task from now on,” Livy writes after he finishes off the last king, “will be to trace the history in peace of a free nation, *governed by annually elected officers of state* and subject not to the caprice of individual men, but to the overriding authority of law.”⁴ At the end of Book V, in Camillus' stirring speech urging his countrymen not to abandon

² Polyb. 1.1. Emphasis supplied.

³ Polyb. 6.2.

⁴ Livy 2.1. Emphasis supplied.

Rome, Livy makes him ask them whether they would so easily forsake the hallowed meeting-grounds of the Republican assemblies:

Remember, too, our public functions nearly all of which we transact, after due ceremony, within the *pomerium*, and to what oblivion and neglect we are condemning them. The Meeting of the Curies, to deal with questions of war, the Meeting of the Centuries for the election of consuls or military tribunes – where with the proper rites can these be held but in the places tradition has made sacred?⁵

Later, in an excursus on Alexander the Great (9.17), Livy contemptuously compares Alexander's brief successes to the full weight of centuries of duly elected Roman magistrates. In short, Livy idealized Rome by idealizing the Republican constitution.

Julius Caesar's usurpation from 49-44 B.C. therefore provided an instructive lesson for Augustus on the dangers of omitting a Republican pretext. It is curious, in light of the pains Caesar took to appear legitimate prior to 49, how little concern he evinced for Republican form once he regained Rome.⁶ His disregard for constitutional government reached its climax in February 44 when he attained the perpetual dictatorship and threw two tribunes out of office for removing the diadems from his statues. In so doing, he sealed his own fate. His heir did better.

⁵ Livy 5.52.

⁶ Precisely because the early imperial coinage reflects a vigorous Republican pretext, it is interesting that Caesarian coinage does not. It usually refers to Caesar's personal station and glory, or the association of his *gens* with Venus Victrix. For example c. 44 B.C. we find CAESAR PATER PATRIAE (BMC.4187; Syd.1069), CLEMENTIAE CAESARIS (BMC.4176-7; Syd.1076) and even what must have been the hastily produced CAESAR DICT PERPETUO (BMC.4169, Syd.1073).

The Electoral Pretext under Augustus

1. Magistracies and Candidates

In his own possession of Republican magistracies, and in his relations with those who held them, Augustus carefully maintained the appearance of proper respect for the constitution and tradition. In return an eager parade of candidates came forward to participate in the maintenance of the Republican pretext, seeking both the old offices and new ones created for them by the *princeps*. Dio tells us that beyond the title of triumvir Octavian demanded no “offensive” (that is, non-Republican) titles for himself.⁷ But he did assume offices and powers with safe Republican precedents. Octavian was made *sacrosanctus* akin to a tribune in 36 B.C. and thereafter was allowed to sit on the front bench.⁸ Returning from the field that year, Octavian obediently remained outside the *pomerium* to address an assembly.⁹ He was elected to a second consulship for 33 B.C., which he both assumed and resigned on the Kalends of January.¹⁰ Except for the unprecedented institution of the triumvirate itself, Octavian observed legalities with respect to the Republican magistracies.

In 31 B.C., after the end of prearranged consuls under the triumvirate, Octavian entered into his third consulship.¹¹ This began an unbroken succession of consulships that

⁷ Dio 47.15.

⁸ Dio 49.14. Other ancient sources differ. Appian (*B. Civ.* 5.132) says Octavian was named tribune for life in 36 B.C. Orosius (6.18.34) refers to this event as a grant of *tribunicia potestas*, which Dio dates later.

Dio's specific description of *sacrosanctus* for 36 B.C. seems to give him more credibility on the question.

⁹ Dio 49.15.

¹⁰ App. 3.28.

¹¹ Dio 50.10.

lasted until 23 B.C. Such a repeated succession had only Marius for a precedent, but there is no evidence the assemblies were anything but willing; A.H.M. Jones reckons the people were “spontaneously eager” to keep him.¹² In 30, according to Dio, Octavian was awarded a tribune's power to protect citizens via the *ius auxilii*.¹³ That year Octavian named the son of Cicero as his co-consul, a nice stroke of Republican nostalgia and a final dig at Antony.¹⁴ In his triple triumph of 29 B.C., in an unusual show of deference, his co-consul followed behind him and even offered the sacrifice.¹⁵

In 28-27 Augustus rearranged the state and his powers. According to Dio, Augustus agreed to “conform to ancient customs,” to lay down his office properly at the end of his term, to invalidate the illegal acts of the triumvirate, and to share the *fasces* with his co-consul.¹⁶ This settlement was the basis for Augustus' claim that he had transferred control of the state back to the senate and people of Rome.¹⁷ Augustus claimed that from this point he exceeded all men in *auctoritas* but held no more legal powers than his co-

¹² A.H.M. Jones, “The Elections under Augustus,” *JRS* Vol. 45, Parts 1 and 2 (1955), 13. This eagerness is further evidenced after 23 B.C. by the people's repeated offers of consulships and the dictatorship to Augustus.

¹³ Dio 51.19. He also states that from this point Octavian held tribunician power for life, but is probably mistaken; it seems more consistent that Octavian was only *sacrosanctus* from 36 B.C., but received the *ius auxilii* from 30 B.C., and then the full *potestas* from 23 B.C. onward. See P.A. Brunt and J.M. Moore, eds. *Res Gestae Divi Augusti: The Achievements of the Divine Augustus* (Oxford: Oxford University Press, 1967), 11. The matter of *ius auxilii* is especially significant for Jones, who traces from this point the eventual transfer of the power to hear appeals to the emperor. A.H.M. Jones, *Studies in Roman Government and Law* (New York: Barnes & Noble, 1960), 54.

¹⁴ Plut. *Cic.* 49.

¹⁵ Dio 51.21.

¹⁶ Dio 53.1. This seems to be a retroactive admission of irregularity, but the sources emphasize the gratitude for his “restoration” of the Republic rather than any dissatisfaction with the previous arrangement.

¹⁷ Aug. *RG* 34: *rem publicam ex mea potestate in senatus populique Romani arbitrium transtuli.*

magistrates.¹⁸ Technically, this was true, but no man had held such a collection of powers at the same time.

In 23 B.C., Augustus rearranged matters again and announced he would resign his consulship. In return the senate granted him *tribunicia potestas* with the power to submit laws to the people and convene the senate and he retained his *imperium*.¹⁹ Augustus relied upon this tribunician power, a Republican symbol, as his primary source of legitimacy for the rest of his reign.²⁰ Jones comments:

By posing as a tribune of the plebs Augustus hoped to rally this popular sentiment for himself, and to represent that he occupied his high position *ad tuendam plebem*. To the plebs, it was a guarantee... that Augustus was not abandoning them to the *optimates*, to the *optimates* a threat that Augustus might revive the popular tradition of his adoptive father if they would not play ball with him.²¹

Augustus cites his *tribunicia potestas* repeatedly in the *Res Gestae*.²² He dated his reign by it, setting the precedent for all future emperors. Dio considers these settlements to be the true birth of the monarchy.²³ One modern author notes acerbically of the famous claim of the *Res Gestae*: “Augustus may have handed over the state, but he fails to mention that the senate handed it back.”²⁴

¹⁸ Aug. *RG* 34: *Post id tempus auctoritate omnibus praetiti, potestatis autem nihilo amplius habui quam ceteri qui mihi quoque in magistratu conlegae fuerunt.*

¹⁹ Dio 53.32.

²⁰ Syme calls Augustus' *imperium proconsulare* and the *tribunicia potestas* "the two pillars of his rule" *Roman Revolution*, 337.

²¹ Jones, *Imperium*, 116.

²² Aug. *RG* 4.2, 4.4, 22, 35.2.

²³ Dio 53.17.

²⁴ W. Turpin, "Res Gestae 34.1 and the Settlement of 27 B.C.," *CQ* N.S., Vol. 44, No. 2 (1994), 427.

After 23 B.C., Augustus' principal Republican powers therefore were his *imperium* and his *tribunicia potestas*.²⁵ He held only two ceremonial consulships after his resignation in 23 B.C., but any inconvenience from not holding the actual title was removed in 19 B.C. when he was awarded the permanent right to sit with the consuls anyway.²⁶ Jones sees this as another significant step in the evolution of the *princeps'* jurisdiction, as from this point Augustus heard appeals from the praetors by virtue of his consular authority.²⁷ As a final note concerning his own magistracies, Augustus showed notable caution in his treatment of two Republican titles that veered too close to the reality of his power. He notes briefly that he was twice offered but declined the post of dictator.²⁸ Also interesting is his pussyfooting around the title of censor, which he appears to have avoided despite wielding censorial powers. Dio states flatly that Augustus "became censor" in 29 B.C. but Augustus says no such thing, noting merely that he had served as *curator legum et morum*.²⁹ Jones judged that Augustus relied either on special grants of *potestas* or his overall *imperium* to carry out censorial duties.³⁰ An inscription in the *fasti Venusini* seems to support this idea: after listing Augustus and Agrippa as co-consuls for 28 B.C., the next line adds, "these same men conducted a *lustrum* with censorial power."³¹ In 19 B.C. Augustus was named *praefectus moribus* for

²⁵ Another much-plowed field is the precise nature of Augustus' *imperium*, when it was consular and when it was proconsular, and the extent to which it was *maius* over other magistrates. See especially A.H.M. Jones, "The Imperium of Augustus," *JRS* Vol. 41, Parts 1 and 2 (1951): 112-119.

²⁶ Dio 54.10.

²⁷ Jones, *Studies*, 78.

²⁸ Aug. *RG* 5.1.

²⁹ Dio 52.42; Aug. *RG* 6.1.

³⁰ Jones, *Studies*, 354-357.

³¹ *Idem censoria potest. lustrum fecer.* V. Ehrenberg and A.H.M. Jones. *Documents Illustrating the Reigns of Augustus and Tiberius*, 2nd ed. (Oxford: Oxford University Press, 1955), p. 35.

a five-year term and then again in 12 B.C.³² At any rate he conducted three *lectiones* of the senate during his reign and three censuses.³³

Augustus' treatment of other office-holders generally conformed to Republican practice. Appian notes that under the triumvirate, Octavian allowed the magistrates to function normally.³⁴ A functioning tribunate (or at least, one functioning in Octavian's favor) is suggested by a tribune's successful veto to block the plot of Antony's faction in 32 B.C.³⁵ In general, Augustus seemed to realize that it was more valuable to honor the nobles with magistracies than to hog all the symbols of power himself. As early as 41 B.C. the triumvirs were appointing both *ordinarii* and "lesser consuls" to spread the wealth, a practice resumed later in Augustus' reign.³⁶ Later his creation of the *vigintiviri* in the city created even more opportunities for patronage. Suetonius says Augustus created new offices, increased the number of praetors, and even requested two consular colleagues during his own tenure, which the senate refused to do on the grounds that even a single colleague was "sufficient detraction from his supreme dignity."³⁷ Although there were occasionally shortages of candidates for aedile or tribune, there is no evidence of a shortage of willing candidates for praetor and consul.³⁸ The nobles were generally eager to take part in the regime. M. Hammond contended that the magistracies under Augustus were used as "a sop for the aristocracy to console them for their loss of military power

³² Dio 54.10, 54.30.

³³ See Jones, *Studies*, 350-351 for analysis.

³⁴ App. *B Civ.* 5.132.

³⁵ Dio 50.2.

³⁶ Dio 48.35.

³⁷ Suet. *Aug.* 37.

³⁸ Jones, "Elections," 11.

and to symbolize the continuance of the Republic.”³⁹ The link of legitimacy between the magistracies and the *princeps* is reinforced by the *fasti* of the *magistri vici*, which begins with 43 B.C., the year of Octavian's first consulship.⁴⁰

Scholars have spent considerable effort trying to discern from the *fasti* whether Augustus had a particular strategy in the advancement of magistrates. Seager analyzed the lists and found that most of the *ordinarii* consuls were nobles, while more of the replacement *suffecti* were new men.⁴¹ Brunt argued that the rise of *novi* among the *suffecti* was both a practical result of the need for new talent, and the coming-of-age (later in Augustus' reign) of a postwar generation.⁴² In any event they owed Augustus for his patronage. The pretext was important: the maintenance of Republican form allowed them more dignity and status than they would have received as openly hand-picked toadies of Augustus. “Thus,” Shotter observes, “magistrates and promagistrates were dependent upon him, but not in an overt or humiliating fashion.”⁴³

2. Assemblies and Elections

The Republican citizen voting assemblies continued to meet under the Principate and frequently are mentioned in the sources in the role of ratifying arrangements made by

³⁹ M. Hammond, *The Augustan Principate in Theory and Practice During the Julio-Claudian Period* (New York: Russell & Russell, 1968), 87.

⁴⁰ R. Friggeri, ed., *The Epigraphic Collection of the Museo Nazionale Romano at the Baths of Diocletian*. Trans. E. De Sena. (Milan: Mondadori Electra S.p.A. and the Soprintendenza archeologica di Roma, 2001), 78.

⁴¹ Seager, *Tiberius*, 107.

⁴² Brunt, “The *Lex Valeria Cornelia*,” *JRS* Vol. 51, Parts 1 and 2 (1961): 5.

⁴³ Shotter, *Fall*, 100.

Augustus and/or the senate.⁴⁴ There could hardly have been a more direct source of Republican legitimacy than the approval of the same ancient bodies that for centuries had elected magistrates and spoken for the *populus Romanus*. The assemblies assisted Octavian/Augustus at each critical step. At the onset of his public career, Octavian formalized his link to the past by accepting his adoption as Caesar's son "in the customary way," presumably in an assembly.⁴⁵ Dio also says his first, senate-coerced election as consul was confirmed by "the people."⁴⁶ No sooner had Octavian extracted legitimacy from the senate and the assembly than he did a *volte face* and struck a deal with Antony at Bononia. The result was the *lex Titia* from the tribunes establishing Octavian, Antony and Lepidus in a five-year dictatorship as *triumviri rei publicae constituendae*, cloaked by the assembly with "the name of law."⁴⁷ So was his designation as *sacrosanctus* (or the grant of further powers, as conflicting sources say) in 36 B.C.⁴⁸ His settlement of 28-27 B.C. and a division of command over the provinces was ratified "by the senate and the people as well."⁴⁹ Dio further states that both "the people and plebs" continued to hold elections after the rearrangement.⁵⁰ In 7 B.C. the people and senate insisted that Augustus' adopted son Gaius be designated for the consulship despite his insufficient age.⁵¹ According to Suetonius, the popular assemblies tried to name

⁴⁴ The ancient authors, less legalistic than the historian-successors of Mommsen, often used "the people" as a generic reference to the assemblies, leaving us to figure out which according to function. Occasionally a phrase such as "the people and plebeians" or "the tribal assembly" gives us a more precise indication.

⁴⁵ Dio 47.43.

⁴⁶ Dio 46.45-47.

⁴⁷ Dio 47.2

⁴⁸ App. *B Civ.* 5.132.

⁴⁹ Dio 53.12. This division worked in Augustus' favor, since he kept the provinces that needed the most military attention.

⁵⁰ Dio 53.21.

⁵¹ Dio 55.9; Aug. *RG* 14.

Augustus as *pater patriae* even before the senate took that action, and Tiberius was adopted as Augustus' heir by a "special bill in the Forum."⁵² In addition to specific references in the sources, Brunt argues reasonably that many deeds attributed by Suetonius and Dio to Augustus unilaterally most likely were ratified in some fashion by the senate and/or the assemblies.⁵³ Augustus took the assemblies seriously and prepared his remarks to them just as carefully as he did his speeches in the senate.⁵⁴

If the assemblies were grantors of legitimacy to the *princeps*, he paid them back in the same coin. Nowhere did Augustus maintain the Republican pretext more assiduously than in the arena of elections. The triumvirate had continued Caesar's high-handed indifference to proper form in elections; Octavian seemed dedicated to restoring their luster. It was no coincidence that his early building projects in Rome included the refurbishing of the Rostra that his adopted father had put at the head of the Forum, adding a new Rostra of his own facing it across the Forum at the temple of the Divine Julius, and the restoration of a voting-place at the temple of Castor and Pollux.⁵⁵ Agrippa took over the rebuilding of the Saepta, or voting-pen, on the Campus Martius (Dio 53.23 says it was for the *comitia tributa*, though the centuriate assembly met there also) as well as adding the cavernous Diribitorium next door for the purpose of vote-counting. Augustus personally took part in elections, humbly appearing to vote with his own tribe to show he

⁵² Suet. *Aug.* 58, 65.

⁵³ Brunt, "The Role of the Senate in the Augustan Regime," *CQ N.S.*, Vol. 34, No. 2 (1984), 427.

⁵⁴ Suet. *Aug.* 84.

⁵⁵ Taylor, *Roman Voting Assemblies*, 58.

was a man of the people.⁵⁶ These deeds were the basis of Tiberius' claim, in his funeral oration in 14 A.D., that Augustus had "preserved the dignity of elections."⁵⁷

But dignity and independence are different currencies. The truth seems to be that the “restored Republic” was increasingly deferential to Augustus' choices for magistrates, a deference that later in the Principate would harden into powerless acquiescence. From the time of the first constitutional rearrangement in 27 B.C. Dio tells us Augustus was naming at least some of the magistrates, while leaving other offices to the free choice of the assemblies.⁵⁸ As it so happens, their “free” choice appeared to be in favor of Augustus himself, as they kept returning him to the consulship until 23. Following his second constitutional settlement in 23, in which he resigned the consulship, the populace demanded that the senate offer Augustus the dictatorship; the *princeps* bared his breast and begged to be allowed to refuse.⁵⁹ Similarly in 19 B.C. the assembly kept a consulship open for Augustus and sent a delegation to him begging that he accept it; Augustus named one of the envoys consul instead.⁶⁰ Whether Augustus (who earlier had nearly died from illness) truly wanted to step back, or wanted popular acclaim, the result was the same either way: By surrendering his formal power, Augustus had the assemblies begging for him to pick it back up.

Later in his reign, his control over elections became more formalized with the adoption of the *lex Valeria Cornelia* of 5 A.D., in which 10 centuries of the *comitia centuriata* were renamed in honor of Gaius and Lucius Caesar and given the task of pre-

⁵⁶ Suet. *Aug.* 56.

⁵⁷ Dio 56.40.

⁵⁸ Dio 53.21.

⁵⁹ Dio 54.1; Suet. *Aug.* 52.

⁶⁰ Dio 54.10.

selecting preferred candidates.⁶¹ In 7 A.D., according to Dio, Augustus simply appointed all the magistrates for the year; afterwards, because of failing health he stopped attending the assemblies and forwarded an annual written list of his recommended candidates.⁶² In 14 A.D., the year of Augustus' death, Tacitus tells us flatly that the elections were transferred from the assemblies to the senate outright.⁶³ Tacitus says after this some of Tiberius' nominations of candidates were automatic, while others were merely recommendations – a distinction which seems to have made little difference.⁶⁴

In sum, the voting assemblies conferred legitimacy upon Augustus at each critical step of his career, during his struggle for preeminence in the triumvirate, in the post-Actium transition, in the settlements of 27 and 23 B.C., and as his reign neared its end and the succession loomed. Hammond argues that Augustus truly had hoped for more Republicanism out of the assemblies, but the watered-down stock of citizenry was not up

⁶¹ Ehrenberg and Jones, *Documents*, p. 76. Our knowledge of the *lex Valeria Cornelia* comes from a subsequent inscription called the Tabula Hebana, dated to 19 A.D., when the voting procedure was further modified to add additional early-voting centuries. Demougin (“*Quo descendant*,” 309) says this imparted a sense of “quasi-divine” preference for the candidates so anointed.

⁶² Dio 55.34.

⁶³ Tac. *Ann.* 1.15.1: *tum primum e campo comitia ad patres translata sunt*. Most scholars agree that “ad patres” must mean the senate, as opposed to some other unidentified group of “fathers,” but some speculate that while the senate may have chosen the “real” winners, the *comitia* still went through the motions of electing them. This makes sense, considering that the Tabula Hebana five years later makes reference to ongoing procedures in the centuriate voting assembly. See Jones, “Elections,” 19; Brunt, “Senate,” 429; F.B. Marsh, *The Reign of Tiberius* (New York: Barnes & Noble, 1931), 62. For a “topographic” hypothesis that Tacitus’ *translata* meant a physical transfer to the Palatine, for a gathering of the preliminary centuries in charge of creating *destinatio*, see Demougin, “*Quo descendant*,” 313.

⁶⁴ Defenders of the Principate have made much of the evidence that Augustus was not always in control of elections. Dio (54.16, 55.5) talks about repeated attempts to control electoral bribery, which would not have been necessary in a rigged system. He also describes several shortages of candidates: aediles, 28 B.C., (53.2); tribunes, 14 B.C., (54.26); tribunes again in 12 B.C., when Augustus orders the magistrates to fill the bench by appointment, (54.30); aediles, filled by compulsory lot, (55.25). But we need not prove that Augustus controlled every election at every rank; neither is a shortage of tribunes at a time that the tribunate was losing its meaning especially surprising. There was no shortage of candidates for praetor or consul – the elections in which the *princeps* would have been most interested – attested in any source. Even at the end of the first century, when the emperor was clearly in control of everything, elections for tribune appear to have been afforded some leeway. Pliny (*Ep.* 2.9.2) was still able to fret that his recommended candidate for a tribuneship might not be elected, hence embarrassing him before the emperor for giving him bad advice: *quem nisi obtinet in senatu, vereor me decepisse Caesarem videre*.

to the task: he concluded the “city mob” was “no longer the Roman People.” It had been corrupted by manumission and foreign stock and had “a limited comprehension of the problems of empire.”⁶⁵ Just as the weak-kneed senate had forced Augustus to take more power, according to Hammond, the people forced him in the direction of autocracy as well. Taylor concludes a chapter of her book on Roman voting assemblies by picturing them meeting in the fine marble structures constructed by Augustus. “There,” she wrote, “the henchmen designated by the emperors for office were acclaimed as consuls elected by a sovereign people.”⁶⁶

Willing Audiences for the Pretext

The transition from Republic to Principate under Augustus was not a top-down hoax perpetuated by a clever few, but a willing, multi-lateral, cooperative process. Up and down the levels of Roman society, participating groups cloaked the *princeps* with Republican legitimacy, stretched Republican definitions or looked the other way. They created a new consensus reality among themselves that employed comforting old names. Tacitus struck a faint but appropriate note of suspicion in describing the early Principate: “At home things were settled, official functions had their same labels.”⁶⁷ We have seen how Augustus co-opted the magistracies and candidates and the voting assemblies, precisely by stressing their “Republicanism.” He did the same for other audiences as

⁶⁵ Hammond, *Augustan Principate*, 131.

⁶⁶ Taylor, *Roman Voting Assemblies*, 106.

⁶⁷ Tac. *Ann.* 1.3.7: *Domi res tranquillae, eadem magistratum vocabula*. I choose “labels” in the spirit of H. Haynes' inferences about Tacitus' use of *vocabula* for words that had become separated from their meanings. Haynes, “Tacitus's Dangerous Word,” *Cl. Ant.*, Vol. 23, Number 1 (2004), 34.

well, and they confirmed his status: the senate, the *equites*, the plebs, religious audiences, the military, the rest of Italy and the provinces, and even foreign states.

Furthermore, these audiences eagerly cooperated in the acceptance of Augustus' successor Tiberius.⁶⁸ Tacitus tells us that Tiberius wanted to be seen as "called and elected by the state" instead of "having crept into power through the intrigues of a wife and a dotard's adoption." Several of the key audiences we have discussed rushed forward to legitimize the succession: consuls, prefects, senate, army and assemblies all took a loyalty oath.⁶⁹ Yet even this was not enough; in the senate Tiberius compelled Messala Valerius to swear that the proposed oath was spontaneous and freely given.⁷⁰ Tiberius still protested the award of power, calling the monarchy "a monstrous beast." The senators threw themselves at his feet and begged him to accept as he recoiled.⁷¹

Early in his rein Tiberius repaid these grants of authority by displaying deference for Republican traditions. Suetonius gives several examples: He demonstrated a hatred of flattery, praised free speech, and referred to the senate as "generous, just and indulgent masters." He consulted frequently with the senate and allowed open dissension, once even being the only vote on his side of a division. He deferred to the consuls as they passed on the street. He rejected additional honors and the titles of *imperator* and *pater*

⁶⁸ The senate and the assemblies had long acquiesced in Augustus' plans for inherited power under a constitutional pretext, awarding shared power or early qualification for office to Drusus (Dio 54.10, 54.33), Agrippa (Dio 54.12, 54.28), and Gaius and Lucius (RG 14). Eventually Augustus had to turn to Tiberius, who was adopted in 4 A.D. "by a special bill in the Forum" (Suet. *Aug.* 65). Tiberius also held the tribunician power (Dio 55.9, 55.13) and consulships (Dio 55.6, Suet. *Aug.* 97) and was primed for the succession. At first blush the notion of "constitutional" or "Republican" power that could be transferred across generations might seem an oxymoron, yet even in our own nation's history we have chosen as our president a grandson (Adams), cousin (Roosevelt) and son (Bush) of previous presidents.

⁶⁹ Tac. *Ann.* 1.7: *ut vocatus electusque potius a re publica videretur quam per uxorium ambitum et senili adoptione inrepsisse.*

⁷⁰ Tac. *Ann.* 1.8.

⁷¹ Suet. *Tib.* 24; Tac. *Ann.* 1.11.

patriae.⁷² Meanwhile, the magistracies continued to function. Tacitus mentions a tribune casting a veto during a controversy over the scourging of actors.⁷³ The elections continued in form, judging from the Tabula Hebana, despite Tacitus' assertion that the real business of choosing magistrates was transferred to the senate. Tacitus describes Tiberius' practices of submitting candidates for election. Sometimes he coyly described a man's career without mentioning his name, though it might be obvious. Other times he instructed candidates not to canvass for themselves. Officially, however, Tiberius said others were welcome to come forward. Tacitus concluded: "The greater the disguise of freedom which marked it, the more cruel the enslavement into which it was soon to plunge us."⁷⁴ Despite Tiberius' subsequent alleged depredations, by the time of his death the legitimacy-granting audiences had grown well accustomed to their role. Upon the succession of Gaius, "the senate immediately and unanimously conferred absolute power upon him."⁷⁵

Conclusions: Augustus

The abuses of elections in the late Roman Republic provided Augustus and his followers with the opportunity to be credited with restoring them to their original form. It is too much to claim every audience under Augustus made a conscious, deliberate decision to participate in a false restoration of Republican elections – the more interesting

⁷² Suet. *Tib.* For flattery, 27; free speech, 28; senate as "masters," 29; frequent consultation with senate, 30; lone dissenting vote, 31; deference to consuls, 31; rejection of honors, 26 (also in Tac. *Ann.* 1.72).

⁷³ Tac. *Ann.* 1.77.

⁷⁴ Tac. *Ann.* 81.

⁷⁵ Suet. *Gaius* 14.

interpretation, indeed, is that for the most part they believed it. Even in the occasional flare-ups of resistance to Augustus we find no evidence for a widespread belief the Republic had been usurped.⁷⁶ The audiences accomplished their feat by the use of terms with shifting meanings. *Res publica* and *libertas* meant dramatically different things to Cicero than they did to Velleius, who asserted that under Augustus the Republic had been restored to its pristine form.⁷⁷ Hammond, commenting on the changing meaning of *libertas*, notes that even Neronian coinage included the phrase *P.R. restituta*, and that of Vespasian, *S.P.Q.R. adsertori libertatis public[ae]*. The term *res publica* became a general synonym for the Roman state, not for any specific constitutional scheme.⁷⁸ *Libertas*, too, became a generic rallying cry from which all parties sought to draw “moral capital.”⁷⁹ Tacitus hence employed his subtle term *vocabula* to describe the nouns “liberty” and “freedom” as used in the Principate.⁸⁰ Even Pliny, at the end of the first century A.D. was able to give thanks with a straight face “that the Republic still exists.”⁸¹

Brunt and Moore state:

The constitutional arrangements made by Augustus are important as partial explanation of his success in winning the consent of the upper classes. They gave him the necessary legal powers to perform his executive tasks, and legality in itself was important to the Roman mind. They enabled him to guide policy in general within a framework

⁷⁶ Jones, “Imperium,” 114, suggests Augustus' settlement of 23 was motivated in part by a thwarted conspiracy against him. Shotton, *Augustus*, 34, believes in the late 20s B.C. the *princeps* was not as secure as he is generally portrayed. Dio (54.15) tells us of a conspiracy that resulted in executions in 18 B.C., and later of the plots of Cn. Cornelius (55.14) and P. Rufus (55.27).

⁷⁷ Vell. Pat. 2.89: *Prisca illa et antiqua rei publicae forma revocata*.

⁷⁸ M. Hammond, “*Res olim dissociabiles: Principatus ac Libertas: Liberty under the Early Roman Empire*.” *Harv. Stud.* Vol. 67 (1963): 99-101.

⁷⁹ Mourtsen, *Plebs*, 11.

⁸⁰ Haynes, “Tacitus,” 43.

⁸¹ Plin. *Pan.* 93.

which preserved the Republican forms. The Republican constitution was hallowed by antiquity; and it was as a Republic that Rome had grown great.⁸²

Octavian emerged from the Republican rubble to shape a new regime from 31 B.C. onward. He did not rule by the hated title of *rex* but merely as *princeps*, first citizen. For the rest of his life the renamed Augustus governed in two ways: through his unofficial personal standing (*auctoritas*) and by employing a salad-bowl of official titles and powers (*potestas*) carried over from the Republican constitution. History knows him as the first emperor. Yet by maintaining Republican labels, holding elections and consulting the senate, Augustus asserted until his death in 14 A.D that he had "restored the Republic," and he was widely credited by his contemporaries with doing exactly that. The most striking aspect of this process was that it was ratified at every level of Roman society and even by some external actors – senate and aristocracy, magistrates and candidates, assemblies, army, urban plebs, intellectuals, Italians and provincials, allied states and foreign kings. If we could build a time machine, visit the Forum and inquire of a citizen of Augustan Rome (perhaps on his way to a sham election) whether he regretted surrendering a half-millennium of *libertas* to this new form of tyranny, he would be astonished at such a nonsensical question.

⁸² Brunt and Moore, *RG*, 16.

Conclusions: The Role of Electoral Abuse

As the Republic careened toward collapse in the 60s and 50s B.C. its constitutional mechanisms proved incapable of dealing with unrestrained assertions of group interests, political rivalry, violence and urban frustration. Some scholars blame the senate for its failure to comprehend what was happening and the retreat of the *optimates* into a reactionary shell. Some blame urban pressures and the utter lack of any constitutional mechanism for dealing with the unprecedented degree of urban violence. Some blame pressure from the Italians and the provinces; others, the dissatisfactions of the military. The system of government that was developed under a small city-state founded upon seven hills could not be stretched to govern an empire.⁸³

As a result the Romans bent and ultimately broke their Republican constitution. The focal point for all their problems and frustrations was the mechanism for control of the government – the annual elections. Each group, faction and party set about to manipulate the elections for its own interests. Each sought to delay the elections, to bend the laws concerning office, to abuse religious obstruction, to cow the assemblies by violence or to buy them with money, to control them by cabal, to usurp the powers of the elected magistrates, and on occasion simply to stuff the ballot-box or to rig the procedure. Any original justification for the existence of such measures, even ostensibly “legal” ones,

⁸³ See Brunt, (*Fall*, 72, 79, 81) for the failures of the senate; for pressure from the provinces, 69; for pressure from the soldiers, 77. For the lack of police power, see Crawford, *Roman Republic*, 14; and Lintott, *Violence*, 4, 174. For the limits of the city-state government, see Shotter, *Fall*, 96.

was swept away in the zeal of their application. Each practitioner of abuse, considering himself to be acting for the “good,” justified his abuse by the offenses of another.

This was the lawless state inherited by Caesar and the second triumvirs, who were thus able to treat the elections and the magistracies as the shams they had become. And when the despots had finished laying the state to waste for another 18 years beyond that, Augustus, mindful of the provinces’ weariness from being bled, of the desperate urban population, of the bankrupted *equites* and the exhausted upper classes, of their craving for order above all else, gave them what they wanted. Crawford concludes:

It was becoming possible to represent a monarchy as compatible with the Roman system of values and to the fact that almost all men were becoming increasingly receptive to such arguments.⁸⁴

In the 1954 play *A Man for all Seasons* by Thomas Bolt, the character of Sir Thomas More, who eventually loses his life to principle, argues over the importance of the rule of law with a character named Roper:

ROPER: So now you’d give the devil the benefit of the law?

MORE: Yes. What would you do? Cut a great road through the law to get after the devil?

ROPER: I’d cut down every tree in England to do that.

MORE: Oh, and when the last law was down and the devil turned on you where would you hide, Roper, all the laws being flat? This country is planed thick with laws from coast to coast, man’s laws not God’s, and if you cut them down – and you’re just the man to do it – do you really think you could stand upright in the winds that blow then? Yes, I’d give the devil the benefit of the law, for my own safety’s sake.

⁸⁴ Crawford, *Roman Republic*, 187.

Human nature is to sacrifice principle to exigency. This is precisely what happened with elections in the late Republic, as that state imploded amidst class strife, urban violence, and power struggles among a new breed of proconsular warlords. The fault of the final generation of the Roman Republic was to trample its rules for desired ends, rules which were to be enforced against opponents, but to be dispensed with for supporters. The lesson is general for all times and all nations: We establish the rule of law to guard against the rule of despots; the challenge lies in not forgetting why we did it.

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