Cicero the Philosopher

Twelve Papers

EDITED AND INTRODUCED BY

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Cicero's Definition of Res Publica

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I. Introduction

In his Politics in the Ancient World Moses Finley had this to say of Cicero's Republic (p. 128): 'Like Mommsen, I find the central idea of the Republic "as unphilosophical as unhistorical" and I am not persuaded otherwise by the unending flood of adulatory commentaries.' In a footnote he added (p. 128 n. 17): 'As an extreme illustration of the nonsense Cicero continues to evoke, I submit the still regularly cited book by V. Pischel, Römischer Staat und griechisches Staatsdenken bei Cicero (Berlin, 1936), which concludes (p. 173) that the Republic "fused into one the Roman empire, perhaps the greatest creation of that world, and the philosophy of Plato, the most sublime spiritual creation of antiquity".' Cicero's attempt to represent Scipio's Rome as the ideal city annoys most historians and leaves philosophers cold. So when Finley went on to dub as "mere rhetoric" what Mommsen had called 'a singular mongrel compound of history and philosophy' he was preaching to the converted, at any rate so far as an English-speaking readership was concerned.

This chapter aims to rehabilitate the Republic in the reader's esteem. I shall not try to salvage the marriage of history and philosophy which has so moved the ire of the critics. Instead I shall focus on something no less fundamental, namely the definition of res publica as res populii which launches the argument of the whole work. My principal proposal relating to the definition has two

Other versions of this chapter were presented to seminars in London, Oxford, and Cambridge. I am grateful to all three audiences for their comments; particular thanks are due to Jonathan Barnes, Oswyn Murray, Quentin Skinner, and above all Margaret Addis. Cicero Striker kindly sent me a set of queries on the penultimate draft which have induced a number of late changes. I have annotated the chapter very sparingly. Modern works mentioned in text or notes are collected in the bibliography; for further literature see the extensive bibliographies in Möllner and Misch.
dimensions. First, I shall maintain that the definition has a quite specific function in the dialogue, namely to operate as a *criticism of legitimacy*. Its introduction is designed to furnish the grounds of a distinction between constitutions/political/set-ups/"regimes" (in Straussian parlance) that are legitimate and those that are not. Second, I shall claim that this interest in discriminating between set-ups on grounds of legitimacy is a *distinctively Roman and Ciceroian input* into the theory of Rep., not one inherited from whatever Greek models Cicero was using.

Finley's remarks on the *Republic* occur in the final chapter of his book, entitled 'Ideology'. The main thesis argued in that chapter is the proposition that ancient political thought differs strikingly from early modern in having no general or fundamental preoccupation with the problem of the legitimacy of government or governments. It is a typical early modern view that individual men have natural rights to life and liberty, whereas the state or the commonwealth is an artificial creation which legitimately exercises a claim to obedience on our part and requires the surrender of freedoms only on certain conditions, e.g. if we give our consent and its claims are minimal. The most memorable enunciation of this theme as the central issue in political philosophy is of course on the first page of Rousseau's *Du Contrat Social*:

"Je veux chercher si, dans l'ordre civil, il peut y avoir quelque règle d'administration légitime et sûre, en prenant les hommes tels qu'ils sont, et les lois telles qu'elles peuvent être... L'homme est né libre, et partout il est dans les fers. Tel se croit le maître des autres, qui ne laisse pas d'être plus esclave qu'eux. Comment ce changement s'est-il fait? Je l'ignore. Qu'est-ce qui peut le rendre légitime? Je crois pouvoir résoudre cette question.

In classical antiquity, by contrast, Finley found evidence of a concern with legitimacy in only a few Athenian literary productions of the latter part of the fifth century BC and the beginning of the fourth: the *Antigone*, the *Chré*, the private peace struck by Diaecops in the *Acharnians* (p. 125). The argument in and ideas of these works were not echoed in the general historical record, nor in the political philosophies of Plato and Aristotle—although Finley thought this ambiguous in its significance, since Plato and Aristotle worked and wrote on a level of philosophical abstraction, sophistication and generalization that was not only beyond the reach of their fellow-men but was also unsuitable for reconstructing what Greeks generally understood by legitimacy, political obligation or proper political behaviour (p. 124).

Not everyone will agree that Aristotle's political thought is so remote from common Greek views; and his philosophical method was of course designed to ensure that proper account is taken of "opinions in good standing". The fact that for Aristotle there could be no radical question over the legitimacy of government may therefore tell us something not just about him but about general Greek attitudes. Relative to our concerns two things Aristotle takes to be basic truths are of decisive importance: the propositions (a) that men and women are naturally adapted to *community*, and (b) that every form of community has an appropriate form of *rule*—despite, monarchical, political, as the case may be. There is accordingly no general problem of legitimacy for the commonwealth and its claims to rule, even though one can dispute which forms of rule are good or correct in what circumstances, and above all one can consider who *deserves* to rule. That someone must rule who deserves to do so is not questioned. Aristotle's position is therefore in as stark an opposition to Rousseau's as could be imagined.

If there was anyone in classical antiquity for whom this Aristotelian view constitutes the perfect ideology, it was the citizens of the Roman Republic as described by Finley, who stresses the pervasive influence of war in their lives: a Roman spent much of his active life on campaign under orders, bound by the sacramental oath of loyalty to his general (pp. 129–30). Finley comments (p. 130):

"This encourages one to believe that obedience to the authorities became so deeply embedded in the psyche of the ordinary Roman citizen that it carried over into his explicitly political behaviour. As with the Spartans, that informal acceptance of the system to the degree that there was no genuine political discussion (as distinct from disagreements over specific policies directly affecting class interests), I find it inconceivable, for example, that a citizen of Athens or of many other Greek city-states would have allowed the census consultum ultimum to be introduced by the Senate without any serious challenge, and certainly no fundamental challenge, to its legitimacy."

Thus for Finley legitimacy was not usually on the agenda of political discussion in antiquity; least of all at Rome; and certainly not in Cicero's *Republic*, whose appeal to the ancestral constitution
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attempts, albeit desperately, to reinforce unthinking acceptance of the legitimacy of the set-up it is recommending (cf. p. 133).

Finley's general characterization of Roman politics and the political mentality of the Roman citizen would be vigorously disputed by other ancient historians. I confine my own contrary argument to the Republic. I shall contend that Cicero does here raise fairly explicitly a question about legitimacy that is never broached in Greek political philosophy, not even in Crito. And I shall suggest that it is the distinctively Roman concept of res publica which provides the logical space for the question.

II. Res Publica

The expression 'res publica' in Cicero, as in Latin authors and texts both before and after him, has a notoriously elastic range of use: it is 'public-spirited activity', 'public affairs/business', 'the public interest', 'the community [sc. as the prime locus of public activity/the prime beneficiary of the public interest]', 'the community constituted by the civitas or populus', and—particularly in theus patriotic contexts—'the country'. There are as many things that it is not.2

It is not the Republic, i.e. as contrasted with the Principate or the autocratic system of government of the Principate. Nor is it necessarily republican, if 'republican' entails 'not monarchical': for Cicero allows kingship to be one of the status or organizational setups acceptable in the early history of Rome recounted in book 2. In § 2 he utters his famous lament: 'nostri enim vitiis, non casu alio, rem publicam verbo retinentem, re ipsa vero iam pridem amissam' ('For by our own faults, not by any accident, we keep the res publica in name, but in reality we have long since lost it'). Taken out of context this looks as though it could be saying: all that remains of the Republic or republican system of government is the name—i.e. we have chaos/tyranny. What Cicero is actually bemoaning is not the neglect of ancient customs and the absence of public-spirited individuals to maintain and develop

1 See esp. Millar (1964) and (1966), with the critical survey of recent work by North (1990).

2 This section depends heavily on the work of Stark (1967 (1977)), Dodsell (1957), and Suerbaum (1977).

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them. As so often in Roman writers, the focus is moral rather than constitutional: in this case the loss of a common experience and commitment which shaped and stiffened character. The Loeb translation of the Republic frequently renders 'res publica' as 'the State'; the German title for the dialogue is 'der Staat'. Stark's useful dissertation 'Res publica' has a final section entitled Die Entwicklung von res publica zu der Bedeutung "Staat". In truth the emergence of the concept of the state is a topic for historians of Renaissance and early modern, not ancient, political thought. For a review of controversy on the subject I refer the reader to Quentin Skinner's recent essay 'The State'. What is of special interest in his argument for us is its suggestion that the decisive move towards the idea of the state consists in the abandonment of something fundamental to Cicero's treatment of res publica. So long as the powers of the community, if exercised by a prince or a magistrate, are regarded on Ciceroan principles as simply entrusted to him, there is no logical space for the idea of a state or commonwealth distinct from the people or the community. But where it is held, as e.g. by Suarez in the early seventeenth century, that political powers involve a transfer ('translatio') of the people's sovereignty—not so much delegation as alienation—a logical gap opens up between the powers of a community of citizens and those of an distinct impersonal authority, even if vested in a prince or magistrate, which is now in the sense indicated absolute. Skinner notes the difficulties advocates of the absolutist view had in settling on an appropriate name for this authority or Leviathan. But he argues that during the course of the seventeenth century, English authors in particular gravitated more and more to the 'state'. And by the time of Hume and Rousseau, 'the state' and its equivalents in other languages have become the focus of political discourse throughout Western Europe, even though Hobbes absolutism still had to battle it out against rival ideologies. This is not the place to recommend or dispute Skinner's specific story. Suffice it to note that on one finding, as on those of earlier investigators, the origins of the concept of the state lie within a particular historical matrix of political change and of associated shifts in vocabulary occasioned by theoretical attempts to cope with it. The burden of proof accordingly rests on those who would ascribe an idea of the state to Cicero and Tacitus to identify a comparable matrix in ancient Rome which could support the ascription.

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There is no exact correspondence between ‘res publica’ and a Greek equivalent. When in inscriptions the Romans found it necessary to translate ‘res publica’ into Greek, the favoured expression chosen was τὰ δημόσια πράγματα, ‘public affairs’: a literal-minded rendering which catches no real resonances in Greek political ideology. One might have thought that τὸ κοινὸν, ‘the community’, τὸ κοινὸν τῶν Ἰάνων, ‘the community of the Ionians’ (Hdt. 5.109) or τὸ κοινὸν τῶν Μακεδόνων, ‘the community of the Macedonians’ (IG XI.4.1102)—would have been a better bet, although here the assertion of community is often rather more forced (implying the unity of a plurality of regions or cities) than in talk of the ‘res publica’ at Rome. Or τὸ κοινὸν διαθέσις/αμφότερον, ‘the common good/advantage’, which of course is a key notion in Aristotle’s political philosophy (cf. also τοῦ κοινοῦ αμφότερον, Polib. 6.8.3). The Pro Sesto (just before Rep.) apparently favoured this equivalence, in speaking of ‘res ad communem utilisatiam, quas publicas appella- mans’ (11). In enunciating his dialogue De Republica Cicero obviously means us to think of Plato’s πολιτεία. But ‘res publica’ does not for him ordinarily or standardly mean πολιτεία, ‘constitution’ or ‘set-up’. When he wants to indicate that the subject of the work is to be the best constitution, he announces it as ‘optimum status civitatis/rei publicae’ (Rep. 1.33, Leg. 1.15), and regularly employs similar locutions such as ‘forma/mode/genus rei publicae/rerum publicarum’. It is true that he speaks e.g. of a ‘popularis’ or ‘regalis res publica’, but I think this is to be a sort of shorthand for ‘genus populare/regale rei publicae’, as for example at Rep. 2.41 (‘rem publicam, quae ex tribus generibus illius, regali et optimato et populari, confusa modo’ ) and 2.43 (‘regale genus civitatis’). Here, as in other contexts in Rep., ‘civitatis’ functions as a synonym of ‘res publica’; which makes one think of Greek πόλις. This identity is further supported by a passage in book 7 where Cicero says that he will not, like some ‘docti homines’, begin his discussion of ‘res publica’ with the first union of male and female etc. Presumably he has in mind the sort of account of the origins of the πόλις that we meet in Aristotle. On the other hand, his definition of ‘res publica’ suggests the πόλις but some property of the πόλις.

What sets ‘res publica’ apart from all these putative Greek equivalents (except perhaps πόλις) is its quite extraordinary capacity to attract metaphors. Brescier’s long article ‘Res publica’ presents page

III. Res Populi

At 1.39 Cicero gives what Augustine calls his ‘brief definition’ of res publica as res populi. Whether this is intended as a formal philosophical definition we may well doubt from the very outset. Cicero has just made Scipio express his aversion to the kind of precision in definition which is more difficult to understand than the actual thing being defined (1.38). Such precision is evidently associated with what Cicero takes to be recognizable as the standard practice of the philosophical schools, from which he distances himself elsewhere in Rep. Moreover, while ‘populi’ draws out an implication of ‘publica’, the meaning of ‘res’ and the analysis of res publica as a concept are left entirely undiscussed. ‘Res populi’ picks out just one key feature of res publica, evidently for a particular purpose, that as I shall argue—to supply a criterion of legitimacy of forms of government. Whether the introduction of the definition is due to Varro (as one stray bit of evidence suggests) or to Cicero himself, it has the look of a wholly Roman concept: although Polybius’
expression τα κοινα των πολιτων, 'the common affairs of the people' (6. 8. 3), should make us cautious about such judgments. What is uniquely Roman is its use in definition as a tool of philosophical criticism.

The criterion furnished by the definition has two components:
(A) the idea of populus itself, and (B) the proposition that res populi is the res of a populus. Cicero does more to explicate (A) than (B).

The primary characterization of populus is as follows:
populus autem non omnis hominum coetus quoque modo congregatus sed coetus multiplicitatis iure consensus et utilis consulteri societas. (But it is not any and every collection of human beings, harded together in any way at all, that is a people, but a collection of a mass which forms a society by virtue of (i) agreement with respect to justice and (ii) sharing in advantage.)

There has been considerable discussion in the literature about the philosophical pedigree of this account of populus: is it Aristotelian? Is it Stoic? etc. This preoccupation with its provenance has been unfortunate, since it has diverted attention from the more important question of Cicero's use of the Ingredients of the account, as indeed of the idea of res populi itself, in the ensuing argument. In fact (i) and (ii) have a central place in all major Greek theories of society. The brevity of Cicero's formulation of them and the vagueness of the connection he makes between them suggest that what he wanted at this point was a generally accepted story which could then be put to critical use later in the theory.

A more pointed doctrinal stance emerges in the rider which is immediately added:

etiam autem prorsa causae continent est non tam imbecillitas quam natura quaestio hominum quaestio singularum nec colligatur generatibus, sed in omnem quidem renum adhibentibus copulis. (But the first cause of the coming together is not so much weakness as what one might call a sort of herd instinct natural to human beings: for this species is not congregated or solitary, but is born of such a nature that not even under conditions of great prosperity of every sort is one human willing to be isolated from his fellow human.)

Here Cicero goes out of his way to distance himself from the key motivational ingredient in the contractualist account as told e.g. by Glauc. In Rep. 2 or in Epicurean theory. The very word 'imbecillitas' indicates an indirect reminiscence of Glaucus's story. In book 3 Cicero has Philus rehearse the version of that story which Carneades told in the second leg of his famous argumentum in stramque partem about justice. When Carneades turned to refutation of Plato's position, he borrowed as its theoretical basis Glaucus's explanation of justice as a contract founded on weakness. The second part of 3. 23 is little more than a Latin paraphrase of Plato Rep. 358e-359b (esp. 359a5-11). As Glaucus makes ἀγαθοπρεπὴς τὸν ὀληχοῖς ('weakness when it comes to wrongdoing others') the crux, so Philus concludes: 'justitia non natura nec voluntas sed imbecillitas mater est' ('Not nature nor choice, but weakness is mother of justice'). When, therefore, Cicero rejects imbecillitas as cause of the association which constitutes a populus, he signals rejection of the contractualist story on the matter. What he puts in its place is an idea which has no less obvious Aristotelian and Stoic associations: the thesis that among human beings there is a natural tendency to herd together. His assertion of this thesis comes as something of a surprise, for both in the early De Inventione (1. 2-3) and as recently as pro Sextio 51-2 he had subscribed to an account of the origins of society which implies that men have no natural instinct for association. If their capacity for civilization and justice was to be developed, an initiative had to be taken by a rational leader who could persuade men to live in society according to a system of justice. Rep. 1. 39 implies abandonment of this position; and its stress on the naturalness of the impulse to society is reasserted not only in the sequel De Legibus (1. 35) but ten years later in De Officiis (1. 12, 157-5, etc.).

But we should not dwell too long on the Aristotelian/Stoic rider (A). For the purposes of Cicero's main argument in Rep. what counts is (A) itself, and its ingredients (B) and particularly (i), the proviso that the persons who make up a populus do so by virtue of agreement with respect to justice ('turba consensu ... societas'). One criterion of the non-existence of res publica in a regime or setup is the dissolution of the mutuality and moral consensus which bound society together. So Rep. 3. 43:

-σοι δὲ μην ναμ πολιτικος, οὐδέν τινος εγνωστικός τινος οὐδέν ουβανικός τινος ἀνθρωπός, οὐ καθαρός οὐκ αὐτὸς οὐκ οὐκ ἀπευθεῖας ἀκεφάλιστης τετελεσμένης αὐτῷ ἐντάξειν, νεκρος ἄνθρωπος.
(Therefore who would talk of a res populi, i.e. a res publica, in the case when the citizens as a whole are oppressed by the cruelty of a single man, and there is no single bond of justice nor the agreement and association of a collection of persons—which is what a populus is.)

What Cicero seems to have in mind by 'consensus' is indicated by such expressions as 'commune ius', 'shared justice' (Rep. 1. 41) or 'societas juris', 'association based on justice' (Leg. 1. 35)—a shared sense of justice reflected in the moral life and institutional arrangements of a society.

It is easy to see that the communal sense of justice will very likely collapse under tyranny. But Cicero appears to have reserved his fiercest rhetoric to diagnose and exorcise its destruction under popular rule. If one looked to (B), the stipulation that res publica is the res of the populus, it might appear that the security of the res publica is paradigmatically guaranteed under a popular government. Are not public affairs then uncontroversially in the hands of the populus? Not so, says Cicero. (B) can be satisfied only if the populus which wields power really is a populus.4 And that will be the case only if (A), the idea of the populus spelled out in Cicero's definition, is realized. When a mob takes control, there is no common respect for justice, and so the key element in the definition of (A) is missing, as it is not in a law-governed democracy (Rep. 3. 45):

S. Venio nume ad tertium genus illud, in quo esse videamur fortasse angustiae, cum per populum adiuvare et esse in populi potestate consistere, quae de quosdam veluti, supplicium summi multitudine, cum eizent, supplunt, teent, desipunt, quae volent, potescunt, Lael, negare rem esse illam publicam, cum populi sit contra, quammin quidem populi esse rem publicam.

Tum Laelius: Ac nunc quidam sitius negaverint esse rem publicam, quam istic, quae tota plane sit in multis indiciis potestate, nam si nobis non placeat, Syracusae fuisse rem publicam neque Agrigentae neque Athenis, cum essent tyrannis, nec hic, cum decurioni, non video, qui magis in multis indiciis demeretur et publice nonnun aparenter, quia primum nulli populus non est, ut in optimis defensibus, Senio, non sit quisque simul, seu continetur, sed est res tyranum ut conveniat, quam s esset unius, hoc continetur, sed est res tyranum ut conveniat, quam s esset unius, hoc continetur.

4 Cicero is of course alert to the appropriation of the concept populus by politicians, restricted to be 'populaces', who espoused democratic causes. He has no difficulty in representing this as a misappropriation, often with wit and venom, as e.g. at Sect. 103-14. See Seager (1974).

And 3. 43 has already argued that under tyranny agreement respecting justice collapses.

It is time to say something about (B), the proposition that res publica is the res of the populus. As we have noted, Cicero does not attempt a formal account of res nor does he indicate what sort of genitive this is. I offer as a working paraphrase 'the affairs and interests of the populus'. How does (B) function in the argument of Rep.? Augustine reports on book 3 as follows (CD 2. 21):

deminunt quantum sit in disputando definitionem utilitas, utique ex illo sua definitionibus colligit tunc esse rem publicam, id est: esse populi, cum bene et tute geriur sit ab uno regno sive ab unius populi.

(Next he explains the usefulness of definition in argument. From these definitions of his own—of populus and of res publica—he infers that a res publica, i.e. a res populi, exists just as in case it is conducted well and justly whether by a single king or a few aristocrats or the people as a whole.)

Augustine here refers to definitions in the plural. I take it that the inference is strictly only from (B), not from (A) and (B) together, although of course (B) presupposes a properly articulated
conception of populus such as is supplied by Cicero's explication of (A). The requirement that the res populi be "conducted well and justly" is no doubt an authentically Ciceroian formulation. But in practice Cicero seems mostly to work with a more determinate conception of the conditions for the existence of res populi, which can be expressed in negative terms as follows: Where there is a set-up such that the people's affairs are conducted as though they were not its affairs but those of the ruler or ruling party, or its interests are not adequately consulted by the ruler, then there is no res populi, and therefore no res publica. In book 1 Cicero attributes to democratic ideology a stronger criterion: unless the people has direct control over its own affairs, there is no res populi, and therefore no res publica. But while he allows that direct popular control is one form of legitimate set-up, he himself does not agree that it is the best nor that there can be no res publica without it.

To sum up our discussion so far: a constitutional set-up will qualify as a res publica if and only if (B') the government in conducting public affairs adequately consults the interests of the people, which (A') forms a society in virtue of agreement on justice and of common advantage. Tyranny, oligarchy, and mob rule all fail this test. Augustine (CD 2. 21) suggests that tyranny and oligarchy fail it because they do not meet condition (B'), whereas in the case of mob rule condition (A') is what is not satisfied. Under tyranny and oligarchy there is no res populi; when the mob is in charge then strictly speaking there is not even a populus. This suggestion is too neat as it stands. Undoubtedly the failure to meet condition (B') is stressed in the discussion of tyranny and oligarchy, but we have already seen Cicero denying that under a tyrant there really is a populus, precisely on the ground that condition (A') is not satisfied. And while in his treatment of mob rule he certainly emphasizes the non-satisfaction of (A'), we shall shortly note evidence that he also presented a distinct argument for a claim tantamount to the thesis that (B') is not satisfied either: if a people degenerates into a mob, someone else should take control of its affairs—because it is incapable of managing them properly itself. Theoretically it would be possible for a constitution to satisfy (A') but not (B') or (B') but not (A'). Cicero evidently thinks that this is not how the world actually

works. To hazard a guess at his reasoning, corruption in government leads to the corruption of society itself, as perhaps—if we may so gloss Augustine—in the cases of tyranny and oligarchy; and vice versa, as perhaps in the case of mob rule.

Our account of (B) has up to now omitted the most interesting and important feature of Cicero's handling of res populi. What he has in mind by res populi is "the affairs and interests of the people". But 3. 43 it. is written as though the expression actually meant 'the property of the people'. Laelius agrees with Scipio that under an oligarchic faction like the Thirty in Athens or the decemviri at Rome (3. 44): 'Populi nulla res erat, minus vero id populus est, ut rem suas recuperaret' ('There was no res belonging to the people. Indeed, the people took steps precisely to recover its own res'). Under the tyrant Dionysius of Syracuse (3. 43): 'nihil ... populi et unius erat populus ipse' ('Nothing belonged to the people, and the people itself belonged to a single man'). And in an argument about mob rule whose first phrases only are preserved, Cicero seems to have reasoned by analogy that sometimes it will be imperative to deprive the people of control over its res, just as the law gives control ('potestas') over a madman's property to his relatives (3. 43). The idea is presumably not that res publica is literally speaking property, but rather that the affairs and interests of the people may be conceived metaphorically as its property. When a tyrant or a faction tramples upon the proper interests of the people, or conducts its affairs as though they were private, then it is as if there is a theft of public property.

Why did Cicero construe res populi in terms of the property metaphor? Two of the three specific contexts in Rep. 3 in which we find the metaphor are concerned with the liberty of the populus. This prompts the conjecture that Cicero sees the metaphor as an attractive means of bringing out the intimate connection between the conditions on the existence of res publica and the conditions of political liberty. His thesis is that a populus has no liberty if its res is taken into the possession of a tyrant or faction. He goes so far as to say that in these circumstances the populus itself belongs to someone else (3. 43). If liberty is to have its claims ('vindictae') heard, the populus must recover its res (3. 44).

The conjecture finds some confirmation in the argument for democracy which Cicero rehearses in Rep. 1. 48. The democratic argument first interprets political liberty as the idea of the
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The notion that the populus should own its own res is not itself the point. What Cicero has in view is an idea about rights which the metaphor enables him to express. If the populus possesses its own res, then it follows that it has rights over its management and use. And the ability to exercise those rights is what political liberty consists in. Cicero is himself deeply opposed to the democratic assumption that the power of the populus over its res should be unlimited, and that consequently there should be no constraints on political liberty. But he is clear that it should have some such power, and that consequently a degree of political liberty is essential to a true res publica. He has been able to show how, although the definition of res publica makes no mention of liberty, consideration of the conditions under which there can be a res publica leads Cicero to identify these with the conditions of political liberty, provided that res publica is conceived in terms of the property metaphor.

At 3. 43 Cicero observes that, according to his argument, tyranny is not a vicious form of res publica, but no res publica at all. This apt remark is offered as a correction to the account of constitutions presented in book 1. Cicero is concerned not just with discriminating between good and bad constitutions, but with the more basic issue of determining what makes government as such legitimate. For where through failure of condition (B) there is no true res publica, the reason will usually be that the regime in power has abused or infringed or wholly removed the rights of the populus over its own res. Aristotle talks of concern for the common good as a test of a correct constitution. He operates with a notion of the city as a collection of citizens whose interests the constitution is there to safeguard. By focusing his discussion on the notion of populus and rights, Cicero effectively creates an entirely new theory, cast in a legal vocabulary which has no parallel in Greek generally or in Greek political philosophy in particular. Its legal inspiration makes it a distinctively Roman contribution to political thought.

IV. "Consilium" and Government as Trust

There the argument might rest. To say no more, however, would give a very misleading picture of Cicero's argument in Rep. It could suggest that, although he is not an extreme democrat, his political theory is none the less in essence democratic, since at its heart stands the populus and the rights of the populus over its own res. What needs to be explained is how Rep. marries a fundamental recognition of popular sovereignty with an unshakeable and deep-seated commitment to aristocracy as the best practicable system of government.

The crucial text is 1. 41-3: a passage where various ideas borrowed from Greek theory are reshaped and harnessed to an argument about consilium. Here Cicero in recapitulating his definitions of populus and res publica advances the thesis (1. 42): 'omnis res publica, quae ut dixi populi res est, consilium quodam regendae est, ut diuturna sit' ("Every res publica, which as I have said is the res of the populus, must be ruled with a certain amount of policy/deliberation [consilium] if it is to attain any permanence"). Two provisions relating to this consilium are then stipulated. First, it must always be related to the cause which generated the organization of the populus in the first place. This means that deliberation and policy have to be focused on the common advantage and formulated in accordance with the common sense of justice prevailing in the society. They must "preserve that bond which first bound men among themselves in the society of the res publica" (1. 42). Second, the power of consilium has to be put in someone's hands: either one man or a chosen group; or else the mass—everybody—must take it up for itself. Cicero is clear that the third solution is much the worst, even though the basic conditions for the existence of a res publica may be satisfied; and although his recipe for a mixed constitution includes a monarchical element, exemplified at Rome in the institution of the consulship, he prefers to conceive this in terms of executive power ("potestas"), commanding the affection and
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Respect, due to kingship, rather than of the more fundamental authority ('auctoritas') of properly deliberated policy (2. 35; 56-8). Such policy is best secured by entrusting the making of it largely to an elected aristocracy. And the prominence accorded in Rep. 1. 47-5 to the need for consilium indicates the pre-eminence Cicero accords to the aristocratic ingredient in his constitutional scheme.

If confirmation of this verdict is needed, we can find it in the slightly earlier Pro Sexto (56 xc). At Sect. 1. 47 Cicero reminds the court how their ancestors exhibited great wisdom in creating the Roman constitution:

cum regnum potestatem non tulissent, ina magistratus annuus creaverunt, ut consilium senatus rei publicae praebentem semper esse, deligitur autem in id consilium ab universo populo adductus in illum annuum ordinem omnium civium industriarum ac virtutis patrem. Senatus rei publicae custodes, praesidem, proponentes consulaverunt; hunc ordinem auctore autem magistratus et quasi ministros gravissimis consiliis esse voluerunt; senatus autem ipsum praecones ordinem confirmari, plebis libertatem et commercia tueri, atque aegres voluerunt.

(Since they ceased to find the power of kings tolerable, they created annual magistrates. Their idea was to set the consilium of the senate to pronounce over the res publica for ever, but to have them [i.e. the senators] chosen for that consilium by the people as a whole, and to make admission to the highest order open to the industry and virtue of all the citizens. They set up the senate as guardians, president and champion of the res publica. They wanted the magistrates to avail themselves of the authority of this body and to act as if they were servants of its most weighty consilium. But they also wanted the senate itself to be strengthened by the prestige of the orders closest to it, and to protect and enlarge the liberty and advantages of the common people.)

The key role which Cicero both here and in Rep. assigns to consilium and to the elected aristocracy he thinks best equipped to formulate it, reflects his own strongest convictions and, of course, his tenacious self-image. As early as the Verres (70 xc) he was arguing that the res publica could best be defended by the consilium of the senate (Verr. II 4. 4). In the Philippi (44 xc) he tells the senators that they are initiators of public consilium (as at Dom. 1. 12, Sect. 97), but that they are authors of the most far-reaching consilium there can be, on behalf of the whole world (Phil. 3. 34; cf. 4-14). It is notorious that he is for ever claiming for himself the accolade of having liberated (Cat. 3. 54, Sull. 55) and preserved (Dom. 93; Pro R. d. 16, Mil. 36) the res publica from the threat posed by Sulla, at great personal risk, by virtue of his consilium.

We have to return to Rep. to get a sense of the way Cicero reconciles allocation of the main power of consilium to an aristocratic council with the right of the populus to control its res, i.e. res publica. As 1. 42 indicates, the populus may decide either to assume itself the direct management of its own affairs or to choose ('deligere') others whom it will expect to manage them on its behalf and in its interest. If it takes the second option, it does not thereby throw away its rights and its freedom, since it is not transferring powers (although in the surviving portions of the text Cicero nowhere makes this point) but only entrusting itself to others.

The sovereignty of the populus in even the early regal period of Roman history is stressed insistently by Cicero in book 2 (on which see the treatment of Ferrara, 1984). On Marius's death the people did not tolerate the attempt of the senate to rule without a king and demanded one, 'adopting' ('adsever') the foreigner Numus Furius, and 'making an order' ('hysserat') in their assembly that he be king (2. 23-5; cf. the assumption of elective kingship in Polybius' political theory, e.g. 6. 7. 1-4). After his death the people 'created' ('creaver') Tullius Hostilius king (2. 32); similar claims are made about Ancus Martius (2. 33) and Lucius Tarquinius (2. 35). Servius Tullius began his reign 'from haua sed voluit auteg concuss civium', 'with the goodwill and consent of the citizens, though not by their order' (2. 38; cf. again Polybius 6. 4. 2). But he subsequently took pains to consult the people, who then made their customary order. Then like his predecessors he had a law passed in the assembly confirming his imperium. It may be that when the res populi is ruled by the will of a single person the chances of its being best managed in the people's interests are not minimal (1. 43). But under the Roman kings the people restored liquidus', 'some right', even if it was deprived of proper liberty (1. 43), until the time of Tarquinius Superbus. His overthrow is classically described in terms of the liberation of the people from the yoke of slavery (2. 46-7; cf. 57; 1. 62 speaks of a pattern of revolution designed to put 'all things in the hands of the people'). In what survives of the account of the early republic aristocratic control is treated as established; and Cicero remains principally concerned to chart the continuing evolution of the system of constitutional checks and balances whose first phase is recorded in
the discussion of the kings (2. 30, 56–8). But presumably because
the sovereignty of the populus under the Republic is not something
its readers would have doubted, as they might well have done for
the regal period, it gets no particular attention. The populus liber is
treated simply as one of the key elements in the republican system,
which makes an indispensable input, albeit mostly passive, in all
major developments.

For the idea that a populus is best advised to entrust itself to an
elected aristocracy our only explicit evidence in Rep. comes in the
argument for aristocracy which Cicero expounds in book 3. After
criticism of use of the lot as like picking passengers at random to
steer the ship, an alternative is recommended (1. 54):

quodsi liber populus diligentie quibus se committitat, deliquitque, si modo salus
esse vult, optimum quamque, eum in optimorum consultis positum est civitatis
salus. (But if a free people will select persons to entrust itself to, and if—given only
that it wants to be safe—it will select all the best, then assuredly it follows
that the safety of cities is placed in the counsel of the best.)

This passage not only articulates the obvious justification of aristocratic
rule within the framework of popular sovereignty which is
already adumbrated in 1. 42. Its doctrine of government as trust is
echoed in some famous passages in De Officiis (4. 50) which sum
up Cicero's reflections on the subject at the end of a long public life.
After sketching the principal concerns of statesmanship, he says
(Off. 1. 85):

ut enim tutela, sic praelato rei publicae ad eorum voluntatem quas committere
sunt, non ad eorum quibuscum committere est, gerenda est.
(As with the office of a guardian, so management of rei publicae should be
conducted in the interests of those who are entrusted to one's care, not
in the interests of those to whom management has been entrusted.)

And on the duties of a magistrate (1. 124):

6 "Tutela" and "procuratio" here echo the description of the "optimum civis"; he
must be good, wise, and experienced in the interests and sense of dignity of others
"quasi tutore et procuratore rei publicae"—like a sort of guardian and manager of
the rei publicae (1. 53).

7 As Wood (1988: 134) notes, the remarks about the trust enjoyed by the
magistrate echoes what he had said twenty-five years before of the office of quasator
which he had held in Sotty: Verr. II 3. 35.