THE STATE AS A PARTNERSHIP: CICERO'S DEFINITION
OF RES PUBLICA IN HIS WORK ON THE STATE

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Abstract: This paper argues that Cicero develops a new view of the state as a partnership in his work De republica. Like any other partnership, the Roman state is upheld by the agreement of its members and an allocation of rewards that is proportionate to the contributions. Cicero sketches an outline of this view in his definition of this state. By focusing on how Cicero uses the definition in the construction of his argument, the paper attempts to uncover a detailed view of the state as a partnership. The ancestral Roman constitution, Cicero argues, surpasses all other constitutions in offering the best division of contributions and rewards. Although the state is held together by the agreement of the whole people, there is an enormous disparity in the assessment of contributions and rewards among different social groups.

Cicero’s definition of the state in his book On the State (De re publica, usually translated as On the Republic) is one of the most highly discussed definitions to have come down to us from Greco-Roman antiquity. For classical scholars, the main focus of attention has been the question: how original is the definition? In particular, how much is it indebted to Greek political thought and how much does it owe to the Roman context? In the past fifty years, Aristotle has won out over the Stoics as the main Greek influence. At the same time, there has been an increasing focus on the Roman or Ciceroian features. There is now a consensus that Cicero develops an original point of view with the help of Greek sources.

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This paper is an attempt to probe Cicero's originality further. I will suggest that Cicero develops a new view of the state as a partnership. This view is based on a distinctively Roman conception of partnership. Like all partnerships, the state is upheld by the common agreement of its members and an allocation of rewards that is proportionate to the contributions. As a partnership of the whole people, it sets a standard of cooperation for all associations within the state.

In order to track down this conception, it is necessary to pay attention to the way Cicero constructs his argument. In the past, scholars have been inclined to decode the meaning of the definition by gathering elements that occur anywhere in the text. This aggregative procedure ignores the purpose of the definition in Cicero's argument. This purpose is twofold: one is logical; the other is practical; and the latter enfolds the former. The logical purpose is to offer an undisputed starting-point for discussion; the practical purpose is to lead to a solution to the current, urgent problem of disunity in the state. Cicero uses the definition as a basis for working out both a theoretical and a practical solution. As such, the definition must be distinguished from the conclusions that follow.

As a logical starting-point of discussion, the definition serves as a fixed standard for answering the question: what is the best 'condition', or 'constitution', of a state? The definition is agreed upon by all on the basis of their experience. It is a prerequisite of philosophical argument, not a result. Philosophical argument is used subsequently as a means of determining what type of government is best. The best type of government, it turns out, is the Roman mixed constitution. This constitution offers not only a fair division of contributions and rewards, but also the best division.

The practical purpose extends throughout the text. Cicero proposes to answer the question 'what is the best constitution' as the first step towards the task of restoring unity to the state. Once the best form of government has been revealed, a policy must be developed in order to put it in place. The definition together with the argument that follows is embedded in the larger purpose of healing the civic partnership.

In this paper, I will first sketch the practical background to the theoretical investigation. The central part of the paper consists of two parts: a study of...
Cicero's Definition of Res Publica

Cicero's definition as a starting-point of investigation; and a study of the argument that is based on the definition. I will follow up with a brief comparison of Cicero's definition and procedure with Greek antecedents. Last, I shall offer some conclusions on what is new about Cicero's conception of the state.

The Practical Problem

Cicero wrote the State in the years 54 to 51 BCE. It consists of six books, depicting a fictional conversation at the rural estate of Scipio Aemilius, the greatest Roman military commander of his time and a leading statesman, in the year 129 BCE. Each pair of books is prefaced by a prologue written by Cicero in his own voice. Only about a third or fourth of the text is preserved; most of the preserved part belongs to the first three books, which are most relevant to this study.

The practical problem dominates the dialogue from the very beginning. Cicero begins with a casual prelude that turns abruptly to a consideration of the political turmoil that is raging at Rome. As Scipio's friends — four senior statesmen and four junior associates — arrive at Scipio's country home, their talk focuses on an astronomical curiosity: the reported sighting of two suns. While they linger on questions of astronomy, one member of the group, Scipio's closest friend Laelius, cannot contain himself any longer: why discuss those two suns in the sky when, before our very eyes, 'in one state (in una re pública), there are now virtually two senates and two peoples' (1.31). The tribunate of Tiberius Gracchus, together with his death, has divided 'a single people into two parts (populam umum in duas partes). One side contains leaders who are 'highly seditious'; the 'good' (boni) are in a state of disarray. Amid this great danger, Scipio alone can help; but he is hindered by his opponents in the senate. Even though it is a difficult task, Laelius concludes, it is possible to bring it about that 'we have the senate and people as one' (senatum . . . et populum ut umum habeamus, 1.32); and we will live 'better and more happily' (melius . . . et beatius) if this is brought about.

The two suns, it turns out, serve as a symbol for the division of the state into two parts. This is a vertical division, so to speak, splitting the senate together with the people into a part that aims to preserve the state and a part that would destroy it. Cicero's Laelius is convinced that help is possible, even though difficult. Citing the Aristotelian ideal of happiness and the good life, Laelius seeks a practical solution to a present problem.

Laelius' vehemence has the effect of turning the group into a quasi-political assembly. One of the junior members rises to the challenge. He asks: 'What should we learn in order to bring this about?' Laelius replies pointedly: learning skills that are useful to the state. Then he puts a proposal to Scipio, the highest-ranking member of the group: 'Let us ask (rogemus) Scipio to explain what he thinks is the best constitution (statum civitatis)' (1.33). Laelius expresses the hope that Scipio's answer, followed by other inquiries, will lead
to an explanation of the present situation. The other senior members approve Laelius' proposal. Laelius then cites Scipio's credentials: It is right 'for the pre-eminent leader of the state to speak about the state' (de republica potissimum principem reipublicae dicere); further, Scipio used to have frequent discussions with two Greeks, Polybius and Panaitius, both very experienced in politics, in which he argued that the Roman constitution was by far the best (1.34). Laelius sums up his proposal by asking Scipio to explain his thoughts 'about the state', de re publica.

Laelius' use of the term rogare signals the change to a political assembly. Traditionally in Roman politics, the presiding officer of the senate initiates debate by stating the issue, then asking the opinion (rogare sententiam) of the members of the senate, beginning with the leader of the senate, princeps senatus. In Cicero's discussion, Laelius takes over the function of presiding officer by proposing a subject and asking Scipio for his opinion. As princeps rei publicae, Scipio acts like a princeps sententias as the head of a deliberative body that has taken temporary refuge at his estate.

The question 'what is the best constitution?' is the basic topic of ancient political theory, beginning with Plato. Laelius in effect invites Scipio to crown an illustrious Greek tradition on the basis of his Roman political achievements, together with his experience in debating with two Greeks, Polybius and Panaitius. Despite the continuity with Greek tradition, the emphasis on political experience, together with the political trappings of the debate and the immediate practical aim, mark the discussion as a distinctively Roman endeavour. The aim is not simply to determine what the best constitution is, but rather to determine how the Roman state can be prevented from collapsing under the present strain of disunity.

Laelius gives special urgency to the discussion by asking Scipio to speak de republica. Traditionally, the Roman senate debated de republica, or de somnia republicae, at times when the very survival of the state was at stake. In this context, the underlying meaning of rei publica as 'public interest' comes to predominate. This sense creates a strong presumption of unity: just as the public interest is necessarily one, so the political structure does not admit of division.

Scipio consents to Laelius' proposal with appropriate modesty. Stressing his Roman experience, he says he doesn't dare prefer what he says to what the

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4 Both Greeks owed much of their political experience to their association with Scipio. Polybius joined the household of Scipio as a political prisoner; Panaitius joined Scipio as philosophical mentor.
5 See T. Mommsen, Römisches Staatsrecht (Leipzig, 1887), Vol. 3, 2, p. 956, n. 3. For example, Cicero (In Catilinam, 3.13) consulted the senate de somnia re publica ('the supreme public interest') when the Catilinarian conspiracy was exposed. As Mommsen explains, the senate probably also debated de re publica at the beginning of each year with special reference to the annual mobilization of troops.
6 Similarly, the familiar expression contra rem publicam means 'against the public interest'.

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Greeks say, even though he is not satisfied with their writings. His consent is seconded by Philus, another senior statesman, who adds further praise: alluding to Scipio's military successes, he says that Scipio has outdone all Romans in 'the greatest affairs of state' (in re publica rerum maximarum, 1.37). Continuing the exchange of courtesies, Scipio responds by accepting the 'very heavy burden' of speaking about 'great affairs' (magnus . . . rebus). Talking about 'great affairs', like achieving the greatest deeds, is to engage in affairs of state. Just as Scipio previously promoted the public interest by military action, so now he is to rescue the public interest by political policy. Philus responds by reassuring Scipio that his discussion de re publica will be 'much richer' than any Greek discussion. Scipio is clearly a man who has his own, rich contributions to political philosophy.

The debate as a whole, then, is a constitutional debate which will consider the general question 'what is the best state?' as a means of solving the immediate problem of restoring unity to the Roman state. Sequestered in Scipio's rural estate, the group as a whole serves as a kind of shadow senate, working out a policy for saving the state.

The Definition

The first question that needs to be answered is: 'What is the state?' Scipio asserts the answer without proof or discussion; and his friends immediately accept it. Showing a familiarity with Greek philosophy, he not only defines the topic of the discussion, but also prefaced the definition with an explanation of the need for it (1.38). In all discussions, he explains, the topic must be agreed upon at the outset in order that error may be avoided. First, the name is agreed upon. After this, 'what' (quid) is meant by the name must be 'unfolded' (explicitur). Only if this explication is agreed upon, can the discussion begin; for 'what' a thing is must be understood before it can be understood 'what sort of thing' (nulla) it is. Since the topic of discussion is re publica, he will first state what it is.

As Cicero illustrates repeatedly in his philosophical writings, it became standard procedure in the Hellenistic period to begin a philosophical discussion with a definition. This is an adaptation of a procedure recommended by Plato. As Cicero points out in De finibus (2.3–5), Plato demanded in the Phaedrus that, in order to avoid error, all participants in a discussion must agree on the topic before discussing it. In the case of terms that are in dispute,

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7 This does not prevent there being some difference of opinion between Cicero and his character. Throughout his depiction of Scipio, Cicero, as narrator, preserves a certain ironic distance from Scipio through the comments he puts in the mouth of other characters. Most copiously, he hints at some excess in Scipio's enthusiasm for Roman history (2.22, cf. 3.42). What Cicero and Scipio share is a commitment to the ancestral, mixed constitution.
a definition must be agreed upon. The aim of the definition is to provide an
unambiguous, fixed standard by reference to which the issue is judged.
Cicero’s Scipio adapts the Platonic precept by drawing a distinction between
‘what’ and ‘what sort’. The definition shows ‘what’ the state is; subsequent
argument based on the definition will show ‘what sort’ of thing the state is. It
is assumed that when we know what qualities a state has, we will know what
sort of state is best.

Although the text is not explicit on this point, Scipio expects that his definiti-
on will command the assent not only of everyone who is present, but also of
anyone at all. In the Hellenistic period, a definition that was agreed upon by
human beings in general was considered true. The reason is that it cor-
responds to a common, naturally formed conception. The advantage of a defi-
nition based on universal agreement is that it provides true premises for
arguments leading to true conclusions. Unlike Plato, who is willing to aban-
don an initial definition, Scipio treats his initial definition as a bedrock of
truth upon which all his conclusions depend. Apart from philosophical argu-
ment, initial definitions that all could agree upon were used in legal pleading.
Cicero describes them as ‘brief’ statements that unfold an ordinary concep-
tion.

A definition that corresponds to a common conception differs from a defini-
tion that has been obtained by philosophical argument. In Aristotelian ter-
mindology, the initial definition is a nominal definition, as opposed to a causal
definition. A nominal definition shows what the word means; a causal definition
reveals the basic nature of a thing by showing what makes it what it is. Scipio,
we shall see, draws a distinction between his definition of the state and the
cause of a state.

Immediately after announcing his procedure, Scipio puts a limit to follow-
ing the Greeks. He won’t outline the elements of the state by tracing its origin
to the first couple; nor will he offer frequent definitions. For ‘the topic is so
clear and so well known’ that there is no need to do so. Making a pointed

8 Plato, Phaedrus, 257b–d, 263a–d, and 265d; see also Cicero, On Duties, 1.7.
9 Both the Epicureans and the Stoics distinguished between an initial conception
(προτύπον), which is formed naturally in humans and is true, and a technically elabo-
ration conception, which is obtained by argument on the basis of initial conceptions.
According to Augustine, the Stoics held that it is the job of a definition to ‘unfold’
(εξπληκτά) the common conception (called προτύπον, ‘prescription’) that all humans
have by nature (Augustine, City of God, 8.7 = Stoicorum Veterum Fragmenta (Bonneller,
SVF), ed. Hans von Arnim (Leipzig, 1903–26), 2.100; cf. SVF, 2.83.
10 Cicero, De inventione, 2.53; De oratore, 1.189–90; cf. Ad Herennium, 2.17 and
4.35. In De partibus aequitatis, Cicero distinguishes the kinds of cases for which defini-
tions must be used (33) and recommends that the definitions should ‘unfold’ the ordinary
sense of the term (123–6).
11 See esp. Aristotle, Posterior Analytics, 2.10.
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contrast between the learned (docti) and those who have practical wisdom (prudentes), Scipio says that he won't allow that the reality should be clearer to his hearers, who have achieved the greatest glory 'in the greatest state' (in maxima republica), than his discourse (1.38). What Scipio excludes are generic accounts of the state, such as found in Plato's State, or an analysis of the state into households and villages, as found in the first book of Aristotle's Politics, or the intricate taxonomies of the Stoics with their definitions. He will later offer a historical account of the Roman state; but this is a story of Roman experience, not a theoretical analysis.

Scipio's reliance on practical experience might raise the objection: if his hearers understand political reality to clearly, why does he go to the trouble of providing a definition of res publica at all? In the Phaedrus, Plato restricted the use of definitions to terms about which there was disagreement, such as 'love', terms whose meaning was obvious, such as 'iron' or 'silver', were to be used without definition. Subsequently, philosophers debated among themselves whether things that were obvious needed to be defined at all. Some philosophers, Cicero tells us, rejected the use of definitions in obvious cases; most did not. Scipio's use of a definition can be justified by two reasons. First, the term is not without ambiguity, as we will see. Second, it is important to state the meaning explicitly in order to have explicit premises for the arguments that follow.

The definition is famous. It was known ever since Cicero published his State in 60 BCE. Although the surrounding text was lost from the time of the early Middle Ages until Mal's discovery of the palimpsest of the State in 1819, the definition itself was known through Augustine's citation of it in City of God. Here, then, is Scipio's definition (1.39), as it appears in the manuscript:

Ex istitur . . . res publica res populi, populus autem non omnis hominum coetus quoque modo congregatus, sed coetus multitudinis iuris consensui et utilitatis communione sociatus.

Res publica, then, is the concern (res) of a people (populi). A people, further, is not just any gathering of humans that has come together in any way at all; but it is a gathering of a multitude formed into a partnership by a common agreement on law (iuris consensui) and a sharing of benefits (utilitatis communione).

The first thing that stands out is the definition; res publica. The previous discussion, which led up to it, showed that res publica has a range of meanings.

12 On Stoic taxonomies and definitions, see Cicero, Tusculan Disputations, 4.9. In agreement with Scipio, Plutus later (3.13) singles out the Stoic Cheiripras for considering everything on the basis of meaning, not facts.
13 Plato, Phaedrus, 263a-c.
14 Cicero, Academicus, 2.17-18.
15 Augustine, City of God, 2.21.
that includes 'state', 'public interest', 'public affairs'. The term also has a
strongly patriotic connotation as the term used by the Romans to designate
their own state. Scipio does not use the more general term civitas, which
corresponds more closely to Greek politeia (polis) and was used initially by
Laelius to frame his request. It was appropriate for Laelius to use the term
civitas because his question concerned not just the Roman state, but all states.
The general topic, as we saw, arose out of a special concern about the Roman
state. The choice of res publica as the definiendum reflects this concern. It
also reflects Cicero's own understanding of what a state is. Res publica leads
directly to a definition in terms of a unified people (populus).

As though to correct the implicit focus on Rome, Scipio makes clear shortly
afterwards that he is considering all states. Proceeding very systematically, he
follows the definition by a brief explanation of the cause that first brought
about states. After this explanation, Scipio recapitulates his definition of res
publica by citing it within a series of definitions. First, he defines a town or
city (oppidum, urbs) as a 'conglomeration of dwellings' (constinctio
municipiorum). Next, he sums up his definition of 'people', then offers a brief defi-
nition of civitas, then ends with an abbreviated definition of res publica
(1.41):

omnis ergo populus, qui est talis coetus multitudinis qualem exponit, omnis
civitas, quae est constitutio populi, omnis res publica, quae, ut dixi, populi
res est, consilio quodam regenda est.

Every people (populas), then, which is the sort of gathering of a multitude
that I put forward, every state (civitas), which is an organization of a people
(constitutio populi), every res publica, which, as I said, is the concern of a
people, must be ruled by some deliberative body (consilio).

By reintroducing the general term civitas, Scipio reorientates the discussion in
the direction in which it was always intended, that is, a consideration of all
states. Civitas and res publica are viewed as synonyms. Although the two
terms have the same extension, each is defined by a different aspect. Just as
the definiendum civitas reflects Greek polis or politeia, so the defining term
constitutio is a translation of Greek συστασιά or σύστασις. The Stoics, for
example, defined both polis ("city" in the sense of "city-state") and politeia
("city-state" or "constitution") as "an organization of human beings" (συστασιάν πολιτικήν). Polybius regularly refers to the city-state as a
συστασία. By contrast, the definition of res publica views the state as a col-
lective entity rather than an organization.

By prefixing a definition of town (city), Scipio clears up a possible ambigu-
ity: the state is a politically structured entity, not just a communal dwelling-

10 3TP, 3.326; cf. 2.528; see further below.
17 Polybius, Historiae, Vol. 2, ed. Theodor Buecher-Wobst (Leipzig, 1889), 6.4.5,
6.5.10, 6.10.14.
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place. Unlike Latin civitas or res publica, which already suggest a political entity, Greek polis is ambiguous between city as a dwelling-place and city as a city-state. Even though Roman terminology is not beset by the same ambiguity, Scipio confronts the ambiguity by adding a definition of 'city' (opipidum, urbe) as a dwelling-place. Just like the discussion as a whole, this detail reflects a Greek source, together with a thrust to put Roman political experience in the foreground.

Formally, the definition of res publica is a double definition, consisting of an etymological unpacking, res populi, followed by a definition of the second word of this brief account, populus, 'people'. Without a definition of populus, Scipio would not achieve his purpose of providing a clear standard for inquiry. For even if the term res publica is quite clear in meaning, the word populus is treacherously ambiguous. Laetus has just distinguished the people (populus) from the senate (1.31). Throughout the remainder of the dialogue, Cicero will use populus both in a wide sense to designate the whole Roman citizenry and in the narrower sense of a grouping of people that differs from the senatorial aristocracy. Scipio later uses the adjective popularis to refer to rule by the people in place of a monarchy or an aristocracy. Popular rule, he says, degenerates into a bad type when the 'power of the people' (populi potestas) turns into the fury of a mob (1.44). Scipio needs to make clear from the beginning that he does not take res populi to mean the same as popular rule, let alone its deviant form, mob rule.

Scipio's definition of populus is a philosophically rigorous definition, consisting of a genus — a gathering of humans' (hominum coetus), or more precisely 'a gathering of a multitude' (coetus multitudinis) — together with a differentia — an association formed by a common agreement on law and a sharing of benefits. The term sociatus shows that the gathering (coetus . . . congregatus) is not just any aggregate, but a certain kind of organization. Along with the logical progression, the definition increasingly emphasizes the unity of the state. This progression begins with a combination of singular

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11 The identification of res publica as res populi appears to be traditional, as shown by Plautus' reference to res populi at Pseudolus, 524. Another example of a double definition in Cicero's writings is his definition of locus, a rhetorical 'topical', at Topica, 8 as 'argumenti sedem, argumentum autem rationem quae reliquas faciat fidem' ('the place of an argument, an argument being reasoning that proves something in doubt'). Sedes is left undefined, like res; and argumentum is defined in terms of genus and differentia.


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terms, res populi, then continues with a sequence of terms compounded by con- (coetus, congressus, consensus, commentum), which is then rounded off by the final word societatis.

The objection has sometimes been made that Cicero's definition is anything but clear. We need to draw a distinction, however, between the initial clarity of the terms and the clarity that ensues as a result of philosophical investigation. Cicero can justifiably claim that each term in the definition is clear as a starting-point of investigation. For we all attach the same general meaning to the words; and although each term has a wide range of meanings, the general sense is clearly demarcated against an opposite. Thus, 'gathering' (coetus) signifies a throng, as opposed to individuals that are scattered; and all the terms used to spell out the differentia have clear opposites.

It is very difficult to capture the initial clarity of the terms in English translation, while leaving open the range of meanings for each term. Ius is especially difficult to translate; it signifies right, or law, or a policy of justice. It corresponds more closely to Greek dikaios, or German Recht, or French droit than to any English counterpart. Cicero regularly opposes ius in his writings to via, 'violence', in such a way as to reinforce the semantic contrast with the linguistic form. He uses this contrast later in the State (3.41). Ius accommodates many subdivisions of meaning, including a contrast between natural and conventional justice. Cicero previously alerted the reader to this contrast by having Scipio distinguish between 'the right/law (ius) of citizens' and 'the right/law (ius) of the wise', and between a civic bond and the universal law of nature. While the definition requires some type of legal arrangement, it is important to note that it does not contain a requirement for justice, iusticia, simply. Whether ius is to be understood as requiring moral justice is something that needs to be worked out by further argument.

Consensus signifies 'common agreement', whether it consists of mere compliance or strong commitment. Its opposite is dissensus. The usual translation 'consent' is, therefore, misleading. What is required is not simply assent, but a shared position. A sharing (commensio) of benefits is, obviously, the opposite of taking benefits for oneself alone; what is not specified is whether all share equally or not. Utilitas covers any type of benefit, including material wealth, security, freedom, power, fame, virtue, happiness.

Along with single words, two composite expressions invite special attention. One is the combination of res with populi. By itself, the word res is 'thing', 'affair', 'concern'. In Roman law, things (res) were divided into

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23 See Cicero, Pro Sestio, 92.
24 1.27 (non Quidritiam, sed sapientius ine - nec civiliter neco, sed communi legem nature). See also Cicero, De partitione oratoria, 129.
25 It is to be distinguished, therefore, from the Greek opposition between willing acceptance and compulsion, as proposed by Plato in Politicus, 291e–92a and Laws, 684c, 690c.
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corporeal and incorporeal things, the latter including obligations. In both ordinary usage and the legal texts, the plural expression *res publicae* designates public affairs as opposed to *res privatae*, private affairs. The singular term *res publica* includes everything that has to do with the political community as a whole, including the public interest, public affairs and public wealth. Formulated as *res populi*, it designates something that belongs to the people, whether as a sphere of activity or as a possession. Although the genitive case suggests ownership, this connotation is not so strong as to imply a division between the thing owned (the state) and its owners (the people). Defined as *res populi*, the state appears clearly as the kind of thing in which the whole people has an interest. What sort of relationship the people have to this thing remains to be investigated.

The other phrase is *ius consensuum*. It occurs only here in the entire corpus of Latin literature, together with a repetition at 3.45. The awkward use of the genitive case gives it special prominence. The whole expression is compressed, apparently out of a desire for grammatical parallelism with *utilitatis communione*. Still, the general meaning is clear enough: just as the members of the association share in benefits, so they agree on some sort of legal system. The most obvious way to understand the genitive is to take it as standing for *de iure*. At the same time, there is no reason to exclude a so-called subjective use of the genitive; the agreement on law may be viewed as an agreement that is itself lawful. The phrase suggests both an agreement on the kinds of rules and an agreement to abide by them. Cicero subsequently gets around the grammatical awkwardness by omitting the reference to agreement.

26 See Diodor, *Historia*, Vol. 9, pp. 264–79, and Vol. 16, pp. 7–20. Schefold, 'Cicero's *De re publica*'s, pp. 68–70, points out that there is no precise Greek counterpart to also close Polybius's expression τοῦ ἄθροιστος ἀρχηγοῦ (Historia 6.8.3) as coming close to Cicero's *res populi*. C. Ando illustrates the difficulty by citing four different translations of *res publica*, in the Greek version of Augustus' *Res gestae*, τοῦ ἄθροιστος ἰσότερον, τοῦ πολιτικοῦ. τοῦ δικαίου πολιτικοῦ, τοῦ πολιτικοῦ τοῦ πολιτικοῦ. See C. Ando, 'Was Rome a polis?', *Classical Antiquity*, 18 (1999), pp. 3–34, p. 15. The plural counterparts all miss the idea of a unified enterprise.
27 This is pointed out by Bichler, 'Die beste Verfassung', p. 78, n. 55. See, however, note 29 below.
28 Bichler, *Publius*. M. Tullius Ciceron, *De re publica*, p. 123, takes consensus iuris as consensus de iure. P. Cancelli has argued that the 'consent' is not to be construed as a type of volition, but as a condition of harmony or 'comonsens' ('La distribuzione armonica del diritto ai singoli e alii classi congiunti lo stato'); on this view, the genitive is a subjective genitive. See P. Cancelli, *'Ius consensuum* nella definizione ciceroniana di 'Respublica'*, *Rivista di Cultura Classica e Medieval*, 54 (1972), pp. 267–67, p. 256. In my view, Cancelli's interpretation is too dependent on Cicero's later explanation of consent as a musical harmony (2.69); still, the awkwardness of the genitive in the definition accommodates a wide range of explanations, including Cancelli's.
(49): quid enim civitas nisi turis societas ("For what is a state other than a partnership in law?"). At the same time, the fact that Cicero cramns the idea of common agreement into his definition suggests that he regards it as a crucial element.

Finally, it is necessary to consider the entire combination of words in the definition. The full sense of the definition, as understood by the ordinary Roman, becomes clear only if all the terms are understood in relation to each other; and here, I think, something very interesting appears. Using the terms res publica, turis consensus, utilitatis communione and societas, Cicero builds up a conception of the state as a certain kind of partnership, societas. This partnership differs from other kinds in that it encompasses the whole civic community; what it shares with the others is the principle of a fair division of contributions and rewards.

Partnerships were an important feature of Roman life from the earliest times. As defined by de Zulueta, societas was an agreement to contribute property or work or both to the prosecution of a common aim. Partnerships were of two main types: partners could share all their assets, or they could pool just some resources for the purpose of a single transaction or type of transaction. The first type was prevalent at an early period. It was typically a partnership of heirs who left their inheritance undivided; this type of arrangement was particularly suitable to close relatives working a farm together. Examples of the second type are partnerships of tax collectors or corn-millers or persons keeping a shop. The common assets were called res communes. In the period of the Empire, the jurist Gaius drew an analogy between the state and partnerships proper; both have common assets, a common treasury, and an agent who determines what must be done in common.

29 Similarly, in the Dreams at the end of the State the elder Scipio defines states (civitates) as 'councils and gatherings of homes joined in partnership by law' (consilia eociisque hominum iure sociatis, 6.13). The expression societas turis, 'partnership in law', occurs also at Cicero's Laws, 1.35, 7f. Cicero, On Duties, 3.26 and On the Nature of the Gods, 2.148). The use of societas with a genitive is frequent; thus Cicero speaks of a 'partnership in crime' (societate sociata) at Pro Sulla, 52. Combining the term consensus and societas, Cicero defines the bond that holds together friendship in consensus et societas consiliorum et voluntarum. (a consensual partnership of plans and intentions) at Pro Flacco, 5. Cicero also refers to the state as a 'partnership', societas, at Laws, 1.62 and 2.16.

32 Gaius, Institutes, 17.2.45, 47, etc.
33 Justinian, Digest, 3.4.1 (Gaius); Gaius aetatem permisiore sit corpus habere collegii societatis sue cumque aliarius eorum nominis, proprium est ad eorumque rei publicae habere res communes, secum communes et actores eorum syndicum, per quam
In Roman law, partnerships are classified as a type of obligation based on contract (ex contractis). All partnerships rely on "consent" or "common agreement" (consensus); but some rely only on consent (nudo consensus), whereas others reinforce common agreement with formal elements, such as special wording, written records, or a transfer of an object. All partnerships are governed by laws (juris), which constitute "the law of partnership", ius societatis. In partnerships that rely only on consent, a person is legally responsible for acting "according to the law of nations" (ius gentium) or "the natural reason of humans". In general, there can be no partnership in a dishonest endeavor: a partnership in crime (malificii societatis) is null and void.

In any partnership it was understood that partners would receive a share of the profits in proportion to their contribution, whether in money, skill or labour. There is much controversy in the legal literature about the proportion of contributions to profit. The basic principle is that the proportion must be fair. Fraud renders a partnership invalid, whether it is perpetrated by one partner on the others or by the whole partnership. There is no partnership (called "leonine") when one partner gets all the profit and another gets only losses. At the same time, a person may receive more of the profits if he contributes more work or runs a greater risk than another who contributes equal wealth. All partners have an obligation to deal ex bene et aequo, "fairly", with one another. Fraud or negligence makes a partner liable to prosecution.

"In re publica, quod communs fuerit, agatur finis. (These permitted to form a corporate body consisting of a collegium or partnership or specifically one or the other of these have the right on the pattern of the state to have common property, a common treasury, and an attorney or syndic through whom, as in a state, what should be transacted and done is transacted and done); see The Digest of Justinian, Latin text ed. T. Mommsen and P. Ensser, English translation ed. A. Watson, Vol. 1 (Philadelphia, 1985), p. 96.) The 'actor' in the case of the state is presumably the emperor.

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35 See Cicero, Pro Quinctia, 11; and Pro Rospo Commodo, 74.

36 See Justinian, Digest, 17.2.17.1, 17.2.64 and 17.2.82.

37 Guis, Institutes, 3.154.

38 Justinian, Digest, 17.2.57.1, 17.2.3.3 and 18.1.35.2.

39 Ibid., 17.2.23. A. Watson suggests that the "juridical feeling that there should be some equivalence between pretation and return" is characteristic of partnerships in Roman law; other bilateral contracts, he points out, need not be fair (pp. 242–50). What accounts for this feeling, he proposes, is the original conception of a partnership of all assets. See A. Watson, Legal Origins and Legal Change (London, 1991).

40 Guis, Institutes, 3.137.

41 Justinian, Digest, 17.2.52.2.
faith (bona fide). Cicero's own writings attest the prevalence of trials concerning good faith or bad faith. These trials use the formula 'good conduct among good men' (inter bonos bene ager) or 'the better, the more fairly' (mellius acquisitum). A partner who deceives another is not 'a good man'.

Like later lawyers, Cicero associates good faith with the law of nations.

In Cicero's definition of the state, the entire description 'formed into a partnership by a common agreement on law and a sharing of benefits' is applicable to any partnership whatsoever. In particular, the terms consensus and societas stand out as defining characteristics of a partnership. Like any partnership, the state is a consensual enterprise in which benefits are shared. But what are these benefits and how are they shared? If the whole state is to be truly a partnership, the whole people must unite in an agreement on how contributions and benefits are to be distributed. This distribution, moreover, must be fair.

The definition then raises a number of questions. A key problem is: what does the agreement of the people consist of? More precisely, does an entail justice? Is the state indeed a partnership of citizens collaborating with one another for a fair distribution of benefits? Is this the sort of thing (qualis) a state is? Finally, what is the best kind of state? In order to answer these questions, the meaning of the terms used in the definition must be investigated further. It is not the job of the initial definition to provide this illumination. It is beside the point, therefore, to narrow the meaning of the terms as they occur in the definition, as many scholars have done.

Cicero will uncover new depths of meaning as he proceeds in his argument; he does not rely on the definition as already having this philosophical precision. The result will be a philosophically refined conception of the state.

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46 Büchner ("Die beste Verfassung", p. 78); for example, translates consensus in: as "Einverständnis im Recht", then adds that this means "gemeinsame Anerkennung von Recht und Gerechtigkeit" (p. 79, cf. p. 88). Büchner claims that Cicero already uses terms in their full meaning from the very beginning (p. 78, n. 23). Büchner's unpacking of the phrase seems to me correct but it already anticipates the argument that follows. Against Büchner, Kohls ("Consensus turris", pp. 488–95) argues, correctly in my view, that he, as used in the definition, covers both justice and 'Richtungsordnung'. L. Pecelli takes "consensus" to mean 'accordos clericis iuridici' (that is, an agreement on civil rights), as opposed to an agreement on 'diritto' (understood as natural law), with the explanation that it is 'un accordo tra parti contrarie che accettano uno limitazione del loro diritto al fine dell'utile collettiva'. See L. Pecelli, *Il pensiero politico di Cicero* (Florence, 1990), pp. 18–19.
The Argument

Cicero's argument consists of Scipio's exposition together with the discussion that follows. Scipio's speech is divided into two parts, one analyzing the types of constitutions, the other illustrating the very best constitution with a history of Rome. The discussion consists of dialogue and a central debate on the nature of justice. The entire argument will throw new light on four main concepts: unity, consensus, justice, and the sharing of benefits. The key concept is that of justice; it determines how benefits are shared, and it is what holds the state together in a common agreement.

Immediately after stating the definition, Scipio makes a second assertion. This is an explanation of the cause that first brought people together into states (I. 39):

cuius autem prima causa concordi est non tam imbecilitas quam naturalis quedam hominum quasi congregatio.

The first reason for this gathering, moreover, is not so much weakness as a certain natural association of humans.

Scipio adds that even if humans had everything in abundance, they would still prefer to join with each other. The text then breaks down. It resumes about a paragraph later on the same theme. Scipio now refers to 'seeds' of virtue, as well as of the state. Scipio then recapitulates the definition, as just discussed.

In his explanation, Scipio balances two possible reasons against each other and opts for natural sociability in preference to weakness. In Greek terminology, he holds that the human being is naturally social. Although a crucial part of the text is lost, it is clear that he backs up his choice by argument; for he cites as evidence that we would not want to live alone even if we had ample resources. He also indicates that our natural communal impulse is a 'seed' that grows into a virtue. In the first prologue, Cicero described this natural impulse as a 'love for defending the common welfare'.

In opting for sociability, Scipio endorses one side of a debate that divided Greek political thought. Some Greek thinkers argued that political communities are the result of a compact that aims to make the weak stronger through collective action. This position makes a spectacular entrance in political thought in Plato's Gorgias (483b–c), where Calliphe proclaims that laws were instituted by the weaker for their protection against the powerful. Against this view, a long line of thinkers that includes Plato, Aristotle and the Stoics maintained that humans are naturally inclined to live jointly with others. When perfected, this inclination becomes the virtue of justice. In Stoic terminology, it is a 'seed' of virtue. The two views will be debated in detail in Book 3 of Cicero's State. The first view is described here as holding that 'the

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47 1.1: amorem ad communem salutem defendendum.
mother of justice is weakness, not nature or will'. On this view, justice is a man-made arrangement, consisting in whatever rules are believed to overcome weakness. The second view makes use of the Stoic claim that justice exists by nature.

As soon as he turns to the topic of cause, Scipio can no longer appeal to the agreement of everyone. He launches his argument by making a claim that is highly controversial. The discussion has moved from an initial definition, to which all agree immediately, to a causal claim that needs to be backed by argument. While the definition serves as a criterion for delimiting the topic—states—the causal claim, as Scipio goes on to explain, serves as a criterion for judging the types of states, or constitutions. It is also the first step in telling us what sort of a thing a state is: it fits human nature, or more specifically, a natural impulse for justice.

The analysis of constitutions revolves around the criterion of justice. Scipio begins the analysis with the assertion that constitutions differ according to the type of council (consilium). Each type of council, he adds, must be judged by reference to the initial cause of states (1.41). In his subsequent evaluation, Scipio repeatedly draws attention to the need for justice. Three simple constitutions—monarchy, aristocracy, and popular rule—are found to be acceptable for the reason that each type of council is just (1.42–3). Yet all three types are deficient as measured by the criterion of providing a share in the government: in particular, the people lack liberty in a monarchy and an aristocracy; and the wisdom of a single individual or merit of an aristocracy count for nothing in popular rule. Each type, moreover, easily turns into a bad form, specifically, tyranny, oligarchy, and mob-rule (1.44). What makes them bad is that they are unjust: they are beset by iniquity and passions (inaequitatus, cupiditas, 1.42).

The best type of constitution, it turns out, is the mixed constitution, consisting of three parts: a monarchical, an aristocratic and a popular element (1.45, 1.69). It stands out above the rest by having great stability as well as "a certain great equity" (aequabilitas, 1.69). This equity is based on a combination of two kinds of equality: numerical equality, which bestows freedom on each individual, and equality of merit, which arranges persons in a hierarchy of merit. As a result, there is an equitable distribution of power among the three parts of the constitution.29

29 3.23: insunt quae non magna nec voluntas, sed imboclitas mater est.


The entire discussion of constitutions is clearly indebted to Aristotle and his school, as well as Plato. The argument turns on how well the various types of constitution satisfy the reason for which people assembled in states. Although the discussion reveals aspects of justice and injustice in the state, no attempt is made to assess the definition as a whole; it remains in the background. The second part of Scipio’s exposition is much more original. Here Cicero vis a quo as he draws on Roman sources to show how the Romans gradually developed a policy of cooperation that culminated in a mixed constitution. At the same time, Cicero shows how the Roman state grew in size, power and wealth. The state appears as a partnership that attains the pinnacle of success by a policy of pooling contributions and sharing rewards.

The first two kings lay the foundation of both concord and wealth. Romulus lays out the rudiments of a political structure by appointing a senate to advise him (2.15). As military leader, Romulus acquires booty and lands for the people; and the people lend him their enthusiastic support. For his service to the state, he is rewarded by being worshipped as a god upon his death (2.17). The second king, Numa, turns the Romans toward peaceful endeavors by distributing the conquered lands to the citizens to be farmed. By doing so, he promotes ‘justice and trust’ (iusitis et fides, 2.26). The two sources of income, conquest and farming, form the economic basis of the state’s success as a partnership. From the beginning, the Roman state functions as a partnership in which all work hard and cooperatively for the greater benefit of all.

Along with an increase in wealth, there comes an increase in the sharing of political power. The most important innovation after Romulus is the creation of the centurial assembly by the sixth king, Servius Tullius (2.39-40). Describing Servius as ‘the most far-seeing of all kings in matters of state’ (2.37), Cicero gives him credit for recognizing that votes must be ‘in the power of the rich’ (in locupletium potestate) and, in general, that ‘the greater number must not have the greatest power’ (ne plurimum volente plurimi). According to Cicero, the assembly consisted of 193 groups (‘centuriae’) arranged in such a way that the wealthy (distributed in 18 groups of knights and 70 groups of the first class, and joined by a group of carpenters) had enormously greater voting power than the poor (distributed in 104 groups). Each of these 104 groups contained almost as many persons as the entirety of the 70 groups of the first class. The carpenters were grouped with the wealthy because of their ‘outstanding usefulness’ to the state. The very poorest obtained a tiny fraction of voting power on the ground that they contributed offspring.

Scipio justifies this arrangement as follows (2.40):

Ita uxe prohibebatur quisquam tare suffragis, et eis valebat in suffragio plurimum, cuius plurimum intereat esse in optimo statu civitatem.

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In this way, both (a) no one was deprived of the right to vote, and (b) the greatest voting power belonged to the person who had the greatest interest that the state should be governed in the best way.

This distribution combines a democratic and an oligarchic principle: everyone has a vote, but the rich have a vote that is proportionate to their wealth. This is an adaptation of an Aristotelian formula for a mixed constitution. It is surprising, however, that Cicero should endorse the oligarchic principle that wealth should be rewarded with power; for he rejects oligarchy as a bad form of government. On the other hand, it should be noted that Cicero rejects oligarchy not so much because it privileges the wealthy, but because it gives power to wealthy people who are greedy and arrogant, accumulating wealth for their own benefit. Oligarchs misuse their wealth; but the contribution of wealth by the wealthy is crucial to the flourishing of the state.

Cicero, moreover, softens the oligarchic principle by saying that voting power depends on how highly a person values the well-being of the state; he does not crassly equate voting power with the amount of payment to the state. The wealthy are rewarded for securing the well-being of the state by means of their resources. The greater voting power of the wealthy rests ultimately on the view of the state as a partnership in which privileges are based on contributions. Wealth is a basic type of contribution, though not the only one. The wealthy contribute patriotic service along with their wealth; and this contribution includes habits of leadership, both at home and in military campaigns, and deliberation. Military service is valued in itself; but it is valued the more highly the more it is joined by wealth. Those who do not have the money to equip themselves as soldiers count the least; they count only in respect to their children.

When the monarchy falls, the people gain some measure of liberty. The aristocrats assume power and the rest of the people gradually obtain more rights. These rights culminate in the acquisition of political power by the mass of people through their own representatives, the tribunes, together with an assembly that has independent legislative power. The constitutional development ends with an ‘equitable balance of right, duty and function’ among three elements: the regal power of the consuls, the authority of the senate, and the liberty of the people. With the exception of two traumatic ruptures — the tyranny of the last king, Tarquinus Superbus, and the oligarchy of the board of ten — Roman history was characterized by concord, just rule, the growth of justice in society as a whole, an ever wider sharing of political power, and a sharing of ever increasing wealth.

The discussion that follows Scipio’s speech provides an in-depth look at the part of the definition that most requires elucidation: ‘common agreement’.

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22 2.57: acquibilis . . . compensatio . . . et iuris et officii et muneris.
on law' (ius est consensus). This extant text offers just a paragraph on consensus. This paragraph in turn links consensus with justice, which is then debated at length. Consensus is explained, with the help of Plato, as a harmony among different social classes (2.59). Plato used the musical analogy in his State to explain how self-restraint pervades the ideal state. Just like a musical harmony, the lowest part, the workers, the middle part, the soldiers, and the highest part, the philosopher kings, are of one opinion as to who should rule and who should be ruled. Cicero adapts this analogy to his own purpose. Just as concord (concentus) is produced by a blending of high, middle and low notes, which are very dissimilar to one another, so concord is produced in the state by the common agreement (consensus) of the lowest, middle and highest classes, although they are very different.

Importantly, Cicero’s three classes (ordini) do not correspond to the three parts of his mixed constitution. Unlike Plato’s three divisions, they are not political units, agreeing on who should rule and who should be ruled. Instead, they are social classes, working co-operatively with one another. As Cicero makes clear in his other writings, the highest classes at Rome are, first, the senate, and, next, the knights (equites). This is followed by other classes, with freedmen at the bottom. Traditionally, freedmen are bound by legally enforceable obligations to the person who freed them; others along the social scale have looser obligations (in return for rewards) to those above them. Previously in his State (2.16), Cicero signalled the importance of patron–client relationships, which bind all of Roman society. Amid extreme social differences, Cicero founds political unity on a policy of co-operation among the social classes.

Scipio ends his musical image with the claim that civic concord cannot exist without justice (justitia). Indeed, he claims, a state must be administered with the ‘greatest justice’ (2.70). What, then, is justice? The answer is elicited by a debate, in which one side (represented by one of the members of Scipio’s group) argues that justice is nothing but an artifice introduced by humans to compensate for a condition of weakness. The other side (represented by Laelius) argues that justice exists by nature. Laelius’ speech includes a Stoic definition of law as the will of god, applying to humans and states everywhere. Justice is now analysed as an other-regarding virtue. Instead of urging us to ‘increase resources, enlarge wealth, extend boundaries… command as many as possible, enjoy pleasures, have power, reign, dominate’, it instructs us to ‘spare all, look out for the interests of the human race, give everyone his due, not touch things that are sacred or public or belong to others’. 53 This contrast has special reference to Roman imperialism: but it also applies to the

53 3.24: sapientia inebet augere opes, amplificare divitas, profere finis… imponere quam plurimum. Frui voluptatis, polire, regnare, dominari; iustitia animam praeceptit: pacare osonum, comsurge gentii humanum, auro cupere reddere, aures publicae alium non tangere.
internal affairs of the Roman state. Justice will not permit anyone to subjugate others for one’s own benefit or take away what is theirs.

The result is a new look at the initial definition. Reginning his listeners how useful a ‘brief definition’ is, Scipio asserts that the ‘argument now forces’ (ratio namque cogit, 3.43) him to contradict what he said earlier about the types of constitution. The brief definition, as cited by Augustine, is the initial definition of res publica. 54 Using the same definition, Scipio now concludes that the three major types of state are not states at all. Previously, Scipio had admitted the bad types of constitution as types of ‘state’. Tyranny is now excluded for the reason that there is no res populi, ‘concern of a people’, when ‘all are oppressed by the cruelty of a single person and there is not a single bond of justice (unum vinculum iuris) nor common agreement (consensus) and a partnership (societas) of those who are gathered, which is a people’. 55 The reference to a ‘single bond’ points to natural law, which is the same for all. 56 Consensus and ‘partnership’ are treated as equivalent. Just as there is no people, as previously defined, there is no res populi. In the tyranny of Dionysius, for example, ‘nothing belonged to the people and the people itself belonged to a single person’ (nihil . . . populi et unus erat populus ipsius). Instead of the people being in control of the state, a tyrant takes control of the people. 57 The same transfer of control happens in an oligarchy and mob-rule: for they, too, are a kind of tyranny. Scipio keeps repeating as a kind of slogan: there is no res populi. There is no state when one group uses the rest for their own advantage.

What has changed since the initial discussion? The difference, I suggest, lies in the philosophical dissection of the concept of justice. Common

54 Augustine, De civitate dei, 2.21. In his summary, Augustine not only refers to the ‘brief definition’ (in the singular), but also says that Scipio’s argument rests on ‘definition’ (in the plural, twice). The ‘definitions’ are possibly the two parts of the ‘brief definition’, but they may also include the definitions of the types of constitution at 1.42. On the use of the term ‘brief’ to describe an initial definition, see above, note 10.
55 3.43: . . . cum cunctis unius opprimsit eum universum, nemo quique unum vinculum iuris nec consensus nec societas coeques, quis est populus.
56 Cf. Cicero’s Laws, 1.42.
57 Schofield, ‘Cicero’s Definition’, pp. 75-6, has argued that in Book 3, Cicero continues res populi as ‘property of the people’, and that, as property-owners, the people have rights which require ‘a degree of liberty’. The people, he proposes, have sovereignty, while entrusting the management of the state to others. Although I agree with Schofield’s main point, that Cicero assigns sovereignty to the people, I disagree that the argument in Book 3 rests on a (metaphorical) use of res as ‘property’: the sense seems to me to remain that of ‘object of concern’, ‘realm’, ‘enterprise’. In my view, moreover, the people does not simply entrust the management of the state to others. Rather, there is a mutual relationship of trust: the king, or aristocracy, or people, or a combination of all three elements entrusts approval of their policy to the whole people, just as the whole people entrusts administrative powers to these bodies. This reciprocity of trust characterizes the state as a partnership.
agreement, it turns out, entails justice; and justice entails an other-concern that does not permit one person to abuse or rob another. Scipio originally relied on an intuitive, ordinary conception of justice in order to draw a distinction between three acceptable and three bad types of constitution. The ordinary conception allows us to judge the three bad types of constitution as unjust, yet does not provide a reason for rejecting them as ways of governing a state. Though we regard the bad forms as unjust, it is not clear that they are not types of state; in fact, we see such states all around us. By contrast, the debate on justice shows that governments must be just. Without justice, states fall into discord, which leads to the takeover of the state by an individual or faction, and this is the destruction of the state. Along with a rejection of the earlier claim about constitutions, the initial definition needs to be revised by a new understanding of lex, “law”, as “just law”.

The Romans had much experience forcing the destruction of states on others: they destroyed states by taking over the people and what belonged to them. Even though they might claim (as Cicero’s spokesman does claim) that this policy was just, such an act cannot be just when it is perpetrated by a part of the state against the people as a whole. Cicero turns the external situation into a warning for the domestic affairs of the Romans: don’t submit to the injustices of letting yourselves be taken over by one or more of yourselves; that would destroy the state as surely as an external take-over.

The new conception of lex also adds new meaning to the expression res populi. The state, we learn, belongs to the people in such a way that the people are sovereign. This sovereignty is entirely compatible with the administration of the state by a monarchy, an aristocracy, or a popular regime. Although these governing bodies make and enforce policy, they do not exercise dominion over the people. The people remain in charge through the common agreement of all. A clear distinction, therefore, needs to be made between governing power and sovereignty.

The new understanding of the definition reinforces the conception of the state as a partnership. All are agreed on acting fairly with one another. As in any partnership, the basic bond is one of natural justice. Like business partners, the members of the state must act as good men, bene in good faith, bona fide, with one another. They must not dissolve into factions, held together by the bad faith of a partnership in crime, as Cicero describes the former alliance of Pompey and Caesar in a letter dating from 49 BCE.59 In the state, some of the partners contribute administrative work and skill; others contribute military service; some contribute wealth. These contributions are pooled; and none confers automatic control to one group over the rest. Just like any partnership, the state is null and void when one member or group alienates the common possession from the rest.

59 Cicero, Letter to Atticus, 10.4.1 (societas et aequitas consensu fidei, “the faith of a partnership consisting in a criminal agreement”).
Unfortunately, the text breaks off before there is any mention of the mixed constitution. Scipio promised initially that, by agreeing on 'what' the state is, we would learn 'what sort it is'. We have learned that a state must be operated in a just way. What, then, are the special benefits of a mixed constitution? In a political partnership, like any other partnership, common agreement confers rights. But how are these rights to be enforced? One can leave the enforcement to a part of the state — a monarchy or aristocracy or a popular regime. Yet, as Cicero warns us, it is easy for such a part to become bad. In any other partnership, if one of the partners turns out to be bad, one can resort to judges. What about the state? The best guarantee for its continued existence is to reinforce the rights of all with power for all. The distribution of power throughout the partnership not only reflects the value of the contributions that are made, but also provides a continual monitoring of the partnership within itself.

Finally, Cicero offers a revised answer to the question of the origin of states. Later in the text (4.3), he explains that the 'first reason for coming together' is 'a partnership of citizens for living happily and well' (citium bene et honeste vivendi societatem). This explanation bears the imprint of Aristotle, who defined the polis as 'a community for living well' (τὸ ὅπις καλῶς ζώντες). It should be noted right away that Cicero is not offering a new definition; rather, he is offering a new explanation for the origin of states. His initial definition remains in place. At a later point again (3.8), Cicero shows how his conception of citizen happiness differs from Aristotle's:

... haec moderatori rei publicae beami civium vivendi potesta est, ut opibus firmis, copia locupletis, gloria ampla, virtute honesta sit; huius enim operis maximi inter homines atque optimi illum esse perfectorem volo.

... this director of the state has as his aim the happy life of the citizens, in such a way that it may be strong in resources, rich in wealth, ample in glory, and honourable in virtue. I assign to him the accomplishment of this task, which is greatest and best among humans.

The term moderator probably refers to the director of a mixed constitution; but it might be any ruler of a state. His goal is to make the citizens happy by bestowing on them resources, wealth, glory and virtue. Aristotle set a limit to civic prosperity by viewing it as a means to a virtuous life and as a supplement to virtue in a happy life. Cicero lists the four aims as though they are equally important; nor does he assign any limit to any of them. The adjectives describe the collective life of the citizens rather than the individual lives of the citizens. As such, they also describe the state: it should be powerful, wealthy, covered with glory, and honourable.

Cicero now shows, with some precision, in what the sharing of benefits consists. We previously saw these benefits growing in Scipio's history of

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CICERO'S DEFINITION OF RES PUBLICA

Rome. Indeed, the emphasis on benefit goes back to Cicero's very first prologue (1.2-3). Here Cicero assigns to the statesman two main jobs: one is to inculcate virtue; the other is to 'increase the resources of the human race (genus humani) and 'make the life of humans (hominum) safer and richer'. Cicero also says that he prefers an imperial state to a village. As we read on, it becomes increasingly clear that the best constitution, the Roman mixed constitution, is distinguished not only by a strong commitment to genuine justice but also by a sharing of enormous power, wealth and glory. In the first prologue, Cicero anticipates the requirement for genuine justice by identifying 'the human race' and 'humans' rather than fellow citizens as beneficiaries of the statesman's efforts. No state is to usurp what rightly belongs to others, in the same way as no group or individual within the state is to usurp what belongs to others.
Greek Definitions

There are good reasons for thinking that Cicero's definition of the state is indebted to Aristotle more than to any other Greek political thinker.\(^6^4\) The first sentence of Aristotle's *Politics* states that the city-state (polis) is a certain kind of community, the word τῶν ἓκαστον τῶν ἐν τῷ σταθμῷ. Subsequently, Aristotle identifies the good of the political community with justice; this is the same, he says, as the common advantage.\(^6^5\) He argues that the aim of the political community is the good life.\(^6^6\)

Despite obvious similarities, however, there are basic differences. Very conspicuously, Cicero does not use the formal definition of a state offered by Aristotle at the beginning of the third book of his *Politics*. In response to the question: 'what is the city-state (polis)\(^6\)\?', Aristotle identifies the state as 'a...'

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\(^{6^5}\) According to Porfriez, Cicero followed the Stoic Panaitian in augmenting a traditional Stoic definition by a demand for a sharing of benefits. Against Porfriez, E. de Saint-Denis claims that there is no evidence of any influence on Panaitian, though much evidence pointing to Plato, Aristotle and others; see E. de Saint-Denis, "La théorie citoyenneté de la participation aux affaires publiques," *Revue de Philologie*, 3rd ser., 12 (1938), pp. 193–215, p. 204. R. Stark’s study of Cicero’s definition marks a turning point; see R. Stark, "Cicero: Staatsdefinition," *La Nouvelle Clio*, 6 (1954), pp. 56–69. Although Stark concludes that Cicero derived his definition from Panaitian, he believes that Panaitian owed it to the Peripatetics (see pp. 57 and 66–9). Citing numerous parallels from Aristotle, Stark argues that there is any specifically Stoic element in the definition at all (p. 66).

\(^{6^6}\) L. J.-F. Ferry agrees with Stark that the definition is Peripatetic; see J.-L. Ferry, "Le Discours de Lécrile dans le troisième livre du De Republica de Cicéron," in *Mélanges de l’Ecole française de Rome*, 1974, pp. 745–71, p. 746. While acknowledging that some Stoic doctrine has been anaolgated into the discussion, Ferry proposes (pp. 757–60) that Cicero regarded this material as Platonic-Peripatetic. R. Werner holds that the definition is Academic-Peripatetic, augmented by Roman elements; see R. Werner, "Über Herkunft und Bedeutung von Ciceros Staatsdefinition," *Chiron*, 3 (1973), pp. 163–78.

\(^{6}\) This is also the definition of *Politeia* ("state", "constitution") (Aristotle, *Politics*, 2, 1260b40). Aristotle also differentiates *politeia* as an "arrangement (towma) of the inhabitants of a city" (Aristotle, *Politics*, 3, 1274b38) and as an arrangement of offices (ibid., 1278a10). The terms *politeia* ("city", "city-state"), *politeia* ("state", "constitu- tion") and *politeuma* ("government") constitute a spectrum of meanings that slide into each other. Aristotle identifies *politeia* and *politeuma* at *Politics*, 3, 1278b11 and 1279a25–26.


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certain multitude of citizens' (πολιτικοὶ ἡμῖν καὶ πλημμένοι πλῆθος), then goes on to define 'citizen' as someone who 'has the power to share in deliberative and judicial office'. The definition of citizen is opposed to the commonplace conception of citizenship as a status acquired by birth. Aristotle acknowledges that his definition of citizen is especially suitable to a democratic regime. In fact, it does not suit a monarchy at all; and it suits an aristocratic regime only if citizenship is restricted to members of the aristocracy.

Aristotle's definition is a double definition, just like Cicero's. It differs, however, in two crucial respects. In the first place, Cicero defines the state as a public entity (res) rather than a collection of human beings. Second, Cicero puts forward a people in place of a plurality of citizens. Accordingly, Cicero defines the state not by the participation of individuals in the political process but by a common commitment to a collective endeavour. Although Cicero echoes Aristotle's claim that the members of a state are 'not just any multitude', he defines this membership very differently as an association bound by a common policy rather than as a community of individuals aiming at goals that are the same for the state as for individuals.

What makes the differences all the more striking is that Cicero follows the general sequence of argument used by Aristotle in his third book. Both begin with a definition of the state, then propose the reason why people came together, then go on to judge the different types of constitution with reference to this reason. Right away, the formal parallelism between Aristotle's and Cicero's definitions underscores the difference between them: each begins with a statement of the constituency of a state, followed by a definition of the constituency. Cicero could have followed Aristotle much more closely by using civitas as his definitio. This term, which means 'citizenship' as well as 'state', would be expected to be defined in terms of citizens. The choice of res publica immediately announces a difference.

Cicero agrees with Aristotle on the basic reason for political gatherings — that humans are naturally sociable. When Cicero goes on to discuss the types of constitution, however, further differences appear. Cicero demands a deliberative body, consilium (1.41); Aristotle looks for an authoritative body, kurion. On the surface, this difference seems insignificant, for Cicero goes on to assign full power to the deliberative body: it has 'supremacy' (omniam

68 Ibid., 3, 1278a1–2.
69 Ibid., 3, 1278a23 (τῷ ὁμοίως ἄριστοι καὶ ἀριστῷ) and 1278b18–19: ἡ δὲ ἐξομολογία καὶ ἐν ἀριστῷ δικαίωμα καὶ ἐκ τοῦ ἀριστοτέλους.
70 Ibid., 3, 1278b5–6.
71 Ibid., 3, 1303a26; and 7, 1328b16.
72 Ibid., 3, 1278b15–17 and 1279a22–25. It is unlikely that Cicero himself read Aristotle's Politics, since he never cites the work. His sources, however, clearly did have a knowledge of the text, whether at first hand or at some remove.
73 Ibid., 3, 1279a26–27.
summa rerum, 1.42), a term that may be taken to correspond to Aristotle’s karion. Still, the choice of term consilium suggests an attempt to distinguish between who is in charge — the people — and a governing power. Having defined the state as ‘a concern of the people’, Cicero avoids transferring this concern to a governing body. Instead, he demands a directing body that leaves the state intact as an enterprise of the people. From the beginning, Cicero sees the government as an advisory body that makes policy on behalf of the people as a whole.

Cicero follows Aristotle in recognizing three appropriate and three deviant types of constitution. Both authors judge them by the general standard of justice. However, Cicero makes no reference here to Aristotle’s distinction between ruling for the common good and pursuing only one’s own interest. This criterion may be taken as understood. There is nonetheless a difference: Cicero immediately brands the deviant types of constitution as bad, and he has them arise from excessive passions. In particular, he associates cruelty with the tyrant and crazed fury with the mob. The psychological explanation may be traced to Plato, but it also reflects Cicero’s understanding of Roman history as well as his own attitude towards his political opponents. Cicero regularly divides his fellow citizens into the ‘good’ (boni) and the ‘wicked’ (improbis). The same division pervades his State: the upholders of the public concern are the ‘good’; the rest are scoundrels.

Last, a definition that Aristotle rejects provides an especially illuminating parallel. If we look for a Greek model for Cicero’s definition, the most obvious candidate, it seems to me, is a formulation that Aristotle finds wanting. He denies that a city is a ‘community of place, for the sake of refraining from injustice to one another and sharing’. Instead, he claims, it is a ‘community of living a good life . . . for the sake of a complete and self-sufficient life’. The aim, in short, is ‘fine actions’. Aristotle explains that the first formulation

70 Aristotle, one might note, achieves a similar goal by defining thecitizens as sharing in deliberation.
71 Cicero, State, 1.43, and Aristotle, Politics, 3. 1279a19.
72 Aristotle, Politics, 3, 1279a17-20. Fredal, “Constitution and Citizenship”, p. 86, points out that Cicero does not use Aristotle’s criterion for bad constitutions. Cicero acknowledges the criterion of the common good, or the good of the people, at 1.7-8, 1.54, 2.47.
73 The passions of an individual are described in detail at 1.60. With respect to constitutions, cruelty is associated with the tyrant (1.44, 2.43) and madness with the mob (1.9, 1.44); cf. 1.65-6.
74 See esp. 1.7, 1.31, 6.12.
75 Aristotle, Politics, 3, 1280b10-31 (povia kal eisai kolonwniva tovpcu kata toum en diplhEn stis auKoutA kai: thA metadoOneinA carin), 1280b33-35 (cuj koioun eisai zetain koiouniva . . . xwia kal eisai carin kat: auKoutA) and 1281a2-3 (twA koioun . . . prokwnon carin).
lists elements that are necessary but insufficient; mere abstention from injustice is insufficient because this alone will not make the citizens just.76 Cicero also finds the first formulation wanting; but he uses it in such a way as to correct it. Cicero agrees with Aristotle that the state is not simply a community of place. Adapting the rejected definition, he takes from it two criteria that distinguish the state, one having to do with justice, the other with sharing.

To correct the definition, Cicero replaces mere abstention from injustice with a common agreement on law, consensus iuris. As Cicero makes clear in the argument that follows, this turns out to be a robust commitment to treating one another with justice. While preserving the framework of the rejected definition, Cicero builds into it a demand that Aristotle made. At the same time, Cicero's formulation is far removed from Aristotle's own definitions. Cicero does not define the state either in terms of its citizens or in terms of its goal. Rather, he defines the state in terms of its operation as a public enterprise. Although he believes that service to the state is the greatest, most virtuous of all activities,77 he does not see the state so much as a school for virtue as an area in which virtue is applied in the pursuit of a common endeavour.

In sum, Cicero uses an Aristotelian framework to work out solutions of his own. Plato helps him with these solutions. Cicero shares Plato's concern for both unity and justice. In his State, Plato defines the city as 'a common dwelling place' in which many come together to 'associate with (κοινωνώνομαι) and help' one another out of 'need' (νεόνομον).78 This description lacks any mention of justice; indeed, Socrates raises the question where justice (díκαιος) or injustice is to be found in this city.79 The fully developed city is a paradigm of justice. Cicero demands a system of justice (iustus) right away in his definition; but his definition, too, leaves it unclear whether there is true justice (iustitia) or not. Like Plato, Cicero proceeds to unpack the notion of justice, though he does it very differently. In place of a common agreement on who rules and is ruled, as we have seen, Cicero demands a consensus that recognizes everyone's contribution to the state, conceived as a common enterprise, whether it consists of ruling or not.

Stoic philosophy also had an impact on Cicero's definition. A basic Stoic definition of 'city' (πόλις) is: 'a multitude of human beings living in the same place, governed by law' (πολιτεία οικογενεσίας οικίας οικογενεσίας οικιστικούτην οικίσιμον).70 Likewise, a 'people' (πόλιτα) is defined as 'a multitude of human beings governed by law'.71 The Stoics also offered a series of three definitions for 'city': (a) a

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76 See esp. Aristotle, Politics, 3, 1280a38-b12.
77 See Cicero, State, I.2.
78 Plato, State, 369c.
79 Ibid., 371a.
80 Ibid., 371c.
81 SVP, 3.327.
dwellings place; (b) 'an organization of human beings (συμβάσις ἡ λαοὶ
τὰ νόματα τῶν)'; or (more fully) 'an organization of inhabitants together
with citizens (τὸ ἡ λαῷ ἡ πόλισιν τῶν πόλεων τῶν νόμων)'; and
(c) both. In addition, the Stoics defined the whole world (cosmos) as a city
composed of humans and gods.

Like Cicero, the Stoics did not define a city in terms of its citizens;
rather, it is a community of human beings, or a 'people'. As the fuller
version of (b) makes clear, the Stoics admitted non-citizens along with citizens.
The requirement 'governed by law' fits this broad membership; for it is applic-
able to all who are under the sway of law, whether citizens or not. In place of a
double requirement for both law and a sharing of benefits, the Stoics
demanded only the rule of law. According to the Stoics, this is the only real
benefit.

Like Cicero's definition, moreover, the Stoic definitions of a state admit of
both a commonplace interpretation and a philosophically refined interpreta-
tion. When all the terms are taken in an ordinary sense, the definitions agree
with a commonplace conception of the state; that is, they express an initial
conception (πολιτεία) that all have by nature. Everyone can agree that a state
is a multitude of people governed by law. A dramatic reversal occurs when the
term 'law' (νόμος) is revealed in its strict, philosophical sense as: 'the rea-
son of nature, commanding what must be done and prohibiting what must not
be done'. Cicero uses this very definition in his debate on justice (3.33). His
expanded version tells us that this law applies to all humans everywhere and
that its founder is god. In a strict sense, therefore, the Stoics conceived of a
city as governed by the law of god. It follows that a city is morally good; like-
wise a 'people' is a morally good organization. The only city in a strict
sense, moreover, is the cosmic city, as governed by god, or a city governed by
wise humans in union with god. Existing states, as normally understood, do
not qualify as states.  

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82 SYF, 3.328 and 3.528 (which lists only the first two types).
83 SYF', 3.353: cf. 3.327 and 534.
84 SYF, 3.323 (Philos. longa)...
85 SYF, 3.327: cf. the definition of the state (πολιτεία) at 3.327 as 'a good sharing of
humans in a community'.
86 SYF, 3.327. There is much controversy whether the whole world, or the entire
human community, qualifies as a city in the strict sense, or whether a city can consist only
of wise individuals. The distinction between inhabitants and citizens seems to me to
point to a solution. Since a city is defined as a community of inhabitants, not citizens,
nothing prevents a city that contains foolish individuals from being a city in the strict
sense. All humans, it follows, are members of the cosmic city, for all are governed by
law, whether willingly or not; but only wise persons are citizens in a strict sense (see SYF,
1.222). There is no need to implicate one view to the early Stoics (that only the wise belong
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Like the Stoics, Cicero concludes, on the basis of a philosophically correct understanding of a key term, that there is no state except one that is governed justly. Cicero makes use of the Stoic concept of natural law to develop his own, pragmatic conception of justice. States can be just, he believes, if their laws conform to natural law; and the ancient Roman state is an outstanding example of precisely such a state. Cicero’s more realistic conception thus admits existing states. The problem Cicero faces is how positive law can reflect natural law without any loss of justice. Cicero tackles this problem in his Laws. What makes Cicero’s confidence easier to understand is that he conceives of the state as a partnership that is based, like all partnerships, on common principles of justice — the kind that he and the Roman lawyers associate with the law of nations.

Cicero’s definition of the state differs fundamentally from the basic Stoic definition in that it replaces submission (as expressed by the passive participle (d)CPRONOUTRIP)] with common agreement,23 and that it adds ‘sharing of benefits’. For the Stoics, it would be redundant to add a mention of benefits. Cicero is pragmatic from the beginning: the differences agree with the idea of the state as a partnership; partners actively practice lawful behaviour for the sake of a benefit, which is other than simply the justice of the activity. Cicero’s conception of the state combines self-direction with a reaping of material benefits.

Conclusion

The most immediate antecedent for Cicero’s definition occurs in his own endeavours. Early in 56 BC, some two years before he began working on his State, Cicero included a brief definition of res publica in his speech Pro Sestio, 91. Res publicae, he says, are ‘things for the common benefit’ (res ad communem utilitatem). To this definition, Cicero added two others: civitates are ‘assemblies of humans’; and urbes (‘cities’) are ‘conjoined dwelling-places’. These definitions are part of a discussion in which Cicero draws a contrast between two stages of human existence: a solitary life, full of violence (wrt), where there was ‘neither natural nor civil ius’; and the collective life of humans in states. The discovery of ‘divine and human ius’, he says, led to the foundation of states.

The same trio of terms is found in Cicero’s State. The brief unpacking of the term res publica in Pro Sestio conspicuously lacks any mention of ius; but the surrounding discussion centres on the change from wtr to ius. In the State, Cicero gathers the two requirements, ius and benefits, into a single definition; and he ends up requiring both natural law and political legislation.

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23 This has often been noted; see esp. Stahl, ‘Ciceros Staatsdefinition’, pp. 61–2.
In the same speech, Cicero highlighted the current consensus among the Romans. There are dangerous dissenters to be sure, notably Clodius and his followers; but the Roman people as a whole is united, Cicero claims, in a consensus of the good, from its leaders to the freedmen. In his *State*, Cicero puts the requirement for common agreement into his definition. *Consensus* was a key element in Cicero’s own political policy. From the time of his consulship, Cicero prided himself on forging a *consensus* between senators and knights. He claimed, moreover, that this agreement extended to the whole people, including freedmen; it was a *consensus* of all the ‘good’ (*bons*). The explanation of *consensus* in his *State* reflects this personal endeavour. Just as Cicero aimed for a union of senators and knights in his political career, so he posits a union of senate and knights in the highest division of his musical analogy; the rest of the people are joined in agreement with this group. The union of aristocrats and financiers is the fulcrum on which the success of the state rests as a common enterprise.

Although Cicero modifies his view of the Roman constitution between *Pro Sestio* and his *State*, his conception of the Roman state as a partnership remains constant. A partnership is, in sum, a *res ad commonem utilitatem*. In richer detail, it is a *res* in which individuals are conjoined in *ius consensui* and *utilitatem communi*ate. Partners are ‘good’ people, *bons*, bound by a fair agreement to share the profits in proportion to their contributions. If this agreement is broken, the partnership is dissolved. In a state, all members are bound by a fair agreement to make contributions and receive benefits in proportion to their contributions. If the common agreement is broken, the state no longer exists.

In his *State*, Cicero portrays a division, placed in the year 129 aec, of the state into the ‘good’, who attempt to preserve the state, and the seditious, who would destroy it. What is needed is a victory of the good over the seditious; if the seditious are victorious, the state will come to ruin. By hinting at the death of Scipio Aemilianus in the dialogue (6.12), Cicero foretolds the dire situation of his own time. In the prologue to the fifth book, Cicero laments the current destruction of the state. Nonetheless, Cicero constructs a message of hope in his *State*: if the old partnership — the traditional partnership of the good in a mixed constitution — can be renewed, the state can come to life again.

What is a fair standard for measuring contributions and rewards in this partnership? Cicero’s standard was as controversial in antiquity as it is considered unfair now. He ranks contributions along a scale in which citizen status or military service is much less important than wealth, and a selfless,
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Courageous, wise devotion of all one's capacities to the common enterprise is most important of all. The reward is correspondingly large; and it consists not just of material rewards or political power, but above all of honour and esteem. Cicero lists his rewards in the first prologue: his cares and troubles on behalf of the state, he says, were more than compensated by the honour and glory he achieved and the joy he derived from the effect of the 'good' (1.7).

Cicero was attacked in his own time for advocating an oligarchic, repressive regime; and the charge has stuck. Given his deep conservatism, it is perhaps ironic that he views any kind of state — any legitimate state, that is — as a kind of democracy, as the term res populi suggests. As a partnership of the people, any legitimate state is an enterprise operated by the people. Depending on how the contributions are assessed and rewards are distributed, this rule of the people may be highly undemocratic. The term res populi, one might object, may be nothing but a camouflage for the alienation of the state from the people. Cicero's idea of the state as a partnership, in which all members of the community act in good faith with one another according to common principles of justice, remains nonetheless a fruitful one. 90

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