CHAPTER 9

The Incongruence of Power: The Roman Constitution in Theory and Practice

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A primary aim of historical comparisons is to distinguish the specific from the universal or, in other words, identify those aspects of a given community that set it apart from others and determined its particular trajectory. Before embarking on such an endeavor, it is worth briefly noting the difficulties of a comparison of Greek and Roman institutions. At the most basic level we have to acknowledge the simple fact that we are contrasting a single city-state, and one as the previous chapter concludes that grew as it absorbed other cities, with an entire city-state culture. And within that culture only a few poleis are better documented—and not necessarily the most typical ones in terms of scale and structure. Another problem relates to the diachronic aspect of such a comparison. The Roman Republic lasted close to 500 years and did not remain static over this period, either in her institutional structures or in her practical articulation. Indeed, the Romans themselves saw the dynamic nature of their political system as one of its central qualities and strengths. Therefore, gives the duration of the Roman Republic and the sheer number and variety of Greek poleis there is a risk that we end up comparing a “distillation” of the Roman Republic with a generalized “Greek polis.”

While the difficulties raised by the uneven distribution of evidence for the Greek poleis are addressed in the companion chapter, this chapter will attempt to gauge the implications of the evolving nature of the Roman Republic. An added complication here derives from the fact that the surviving evidence makes it hard to compare Roman institutions at different stages of their development. Thus, early Rome cannot be viewed in isolation from the later periods, which produced almost all our evidence. We must also allow for the possibility that the Greek comparanda may themselves have influenced these late, retrospective accounts of the Roman past, causing a kind of “cross-contamination” between different periods, cultures, and traditions.

There is no obvious way of overcoming these fundamental problems, which largely prevents us from going much beyond the merest—essentially hypothetical—outline of early Roman institutions. Still, despite these limitations it is important that an attempt is made, not least because many of the distinctive features of the Republic can be traced back to its earliest beginnings and perhaps even to the monarchy that preceded it.

1 From Monarchy to Res Publica

According to the canonical chronology the city was ruled by kings from its mythical foundation until 509, when an aristocratic revolt led to the creation of a free polity where no one man was allowed to hold absolute power. The transition from monarchy to republic may have been considerably more complex than implied by this tradition and the date is itself suspicious, coinciding as it does with the overthrow of the Persian in Athens. However, there is sufficient evidence to suggest that a change of this nature did take place and probably around this time. The new republican structures are the subject of much debate, but apparently they included the “standard” elements of assembly, magistrates, and council, making the system broadly comparable to those of the Greek poleis.

The distribution of competencies also appears similar, with the assembly passing legislation and appointing magistrates, who held the executive power, above all military, and were advised by a council of elders. However, the articulation of these institutions seems to have differed in important respects from that typically found in the Greek world.

According to later tradition, two consuls were appointed immediately after the overthrow of the kings, but there are indications that during the earliest periods the Republic may have been led by a single chief magistrate. In that case it could be argued that the traditional version may be a reversion of the system that emerged from the patrician–plebeian compromise, which accommodated the plebeian demand for an equal share of executive power by doubling the number of office-holders. Defined as imperium or “command” (derived from imperare), the authority of the chief magistrate was extensive and stands out as a defining aspect of the Roman political system. Effectively, it conferred supreme power at home and in the field, the centrality of the latter being underscored by the consuls’ formal appointment in the military assembly. The powers of the magistrates were almost monarchical in nature, suggesting a degree of continuity between the res publica and the system that preceded it—although that does not imply that the consuls therefore embodied “kingship” in the sense later envisaged by Polybius, History, Book 6. The consuls may have “inherited” the powers of the kings along with the attendant symbols of fasces and aula curulis, but crucially they held them for only a short period of time, strictly limited to a single year. The brief tenure may thus have been the fundamental guarantee against excessive accumulation of power, collegiality being added only at a later stage.

The magistrates derived their mandate from the people, but the procedures surrounding this act—often described as “election”—as well as the relationship between the magistrate and the populares cast doubts on the original nature of the process. The people convened in assemblies, comitia, of which there existed a number of different versions defined by the types of unit into which the populares was subdivided. In all Roman assemblies citizens were represented only as members of a particular unit, which delivered a single verdict. We may therefore be dealing with an act of acclamation rather than election. The procedure did not allow for “mixed” messages, and revealingly the Latin word for vote, suffragium, only carries the positive meaning of support, which could be granted
or withheld but not qualified. It has also been suggested the word may etymologically derive from the sound made by the banging of weapons as a—ascriptive—sign of approval (Vlastera 1993). On this interpretation the “election” of the consulship have been the formal presentation of the new leader(s) before the assembled people, whose subdivisions each would come forward to express their loyalty and support. Such a procedure might explain the origins of the uniquely Roman practice of block voting, which is without parallel in the ancient world.

This line of interpretation might also cast light on the magistrate’s position in relation to the assembly, which seems to have differed in important respects from that known in Greek polis. The Roman magistrate was not merely the holder of a public office carrying certain responsibilities and remits; he was above the populus and exercised complete control over the assembly, which had no formal or practical existence without his leadership (see below). Moreover, when the appointment procedure was transformed into a genuine election, the people’s role remained circumscribed. As it has been convincingly demonstrated, the people were neither “sovereign” nor active in the elective assemblies (Raban 1990). It was convened by a magistrate, who formally guided the comitium, and the technical language used for the appointment indicates that it happened through the joint action of the presiding magistrate and the populus. Without the guidance of a magistrate the populus could not appoint new leaders. It is significant too that the appointment was formally made only when the leader announced it. This feature gave the appointment of magistrates an element of internalized succession, with the appointee formally being “created” by the incumbent, rather than through the popular vote. When the chain between them was broken an interrex had to be appointed to carry out the ritual handing over of power to the successor. The procedure was one where the outgoing magistrate presented his successor to the assembly, asking it to give his approval, and it is generally assumed to have originated in the traditional acclamation of the new king by the comitium curiatum. Supposedly, the kings had received their imperium through a lex curiata de imperio, which in effect was an oath of allegiance sworn to the new ruler, expressing the people’s consent.

The Romans’ willingness to invest extensive powers in their leaders is illustrated also by the institution of the dictatorship, which enabled the Senate to grant supreme authority to a single individual, usually to deal with a military emergency. Again, however, it was of strictly limited duration with a maximum tenure of six months. In addition, the dictator would appoint a magister equitum, who was not his colleague but second-in-command.

According to legend, Romulus first nominated 100 elders from the leading families to advise him in the governance of the state, perhaps indicating a fluctuating rather than permanent body. It is not clear at what point it developed into the stable institution known in later periods when access was formalized and largely reserved for former office-holders who in principle were appointed for life. Given the state of our evidence, the issue can probably never be settled, but considering the powers of the chief magistrates and the likelihood that they had been pre-selected through an internalized process it would seem plausible if the senate had established itself as an independent source of authority with a relatively well-defined membership already before the passing of the lex Oleria, which formally constituted it as a council of former office-holders (Hilkeckamp 1987).

The senators became known as patres, fathers, closely associating them with the hereditary “caste” of patricians, whom the sources present as holding a monopoly on public office during the early Republic. The ascendency of the patricians sparked a prolonged conflict between them and the so-called plebeians who were excluded from office, a conflict that would reshape the political system in fundamental respects.

2 The “Struggle of the Orders”

Virtually no contemporary evidence survives for this conflict and almost all aspects therefore remain open to dispute (Raab ln. 1986). At the most basic level the identity of the two parties involved is subject to debate. Moreover, it is not even certain that the conflict is best understood as a single “struggle,” since we may be dealing with an extended series of loosely interrelated socio-economic and political issues which only in hindsight was conceptualized as the unified “Struggle of the Orders” we find in later sources. This brief summary will leave these issues aside and concentrate on the changes it brought to the political institutions (see also Fronda, Chapter 3).

Patriicians are normally seen as a hereditary “caste,” which asserted an exclusive right to magistracies and possibly also membership of the Senate. This monopoly on executive power appears to have been justified on religious grounds and associated with the patri- cian claim to the auspiciis, the right to consult the gods on matters of state. In Rome modern distinctions between “politics” and “religion” did not apply, and any action which had an impact on the public weal—legislation, elections, declarations of war and peace, military engagements—required divine consent (for the Greek religious context, see Rhodes, Chapter 8). This in turn was ascertained through a complex system of divination, and it is therefore possible to argue that, in addition to the socio-economic resources that undoubtedly underpinned the patrician supremacy, their position rested on an exclusive entitlement to the auspiciis, which precluded plebeian tenure of the highest office. It logically followed that only patriicians could hold the state priesthoods and sit in the Senate, which itself acted as the highest authority in matters of cult and divination.

The plebeians reacted to their exclusion from state offices by creating a set of alternative institutions as a means of furthering their interests. An assembly was established, the concilium plebis or comitia plebis tributum, which issued its own resolutions, plebiscita, that were binding for the plebeian population. It also appointed its own officials, tribuni plebis (initial number uncertain, but later rising to ten), who were charged with the protection of individual plebeians and in return enjoyed their collective protection, and two sodales plebis who were responsible for celebrating specifically plebeian religious festivals.

Eventually the patricians made a series of concessions to the plebeian elite, which was then admitted to all magistracies and priesthoods through a succession of legal measures. The background for this retreat can only be conjectured, but key must have been the simple fact that the patricians constituted a small and shrinking minority, whose position became increasingly untenable as the plebeian elite harnessed wider social and economic grievances in support of their demand for political influence. The main breakthrough came in 367 with the passing of the legis Lusitius-Sextianus, which entitled the plebeians to one of the two consuls, although it does not appear to have come into effect until 342, from which point onwards at least one consul was always plebeian. These laws also admitted plebeians for the first time to one of the major state priesthoods, the duoviri sacris faciundis (later quindecimviri), although it was not until the lex Aquilia, 300, that they gained access to the colleges of the pontifices and the augures. In 356 the first plebeian dictator was appointed, and four years later a plebeian first held the censorship.
The lex Orinia (late fourth century) appears to have been closely linked to this process. As noted, it regulated the membership of the Senate and ensured former office-holders a seat irrespective of background and it has been suggested that by formulating objective criteria for admission it may have created a more inclusive body (Cornell 2000).

The old distinctions between the two categories gradually became obsolete and an important consequence of these constitutional changes was the emergence of a new elite, known as the nobilitas, comprising both plebeians and patricians. Ideologically this class embraced a more aristocratic ethos of office-holding and public service, while at the same time maintaining an element of hereditary entitlement based on ancestral achievement. Indeed the prestigious title *nobilis* came to refer to any descendant, however distant, of a holder of the consulship.

The most paradoxical outcome of the patricio-plebeian settlement was the constitutive of the—formally redundant—plebeian institutions, which were given official recognition and incorporated into the Roman state. Plebeian tribunes continued to be appointed and were endowed with extensive powers to veto and propose laws and to exercise *interrogatio*, intervention on behalf of citizens against state coercion. Moreover, the lex Horatia, 287, gave resolutions of the plebeian assembly the force of law and made them binding for the whole population—despite the fact that patricians could still not take part. The long process of accommodation thus left behind a highly complex institutional legacy, which not only contained a number of paradoxes and contradictions but also made it difficult to identify precisely where political power was located.

3 Institutions in the “Classic” Roman Republic

The period between the end of the “Struggle of the Orders” and the re-emergence of political violence in 133 has long been seen as the “classic” Roman Republic, when the empire expanded and the constitution functioned at its best. This image may be somewhat idealized, conceived as it was under the influence of later events and the eventual collapse of the republican system. Thus, closer scrutiny of the surviving evidence suggests that the degree of stability may have been overstated and that the political system also during this period frequently was put under considerable stress (Hieckmann 2002). Importantly however, it still managed to resolve political conflicts through negotiation and without the use of force. Rome’s ability to deal with these challenges is therefore notable, and ever since Polybius first devoted a digression to Rome’s political system the secret behind the relative stability that characterized the middle Republic has been sought in her political institutions and not least in their mutual interaction. These will therefore be considered in some detail (see also Fronza, Chapter 3).

The magistrates

During the Republic, Rome saw a steady increase in the range of public offices and in the number of appointees, which reflected the growing scale and complexity of Roman society as well as the incorporation of the plebeian institutions into the state. Every year the Romans filled a very considerable number of posts, reaching a total of forty-four magistrates in the late republic in addition to fifty lower officials. Most important were the two consuls, who served as eponymous heads of state, and originally may have been known as *praetores*. Their role was to a great extent defined in military terms, and their primary function was that of commander of the legions; hence their appointment in the military assembly, the *comitia centuriata*. Their *imperium* gave them wide-ranging powers “domini militari,” at home and in the field. Although their powers of life and death, symbolized by the axes in the *fines*, no longer applied in civilian contexts after the *leges Piewiae*, they still had sufficient authority to coerce citizens. Politically they had the right to propose legislation, convene the people, and preside over meetings of the Senate.

In 366 the first praetor was appointed to oversee the administration of justice and perform the consuls’ political functions while they were away on campaign (Brennan 2000). He also held *imperium* and was therefore able to carry out military functions too. While in some respects similar to the consuls, the praetor remained subordinate and complex theories have been developed to explain the precise nature of this office and its place in the constitutional development of Rome; these inevitably contain a strong element of conjecture (e.g. Buuse 1998). The number of praetors increased gradually to cope with rising administrative demands, a second one being added around 242 to deal with disputes between Romans and foreigners, the *praetor inter peregrinos*, eventually reaching eight after Sulla’s reform.

The aemulus was an essential Roman institution that formed the basis for civic organization, military conscription and taxation. Already in the fifth century two censors had been appointed to oversee the quinquennial register of all citizens and revise the membership of the Senate.

To these posts were added *cursule aediles* (the term *curule* derived from the insignia of senior state officials, the *aula curulis*) who performed various public functions, including the celebration of games and festivals, and had oversight of the grain supply to the city. They functioned alongside the two plebeian *aediles*.

As noted, plebeian tribunes continued to be appointed after the plebeian–patrician settlement, and as a result ten officials, still in the early stages of their careers, were granted extensive powers to propose and veto legislation throughout the classical period. Apparently they were also allowed to attend the Senate and from the third century they could convene meetings too. The lex *Atinia* (date is disputed but perhaps 149) gave them automatic membership of the Senate.

A steadily increasing number of *quaestors* were appointed to assist the consuls and perform administrative duties related to finance and provisions for the city of Rome. Below the magisterial level a substantial number of posts were filled by the assemblies, including *tribuni militum*, *tribuni munificiis*, and *tribuni capiteis*.

In 180 the lex *Vilia annalis* for the first time created a formalized magisterial ladder, the *curius honorum*, stipulating minimum age requirements for each office, regulating the order in which they should be held, and prescribing minimum intervals between offices as well as for the iteration of the consulship. This attempt to regulate the public career path was a response to increased competition within the elite and coincided with a spate of other initiatives to tackle a wide range of electoral malpractices. The existence of an official *curius* stands in contrast to Greece and reflects the unique status of the Roman elite as an aristocracy defined by and articulated through the holding of public office.

As a rule, Roman office-holders had to meet a basic property requirement and qualify for membership of the highest census class. Offices were defined as *honors* and were
therefore unrenumerated. Indeed, they normally entailed considerable expenditure, the aeclateship being particularly onerous. In addition, magistrates had access to a very limited "civil service" and relied on private staff to carry out many public duties.

**The Senate**

When a young man had taken his first step on the magisterial ladder and completed his year as quaestor, he could normally expect to be admitted to the Senate, which meant joining the official "political class." During the "classic" Republic the Senate counted around 300 members, although the five-year interval between censuses meant that the official figure often would have been lower. Sulla later doubled its membership as part of the judicial reform which granted the senators full control over the juries.

The internal structure of the Senate was strictly hierarchical, with members ranked according to offices held and seniority within each magisterial class (Bonnefon & Coudry 1989; Ryan 1998). The senator heading the list carried the hononific title of princeps senatus, which conferred prestige and the right to open the debates. The deliberations were highly formalized, with members being asked for their opinions, senatus consultum, in order of seniority, in practice leaving the majority of senators without any real opportunity to contribute—although there is no evidence that the lower ranks, sometimes described as pedars, were not allowed to speak, as once assumed. Votes were rarely taken since the aim was to present unanimity and consensus rather than exponc divisions.

The Senate could issue resolutions, senatus consultum, which served as advice to the consuls but had no binding force of law. In the late Republic the Senate introduced the so-called senatus consultum ultimum, a declaration of emergency instructing the consuls to take any action required to deal with the enemies of the Republic. The measure had no basis in law and its validity therefore remained a source of dispute.

The Senate’s status as an advisory body and lack of formal powers may seem unusual from a Greek perspective but can be explained by two related factors: the formal equation of the state with the popular and the extensive powers of the magistrates who acted on their behalf. Although internally consistent and logical, this construction of the Roman state did not leave room for a council with autonomous powers. As a result we find a stark discrepancy between the Senate’s constitutional role and its de facto position as the center of power; its membership comprised everybody with active political and military experience as well as the accumulated social influence and economic resources of the leading families.

**The assemblies**

In contrast to Greece, the “classic” Roman Republic had a variety of popular assemblies, the comitia curiata, centuriata, tributa, and the comitia plebis. They were created at different moments in Rome’s history, and for different purposes. They did, however, share the same formal structure and procedures. While formally representing the Roman people, each assembly did so in a different configuration. Unlike Greek assemblies the Roman ones were defined according to the kind of unit into which the popular was divided.

The oldest assembly appears to have been the comitia curiata, which organized citizens in curiae. Little is known about its original functions, but in the classical period it was largely ceremonial, formally conferring imperium on holders of the highest offices. As an assembly it became practically redundant and was convened without any popular involvement, each curia being represented by a liector.

The comitia centuriata represented the Roman people as an army and, reflecting the traditional link between property and military service, it was also the most overtly oligarchic of the Roman assemblies. It was divided into 193 centuriae, basic military units, which in turn were grouped together into clausae, defined according to a sliding scale of property ownership. Voting first were the eighteen equestrian centuries, which included the so-called sex suffragis, presumably senatorial centuries. They were followed by the five clausae and four unarmed centuries and a single century reserved for those without any property, the proletarii. This arrangement was an elaboration of an older and simpler system that divided the citizens into those who served, clausae, and those who did not, infra clausum. The system of block voting allowed the weight of each vote to be carefully calibrated, reconciling the principle of equal citizenship with inequality of influence. Thus, the assembly was heavily tilted in favor of the property classes.

The assembly was the object of a little-known reform between 241 and 218, prior to which the first class held 80 centuries and the four remaining classes 20, 20, 20, and 30 respectively (Mouritsen 2011). After the reform the number of first-class centuries was reduced to 70. The background for this move is debated, but a primary objective appears to have been the coordination of the first class with the tribus, of which there were 35. This move reflects the increasing practical and ideological importance attached to the tribal units, which became so central to the identity of Roman citizens that they even entered into their nomenclature and became part of their name.

The origins of the tribus remain obscure. According to tradition the Roman people was in its earliest stages composed of three tribes, Rameses, Titus, and Luceres, about which no reliable information survives. These were in turn divided into the curiae, which originally formed the basic unit for the assembly and the army. The tribus of the classical period appear to be different in nature, since they were regionally defined units that subdivided the citizen body according to domicile. In principle, this made them more socially representative, although distortions soon emerged as the rapidly growing urban population remained confined to just four tribus, which also became the default tribus of freed slaves. Political influence therefore came to lie with the rural tribus, to which landowners continued to belong irrespective of their place of residence.

The earliest assembly to be based on the tribus appears to have been the comitia plebis, also known as the comitia tributia, which established an alternative source of authority among the plebeians. Modeled on the plebeian assembly, a comitia tributa was created, open to all citizens and presided over by state magistrates. As just noted, a tribal element was also added to the already complex structure of the comitia centuriata, as (at least) the first-class centuries were combined with the 35 tribus.

This reform strengthened the formal mandate delivered by the centuriate assembly since the centuries, following the introduction of the maniple as the operative military unit, were no longer essential subdivisions of the Roman people. But another objective seems to be the launch of a striking new feature, the so-called centuria praetoriana, which was a single century chosen by lot from amongst the first-class units to cast the first vote and thereby provide a lead to the rest of the assembled citizens. The sources suggest that the vote of the centuria praetoriana was considered an omen and routinely followed by the assembly. The implication is that the electoral process was given a strong element of lottery while still maintaining the fundamental principle of "popular" choice.
Magistrates and assemblies

All political gatherings require some degree of organization, but in Rome that role went far beyond the strictly practical. The presiding official was in full control of every aspect of the proceedings. The various assemblies and meetings could convene only when called by an authorized official. Thus, unlike classical Athens, there were no statutory assembly days in Rome, allowing the people to come together on a regular basis and debate current issues. An assembly came into being only through the initiative of an official, who could dismiss it again at any time, thereby preventing it from reaching a decision.

The fact that it was a magistrate who constituted the people politically also determined the workings of the concilia. Again the contrast to Athens is remarkable (although less so when compared with Sparta), since there was no possibility of popular initiatives or proposals emerging from the meetings, which were not even allowed an open debate. Discussions were formally separated from the decision-taking meetings (concilia), and relegated to so-called concilia. These non-decision-taking meetings also had to be convened by an official and did not offer the opportunity for free or open debate either. The proceedings were tightly regulated and remained under the direct control of the presiding official. It was he who decided time and place as well as the issue(s) to be debated and, crucially, who was permitted to speak—usually arranged in advance. The concilia was therefore more an address to the people than a consultation of it. There was no formal interaction between speaker and public, merely a one-way communication. It follows that the Roman people had no legitimate way of conveying or expressing its views without formalized leadership (see Morstein Marx, Chapter 17, for a discussion of rhetoric in the concilia; also O’Byrne, Chapter 25, on the reluctance to create a permanent theater where people might assemble).

The essentially passive role of the publicus is also reflected in the legislative procedure. The presiding magistrate would present proposals to the assembly, whose response was limited to yes or no without any opportunity to modify what was put before it. Given the lack of active input into policy-making, a legislative concilia may be best defined as an ad hoc meeting convened by a magistrate for the purpose of ratifying a specific proposal. At elections we find a similar situation, for although the assemblies were offered a choice of candidates there is no evidence that the assembly was then free to vote for whomever it wanted. The presiding magistrate was still formally and in actual fact in charge of proceedings, and he could refuse to accept a vote by the publicus, as happened on at least thirteen recorded occasions (Rbatian 1990).

The relationship between magistrate and assembly in Rome therefore differed in fundamental respects not just from that found in modern political systems, but also from that found in, for example, classical Athens. Unlike Athenian officials, the magistrates were not simply officials in charge of specific public functions and accountable to the ekklēsia. They were superior to the publicus, and the power of the people was expressed via—and only via—the actions of its elected officials.

4 Popular Participation

Despite the growth of the Roman state and its citizen body, the political system continued to operate along the lines of a traditional city-state. The basic principle remained that of direct participation, and political influence could therefore be exercised only if citizens turned up in person at a given time and place. Needless to say, this constitutional fiction, which ignored the logistic realities of numbers and distance, imposed very strict limits on the proportion of citizens able to take part in the proceedings. Any attempt at assessing the scale of participation possible at the various assemblies must by necessity remain conjectural. However, the archaeological and literary evidence for political venues does allow some cautious estimates (Mouritsen 2001).

The old Comitium in the northwestern corner of the Forum Romanum was in historical times used for the tribally structured assemblies. It was a relatively small space that would have been able to hold little more than c.5,800 voters, taking into account also the fact that they had to be separated physically into thirty-five groups. When the legislative assemblies were transferred to the Forum in 145, the rationale seems to have been ideological rather than practical. Still, the change of venue did allow considerably larger crowds to take part, but since voting procedures remained highly complex and time-consuming attendance levels are unlikely to have risen beyond 10,000 and realistically would have remained well below that figure.

In the late second century the elective tribal assemblies were moved to the Septa on the Campus Martius, historically the venue of the centuriae assembly which as the people under arms convened outside the religious boundary of Rome, the Pomerium. This site was substantially larger than the Comitium and the Forum, but the layout suggests that it could not have accommodated more than a small section of the citizen body. Structurally it was split into two spaces, a forecourt for the opening procedures and a central area which was further subdivided into thirty-five enclosures, one for each of the tribus. The size of the forecourt would suggest that the maximum attendance envisaged was around 25,000 voters, a figure that should be considered in relation to a total citizen population that exceeded a million in the late Republic.

Political venues could remain small and the procedures cumbersome despite the growth of the state and its citizen body, because no quorum was required for assemblies to be valid. Only in one respect did the system contain inflexible requirements of representation, but they concerned the participation of voting units rather than voters. Thus, for an assembly to be able to take legally binding decisions all units had to be represented, even if just by a handful of voters each (Cic. Nat. 109). A similar formalism is reflected in the rule that all tribus had to cast their vote in the—successively voting—legislative assemblies, even if a majority had already been found and the bill effectively was passed.

This emphasis on formality and procedure, combined with the essentially passive role played by the publicus, raises the question: what in fact were the function and rationale of the assemblies? Given the magistrates’ control over all aspects of the proceedings and their ability even to disallow electoral results, they were clearly not intended as vehicles for the free expression of the “popular will.” Their key function appears to have been the conferral of formal legitimacy on those who were to exercise state authority.

The publicus was the only true source of legitimacy in the Roman state, a fundamental principle that was apparently never contested even by the elite. The people and its best interests therefore remained the basis for all claims to political power and influence. The Romans saw no clear distinction between the state and the people; indeed the former was not conceptualized as a separate entity. Since the res publica in a very literal sense belonged to the publicus, it followed that the people had to lend its approval to all public
6 Justice and Law Courts

The pursuit of justice was in principle a private matter, and the state would only actively pursue cases of treason and other serious threats to the state, although the tresvari capitales, primarily responsible for organizing a fire brigade of public slaves, had some role to play in criminal cases. The role of the state was to provide a framework for citizens seeking justice. Criminal disputes were originally held in the centuriae assembly and, reflecting the importance and open nature of its decisions, this is the only context where we come across contemporary concerns about turnout and participation (Varr. Ling. 6.90–93). Later public courts were introduced with magistrates presiding but jurors delivering the verdict. Gradually a more complex system was developed, with standing courts, quaestiones, that dealt with different types of crimes. The proceedings involved speakers from both sides of the dispute pleading their case before a panel of jurors who were all drawn from the property classes. Civil cases would be resolved by iudices, appointed by a magistrate. During the last centuries of the Republic the courts came to occupy an increasingly central role in the political process, with prosecutions for electoral malpractice, ambitus, and provincial extortion, res repugnandae, becoming standard means of challenging opponents.

7 Power and Authority in the Roman Republic

The precise location of power in Rome has been the subject of long-standing debate, beginning with Polybius’ attempt to explain her political system as the embodiment of the Greek ideal of the “mixed constitution,” and recently revived by scholars arguing for a strong “democratic” component to Roman politics. However, the difficulties we face when trying to identify who really held the power in Rome may be best resolved by distinguishing between the formal allocation of powers and the practical functioning of the political institutions. From a purely constitutional point of view the Republic was indeed strikingly “democratic.” The aristocratic council held limited powers, merely serving as advisors to the elected magistrates, while the populii was recognized as the fountain of political legitimacy. In addition, we find in the Roman Republic a remarkably unified political discourse focused on the common good and the people’s best interest, itself considered identical with that of the state.

The reality, however, was quite different, since the populii had few means of exercising the powers that were formally theirs. They could not act without the formalized leadership of a magistrate, whose scope for shaping political initiatives was close to nil, and their choice of leaders was strictly limited and offered few political options. The people’s power therefore had a distinct element of ritual to it, as is also underlined by the arcane procedures followed and the simple fact that the vast majority of the population could never take part.

The de facto disenfranchisement of the large majority of citizens did not mean that the political elite formed a self-sufficient oligarchy. Not only was it open to outsiders but, as importantly, there was a practical as well as an ideological imperative that leaders of state consider the views and interests of those outside their order. However, to understand this relationship simplistic notions of the “people” and the “will of the people”
are better avoided; for despite the fact that the *populus* formed a single entity in the dyadic construction of the Senatus Populusque Romanus, the non-senatorial population was of course highly diverse, ranging from wealthy *equites* to impoverished *plebs*, with landed gentry, traders, and craftsmen (mostly freedmen), and rural smallholders in between. Across this social spectrum individual groups and classes would have held different material and political interests and commanded different degrees of influence on policy-making, often evolving over time, as the emergence of the land and grain issues in the late Republic demonstrate. The question of the real "power of the people" is therefore too complex to be given a single, straightforward answer. Instead we have to look at the ways in which each constituent element was able (or unable) to enforce its interests at any given moment in time.

8 The Institutional Context of Rome’s Expansion

The institutional structure of the Republic was in a sense a form of structured elite rivalry channeled into an ongoing competition for public honor and the power and prestige they conferred. The highest of these accolades was the triumph, the ceremonial procession through Rome awarded to victorious generals, and the extraordinary attraction of this honor illustrates the point often made that the Roman elite was in many respects a “warrior class,” imbued with martial values and measuring status in terms of military achievement. Moreover, it is no coincidence that the *nobilitas* which emerged out of the “Struggle of the Orders” established itself during the period of Italian expansion in the fourth and third centuries, the spectacular military advances underpinning their claim to political leadership (1993).

The expansion was further facilitated by a set of political institutions that revealed a striking integration of the civilian and military spheres. Military experience was required of all office-holders, and the primary role of the heads of state, the consuls, was that of commanders-in-chief, hence their election by the *comitia centenaria*. Similarly, the basic civic organization of society was in essence martial in nature, with citizens classified according to military rank or lack thereof, for example *equites*, *classe*, *centuriae*, *triarii*, and *plebeii*. As the conquest of Italy progressed, Rome imposed a complex political structure on the peninsula. Substantial parts were incorporated into the Roman state and given Roman citizenship. As a result Rome soon outgrew the natural limits of a city-state, and her ability to expand both territory and citizen body is one of the most striking aspects of this policy. It was possible because Roman citizenship was defined primarily in terms of personal rights, for example legal protection, rather than active political participation. Therefore, while other city-states were restricted by the constraints of distance and scale, there were no natural limitations to the extension of Rome’s citizen body, which could grow both internally through the emancipation of enslaved slaves and externally via the incorporation of neighboring communities. Whereas conventional political notions of citizenship were predicated on physical integration and geographical proximity, the Roman focus on personal status and individual rights enabled the transformation of their city into a territorial state.

According to tradition, the first significant conquest was that of the neighboring Etruscan city of Veii, which was destroyed and her territory taken over by Romans in 396. A different approach was followed in 381 when the Latin town of Tusculum was incorporated and her citizens given Roman citizenship. The number of *tribus* steadily increased until it reached thirty-five in 241, at which point the process was discontinued for reasons that are not evident. Later incorporated communities would be allocated to existing *tribus*, which thereby lost their territorial integrity and became separated into multiple sections scattered across the peninsula. However, this *tribus* structure may have served an integrative function in relation to conscription, since recruitment was organized on a tribal basis, bringing together Roman citizens from different parts of her territory in single military units (Iulius 2006).

There was also a shift in policy toward treaties that bound the community politically to Rome and imposed military obligations. Occasionally allied communities would also receive elements of the Roman citizenship, but since they were not inscribed in *tribus*, the fundamental mark of the citizen, they remained formally outside her citizen body. Eventually the separation of citizenship from political participation became so complete that by the second century colonies of Roman citizens were founded in Cisalpine Gaul despite the fact that it was geographically cut off from Roman territory and located hundreds of kilometers from the mother city where all political activity continued to be concentrated.

9 The End of the Roman Republic

The main symptoms of the crisis are well known: a decline in consensual government and growing divisions within the elite; increased use of assemblies without senatorial approval; the accumulation of power and influence in the hands of a few leading men; the emergence of violence as a political weapon; and the growing involvement of the army. Several institutional factors may have contributed to the crisis, above all the weakening central control over office-holders and the availability of prolonged military commands and special powers through the popular assemblies. It could be argued that the relative ease with which laws could be passed in Rome may have played a critical role behind the growing instability. There were few if any restrictions on the kinds of laws the *populus* could pass; what regulations existed were largely concerned with legislative procedure rather than with content. The most fundamental safeguard was the expectation that office-holders act in accordance with the majority view of the Senate and respect the principle of collegiality. However, after Tiberius Gracchus’ tribunate in 133 both of these were fatally compromised and thereafter the system had few ways of protecting itself against non-consensual use of the magistrates’ legislative powers. Sulla’s response to this state of affairs and his attempt at restoring senatorial supremacy were quickly undone, since legal measures always could be revoked as easily as they had been passed. The Senate therefore faced real difficulty when trying to assert the collective interests of the elite against the ambitions of individual nobles; for while the importance of constitutional legitimacy never waned, even during the most tumultuous of times, formal mandates from the *populus* were at the same time also extraordinarily simple to obtain. All it required was a well-disposed magistrate willing to put a bill before the assembly, which—no matter how small and unrepresentative—could pass measures of immense scope and implication that might potentially threaten the very core of the republican system.
The events of this period exposed the weak points in the republican constitution, which, as we saw, was characterized by a peculiar incongruence between real and formal powers. They revealed the crucial importance of unwritten and non-formalized rules and conventions, whose observance ultimately relied on elite cohesion and group discipline, as well as ingrained respect for ancestral tradition and ancient custom (often summarized as maiestate). When these faded under the impact of increased competition and external pressures, the republican elite found itself with few means of enforcing its authority and upholding the existing political order.

It paved the way for extended military commands and veteran settlements which strengthened the bonds between generals and their troops that were to become crucial in the final stages of the Republic. In the end the absence of a formal constitution, as opposed to "custom," meant that the supremacy of an individual could be accommodated within the existing legal framework. Because the Republic relied on adherence to men, it was left without effective safeguards against its own gradual abolition. The Republic could therefore be voted out of existence by perfectly lawful means, while those attempting to halt the process—somewhat ironically—had to resort to "unconstitutional" methods such as violence.

REFERENCES

The Incongruence of Power: Rome


FURTHER READING


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