

THE CORRUPTION OF THE CONSTITUTION:
THE *LEX GABINIA* AND *LEX MANILIA* AND THE
CHANGING *RES PUBLICA**

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Introduction

Pompeius' commands against the Mediterranean pirates and Mithridates in the 60s BC have long been considered together. They are often seen as an important, possibly an 'extraordinary' moment in the decline of the Roman Republic, when one man's popularity gained him unrivalled power, a moment that was important in the ongoing destabilisation of the Republican political system.¹ This article will discuss the way in which the statutes that established these commands – the *lex Gabinia* and *lex Manilia* – were part of a long-running process by which the constitution evolved over time and through which Rome changed from Republic to Principate. It will also argue that it is valid to think in terms of Rome as having a constitution, without having to refer to it in 'scare quotes'.² An examination of the statutes shows that the Romans interpreted and argued about the nature of their constitution as they responded to the challenges facing their city. These laws were, fundamentally, an *ad hoc* solution to long-running problems; at the same time, the nature of the solution altered the Roman understanding of what was possible and permissible in their *res publica*. Effectively, they changed the constitution, although they did not intend to. The question is whether this process and these changes were integral to Rome's constitution or a corruption of it – or both. The statutes allowed Rome to respond to immediate problems and secure the *res publica*. At the same time, the nature of this response contributed to larger

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¹ See Boak 1918:1-15; Cobban 1935:87-88; Ormerod 1997:233; Seager 2002:43; Sherwin-White 1984:188 and Kallet-Marx 1995:317, 320 on the 'extraordinariness' of Pompeius' commands.

² Straumann 2011:280-85.

problems, fuelling a conflict between the Senate and the People and putting Pompeius in a position of unrivalled power that made him both a potential threat to Rome and a model for others to emulate and equal. In this way they also contributed to the growing instability in Rome during the 1st century BC which led, ultimately, to the end of the Republican period and the establishment of the Principate.³

Constitutional change

Before we can talk about the Roman constitution, we first need to establish what a constitution is and what it does within a society, and decide whether Rome – which, famously, had no written constitution – can be said to have had one. We can then consider the ways in which constitutions change and what the ideas of integrity and corruption might mean in relation to this.

In modern politics the term ‘constitution’ is often used to refer to a written document or a codified body of legislation that lays out the way in which a political system or government functions. We assume the existence of defined structures and institutions that work in a set and predictable manner in order to uphold the political system of the society in question, and expect legislators and judges to be able to refer to it in the performance of their duties, leading to consistency in political practice.⁴ We expect ‘[t]o see politics as *working within* a constitutional order rather than *working out* that constitutional order.’⁵

³ It is important to note that our conception of the Roman ‘republic’ is contemporary. The Romans referred to their political system as the *res publica*, and the term continued to be used to refer to Rome into what we refer to as the Empire. When we refer to a republic now, we tend to mean that a state has a particular kind of constitution distinguishing it as a republic, which the Oxford English Dictionary describes as ‘[a] state in which the supreme power rests in the people and their elected representatives or officers, as opposed to one governed by a king or similar ruler’. The term *res publica*, which can be literally translated as ‘public thing’ (Atkins 2005:492), does not of itself specify a particular kind of constitution – be it monarchy, oligarchy or democracy. However, the Romans knew something had changed in the *res publica* in this period: we have applied the terms ‘republic’ and ‘empire’ or ‘principate’ to describe these changes, and it can be helpful to use them so long as we do not import our conceptions of these systems and map them directly onto the *res publica*.

⁴ North 2006:257; Roberts 2005:356.

⁵ Leonard 2002:15.

There is, however, a different way of thinking about a constitution, outlined in the following definitions by Anthony King and Lawrence Lessig.

[A constitution is] the set of the most important rules and common understandings in any given country that regulate the relations among that country's governing institutions and also the relations between that country's governing institutions and the people of that country.⁶

[By] 'constitution' I mean an architecture – not just a legal text but a way of life – that structures and constrains social and legal power, to the end of protecting fundamental values.⁷

In this understanding, a constitution is not simply the institutions, structures and processes within which political activity takes place, but also the political culture that embeds them in their society and enables them to function. Such cultural and constitutional principles are rarely written down or codified, but they are standards that are generally understood by the citizens to exist and to be important to the maintenance of their society, and they are worked out through the political life of a community.⁸

It is this concept of a constitution that I wish to pursue. Rome's political system may have been uncoded and complex,⁹ but there was an architecture of institutions, processes, rules and principles which supported the community that was the *res publica*. Political life was directed by a nexus of authorities: statutes passed by the people, decrees issued by the Senate, legal interpretations of jurists and edicts of magistrates, precedent, custom and moral and ethical values out of which an understanding of something that we can call 'the Roman constitution' was constructed and embedded in the society of the *res publica*.¹⁰ Moreover,

⁶ King 2007:3.

⁷ Lessig 2006:4.

⁸ Gwyn 1995:vii-viii, 2 and 5.

⁹ King 2007:5 stresses the difference between 'uncodified' and 'unwritten', arguing that most constitutions we think of as 'unwritten' actually incorporate a good deal of written material (statutes and judgements, for example) which are not codified formally into a 'constitution'.

¹⁰ Cic. *Top.* 28 describes the authorities of the *ius civile*, which was but one element in the complex legal system governing political praxis in the *res publica*;

the Romans believed they had such a well-established, entrenched political system that its rules and principles were important to their success as a political society,¹¹ and they continually debated how best to act in accordance with this throughout their decision-making processes (as we will see in discussing the *lex Gabinia* and *lex Manilia* below).

The way that this collection of rules and principles worked in practice had to be interpreted by those participating in Rome's political life in a process Hölkeskamp has called a 'making sense' of the environment. It regulated the behaviour of Rome's political bodies and the relationships between them, and established conventions about the way things should work and the values that were important in Roman society. This 'making sense' took place through a discursive process of interpretation, debate and decision-making in the forum, Senate and courts, with each decision building on those that had gone before it and reforming the constitution as it came to reflect the decision that had been made.¹² Claims were made for and against proposals on the grounds that they were legal or illegal, and these were rooted in appeals to the various authorities noted above. If a particular argument was accepted by the audience – be it by the election of a candidate to office, the judgement of a court case, or the passage of a

however, the sources of authority are largely the same when considering appropriate action within the *res publica* as a whole, with the *ius civile* taking its place as an authority guiding such action. Cic. *Rep.* 1.39 presents the *res publica* as being formed of the *populus* and instituted out of their desire to form a society; 1.45, 54 and 65 note the benefits of a mixed political system and 2.1-37 describes the growth of this system at Rome. Polyb. 6.11-18 also presents Rome's political system as an interconnected collection of elements, focusing on the magistrates, the senate and the people. See Hölkeskamp 2010:17-22 for discussion of the construction and embedding of this system in Rome.

¹¹ Bleicken 1975:13-14 argues throughout that, although there was no 'officially entrenched' constitution, the fundamental order at Rome was entrenched in practice; Straumann 2011:283-84 argues that there was a constitution in Roman political thought and in reality – not least because the thought impacted upon the political reality through the things that the Romans said and the ways that they acted.

¹² Hölkeskamp 2010:54. This is equivalent to the idea that a society 'works out' its constitutional order; Leonard 2002:15. This process takes place through elections, debates about legislation, the passing of legislation and legal judgements – see Sunstein 2009:3, 23 for a description in the modern sphere. See also King 2007:5-6, 8-9, who notes the way that constitutional change may pass unnoticed through the passing of 'ordinary' legislation, as opposed to specific legislation dealing with the constitution.

law – its legality was accepted and it might be seen as constitutional. It then entered a body of knowledge about Rome's constitution that was drawn upon and interpreted in making future decisions. Through the deliberative process and the negotiations and compromises it often entailed, conflicts were resolved, consensus formed and new rules and conventions became – gradually – a part of Rome's constitution.¹³

This is not to say that this process was consciously constitutional. Cicero claimed that Rome's ancestors were invariably guided by expediency, 'always meeting new emergencies by fresh developments of policy',¹⁴ suggesting contingency rather than fully conceived or intentional constitutional reform. Ando has argued that there was 'a fundamental incapacity' in Rome to conceive and articulate meaningful reform on a broad scale. It might rather be said, not that the Romans could not conceive and articulate meaningful constitutional reform (Cicero's treatises of the 50s show that he, at least, was thinking about the political system as a whole), but that they could not *enact* it in a wholesale manner – something that is difficult for any state.¹⁵ The majority of decisions made and actions taken in Rome were responses to current problems – such as the growth of piracy in the Mediterranean or the Mithridatic war – and they subtly, if unintentionally, altered Rome's constitutional arrangements through the nature of these responses and the way they created new arguments and precedents.

Constitutional change can occur in several different ways: by formal processes such as those established in some codified constitutions (such as Article Five of the constitution of the United States), but also by the passing of other statutes that are not specifically about the constitution, the pronouncement of legal judgements, and the changing of public opinion and political values over time.¹⁶ This is not necessarily a negative process that destroys a constitution but one that alters it gradually, allowing it to change over time and with the times. King has argued that the term

¹³ Hölkeskamp 2010:41. The narrative history of Roman politics as told by Roman historians also highlights the way in which Rome's constitution was altered over time as new laws were passed and new decisions were made.

¹⁴ Cic. *Leg. Man.* 59-60.

¹⁵ Ando 2010:46-50. Perhaps the only obvious exception to this claim was Sulla; but Sulla was in a most unusual position as *dictator*, being able to attempt to 'reset' Rome's political system through the passage of a large number of *leges Corneliae*.

¹⁶ Sunstein 2009:3; Hölkeskamp 2010:16-17, 67-69.

'unconstitutional' has no precise meaning in an uncoded constitution because it is not a benchmark against which ideas and actions can be measured, it is 'what happens'. Indeed it is difficult to argue that any statute passed or decision made is 'unconstitutional' if it is accepted through the decision-making processes of the society in question, whether these are established in statute or are conventions accepted by consensus. In an uncoded constitution such as that of Rome, the evolutionary process can be particularly hard to identify or to challenge (especially from within the society), for change occurs through the 'normal processes' of government.¹⁷ This is, in fact, an integral part of an uncoded constitution, and one can regard developments in Rome's constitution, such as those to which the *lex Gabinia* and *lex Manilia* contributed, as possessing constitutional integrity of this kind. At its best this can allow a constitution to adapt to changing circumstances, the stability of society ensured by the forging of a consensus around the successful interpretation.¹⁸ At the same time, however, it can also create problems, as the decisions made and the precedents set may destabilise or corrupt the ideals and institutions and damage political relationships the constitution is supposed to uphold.

To talk about the integrity or corruption of a constitution presupposes that a constitution is supposed to *do* something within a society. Its purpose, in terms of the ideals and systems it is supposed to uphold, depends upon the society or the 'type' of political system the constitution is underpinning (be it democracy, monarchy, or so on). However, this purpose can be hard to identify in communities with uncoded constitutions, as they are not established conscientiously or to do something specific: they emerge as the community they support develops. Generally speaking, however, constitutions may be supposed to uphold certain key principles and to ensure stable, regular government of a society, both of which are desirable features of a stable state. This leads us to two further questions: (1) If either or both of these things are undermined, can we then consider the constitution to have been corrupted, and (2) if the answer to this is 'yes' (which I think it is), how do we identify such corruption of the constitution?

I suggest that corruption can be identified in two main ways: in the presence of political instability and in the undermining or overriding of key political principles. The former is more easily noticeable for it can be seen in the growth of political and social rifts and even violence and civil

¹⁷ King 2007:8-9.

¹⁸ Meier 1966:32-60; Hölkeskamp 2010:44-45.

war. The latter is harder to identify, as the key principles in a society are formulated and understood in a process similar to that through which the constitution itself is interpreted: principles being matters of negotiation and of consensus, and subject to change over time. Think, for example, of the ideas *libertas* or *virtus*, or of the ideological debates over the role of the 'people' in Rome, which changed and developed over time, but which were critical to Roman politics.¹⁹ These ideas were often explored in the different interpretations of the constitution put forward in the decision-making process, and so a successful argument could claim to be upholding them because it was endorsed through accepted processes. Arguing about the unconstitutional nature of a proposal or a statute on these grounds is difficult and often a matter of personal perspective. Perhaps the one thing we can securely say about Rome's constitutional principles during the 1st century, is that the *res publica* was not a monarchy and that collegiality, annuity and a balance of power between magistrates, Senate and People were particularly important principles in relation to office holding. This may help us in considering the impact Pompeius' Eastern commands had upon the constitution of the *res publica*, for these statutes gave him great personal power, and the opponents of these bills were concerned that it was too much power for one man to hold.

The *lex Gabinia* and *lex Manilia*.

The *lex Gabinia* and *lex Manilia* each intended to enable Rome to deal with two long-running problems, the Mediterranean pirates and the Mithridatic War, with each tribune identifying Pompeius as the best man to hold the commands.²⁰ Piracy had been a persistent problem for Rome since the end of the 2nd century – the result of Rome's weakening of the Eastern monarchies and powers who had previously kept the problem under control whilst refusing to become fully involved in administering

¹⁹ See Earl 1961:18-40; McDonnell 2006:1-19; Kaster 2007; McDonnell 2007, and Balmaceda 2005:21-58 for discussions of *virtus*; Wirszubski 1950:1-10; Connolly 2007:158-89; and Arena 2007:49-74 for definitions of *libertas*; and North 1990:6-7; Millar 1998:1-48, 197-226; Mouritsen 2001:38-62, 144; and Morstein-Marx 2004:9-12, 119-59 on the role of the people in Roman politics.

²⁰ Williams 1984:222-34 discusses the way that Pompeius' appointment to both commands came about, emphasising the separateness of these two laws and arguing that there was no Pompeian master plan to see him hold both commands in quick succession.

the region.²¹ During the Mithridatic Wars, which rumbled on from the early 80s, the threat increased as Roman attention in the Eastern Mediterranean focused on him rather than on the problem of piracy. Although the pirates may not have been as directly associated with Mithridates as Appian suggests, they still benefited from the instability his actions caused in the Eastern Mediterranean.²² In order to enable Pompeius to tackle these problems, both Gabinus' and Manilius' proposals made certain provisions for him as a commander: they ensured that he had the *imperium* he needed to command, allotted his *provinciae*, and also established the forces that he would have at hand.²³ The *lex Gabinia* established a three-year command to be held by a former consul who would be granted proconsular *imperium* and have the authority to act against the pirates across the Mediterranean and up to 50 miles inland. It also provided for 15 legates with propraetorian *imperium*, 200 ships, full control over his levy and the right to take as much money as he needed from the public treasury and taxes.²⁴ The *lex Manilia* added the provinces of Bithynia and Cilicia, along with the Mithridatic command and gave Pompeius the right to 'make

²¹ Sherwin-White 1976:3; Ormerod 1997:199-207. For comprehensive accounts of Rome's activities and developing empire in the East, see Magie 1950; Sherwin-White 1984; Gruen 1984; and Kallet-Marx 1995. The last is particularly important in considering the commands of Pompeius in relation to the development of the Roman Empire (291-334), seeing Rome's presence in the East was part of an ongoing process of maintaining and defending the *imperium Romanum* and arguing that the campaigns of Pompeius marked a changing conception of empire and an increased commitment to it.

²² App. *Mith.* 92-94; De Souza 1999:127.

²³ The *provinciae* allotted by the *lex Gabinia* have been the subject of much debate, given that Pompeius had the power to act within 50 miles of the coast in other commanders' *provinciae* (Plut. *Pomp.* 25.2; App. *Mith.* 94), leading to speculation as to whether he possessed *imperium maius* (Last 1947:160-62; Ehrenberg 1953:114; Loader 1940:134-36; Jameson 1970:539-43; Syme 1939:336; and Brennan 2000:408). This debate falls outside the scope of this article, but it seems that the functional element of the *provinciae* ought to have been enough to separate Pompeius' field of action from those of his peers where they overlapped geographically, and that problems only emerged in Crete because Pompeius and Metellus were both responsible for dealing with piracy; see Richardson 1986:4-5; Lintott 1993:22; Stewart 1998:95-136 on the importance of function to the *provinciae*.

²⁴ Plut. *Pomp.* 25.1-26.2; Dio 36.23.4-5; App. *Mith.* 94.

peace and war as he liked, and to proclaim nations friends or enemies according to his own judgement.²⁵

Tribunician legislation – the passing of *plebiscita* – was not itself unusual, but tribunician legislation dealing with the foreign and military affairs of the *res publica* was not a Roman norm and had in the past been controversial.²⁶ Traditionally, these matters were the responsibility of the Senate: they dealt with embassies and decided upon the *provinciae* to be allotted each year and the forces and funds commanders received for their activities in these areas.²⁷ *Provinciae* were then shared out amongst the annual magistrates through a ritual allotment, the *imperium* they required to carry out their roles established through their election to office. Such a system allowed equity of opportunity in a highly competitive system and also ensured that no one individual gained too much power within the Republic.²⁸

Of course, these norms were not absolute. *Privati* had been appointed to military commands when it was deemed necessary in the past, particularly during the Second Punic War when more commanders were needed than was provided for by the annual magistracies – the most famous example being the appointment of the future Scipio Africanus to a proconsulship in Spain in 210.²⁹ Exceptions had been made to the usual regulations of the *cursus honorum* in order to allow certain men to hold particular commands, notably Scipio Aemilianus, elected consul for 147 because of the popular view that he would be able to defeat Carthage, and Marius, elected to successive consulships so that he could hold the

²⁵ App. *Mith.* 94-95; Plut. *Pomp.* 25.2; 30.1-2; 45.2; Dio 36.42.4; Vell. 2.31.2; 33.1. Pompeius added Pontus and Syria to his provinces through his military campaigns.

²⁶ Sandberg 2001:97-113 argues that in the mid-Republic *all* civil legislation was in the hands of the tribunes, although Crawford 2004:171-72 notes that this might simply reflect the fact that the tribunes were in the city all year. The appointment of Marius to the Jugurthine Command (Sall. *Jug.* 73.7) and the Pontic command under the *lex Sulpicia* of 88 (Plut. *Mar.* 35, *Sull.* 8-9; App. *BCiv.* 1.55-60) are the obvious predecessors of these *plebiscita*.

²⁷ Polyb. 6.12-13. Lintott 1999:65. Hölkeskamp 2010:65, who also notes (26) that this tradition was established by consensus, not statute law.

²⁸ Hölkeskamp 2010:92-95. See Stewart 1998:12-51 and Rosenstein 1995:49-53, on the allotment of *provinciae*; and Lintott 1999:96-97, Richardson 2008:61 and Brennan 2000:13, 19 on *imperium*.

²⁹ Livy 26.18-19.

command against the Cimbri and Teutones after defeating Jugurtha.³⁰ Pompeius himself had held commands 'out of turn' in the past – leading his own army on Sulla's behalf in the 80s, and then being assigned to help deal with Lepidus and Sertorius in the 70s.³¹

The notable difference in the 60s was that the majority of the Senate opposed the *lex Gabinia* and *lex Manilia*. In acting despite this opposition, Gabinius and Manilius were part of a slow-building increase in tribunician involvement/interference in foreign affairs that had begun to use the people to direct Rome's imperial activities. In 133 Tiberius Gracchus had sought to use a plebiscite to accept the Pergamon legacy; in 107 a tribunician proposal granted the command of the Jugurthine war to Marius, even though the Senate had already prorogued Metellus' command, and in 88 the tribune Servius Sulpicius Rufus proposed to transfer the Mithridatic command from Sulla to Marius.³² The *lex Gabinia* and *lex Manilia* built upon the political and legal legacies of such previous examples and, as such, did not present a radically new interpretation of the constitution but a stage in an ongoing process. Indeed, the constitutional precedents and arguments supporting the *lex Sulpicia*, which gave a major command to a popular *privatus* through a law passed by the assembly, may well have been similar to those supporting the *lex Gabinia* and *lex Manilia*. That the *lex Gabinia* did not incite civil war as the *lex Sulpicia* had done, seems likely to have been due to the fact that it did not remove the command from one consul in order to give it to another man, and to a fear of further civil war deterring the opponents of the bill from taking their opposition as far as Sulla had done.³³ The *lex Gabinia* and *lex Manilia* contributed to and confirmed a move towards popular legislation and popular sovereignty in Roman politics and government, changing the nature of Rome's constitution as it did so.³⁴

By putting their bills to the people without the backing of the Senate, Gabinius and Manilius implicitly argued that the people (led by their tri-

³⁰ App. *Lib.* 112; Plut. *Mar.* 12, 28.

³¹ Plut. *Pomp.* 6, 10-11, 16-17. Evans 2003:46-48, 62 argues that the senate's use of Pompeius was a matter of political and constitutional necessity, allowing them to deal with problems without unpicking Sulla's arrangements for the *cursus honorum* and magistracies.

³² Sall. *Jug.* 73.7; *Sull.* 8-9; App. *BCiv.* 1.55-60.

³³ Dio 36.37.1 notes that the senate reluctantly ratified the measures passed by the assembly regarding Pompeius' command against the pirates.

³⁴ Ando 2010:51.

bunes) not only had the right to pass legislation but also could and should direct Rome's administration of its Empire, both in terms of deciding what *provincia* should be allotted and in terms of the choice of commander and acted upon this argument. Their claims were not uncontested. As can be seen from Cicero's speech *Pro lege Manilia*, the debates over the statutes saw the presentation of different interpretations of the constitution for and against them – the key differences being in the understanding of the way that the Empire should be governed (or rather, by whom) and the underlying nature of Rome's constitution itself. The *Pro lege Manilia* shows Cicero's response to the arguments of Catulus and Hortensius. The later account of Dio, which recreates some of the speeches made on the subject of the *lex Gabinia*, reflects these arguments in the speech of Catulus, illuminating the debate when examined in conjunction with the *Pro lege Manilia*.³⁵ In the simplest terms, the 'constitutional' debate features the Senate (represented by Hortensius and Catulus) arguing that it ran counter to the usual practice, as enshrined in the *mos maiorum*, for Pompeius to be given these commands, suggesting that it would give one man too much power, and favouring the conventional process of allotting *provinciae* to the annual magistrates. Meanwhile the people (led by Gabinius and Manilius and in 66 encouraged by Cicero) saw it as constitutionally legitimate for Pompeius to be appointed to the commands and placed emphasis on the power of the people to respond to the situation and direct Roman policy regarding the empire.

For Cicero the key arbiter of constitutional innovation was the best interests of Rome. According to the interpretation he put forward in the *Pro lege Manilia*, if something was essential for the maintenance of the *res publica* then it must be regarded as legitimate, and this war, which threat-

³⁵ Dio 36.23-45. Using Dio's much later account as evidence for the debates of 67 and 66 is fraught with all the usual historiographical problems regarding his use of sources, his bias and the veracity of his speeches. Dio's speeches are inevitably influenced by the role the historian wanted them to play in his work, especially in his account of the end of the Republic, including the rise, rivalry and civil wars of other individuals who saw Pompeius as an *exemplum* to be emulated and surpassed (Millar 1964:77-83 and Gowing 1992:34-35, 93). That said, it is unlikely that Dio simply invented the speech and its opinions. It is more probable that he added his own rhetorical style and colour to the basic arguments found in his sources (for example, the arguments of Catulus as seen in Cicero's speech) and related the speech to his own thematic concerns; see Wiseman 1979:28-29, 51-52; Fornara 1983:142-68 and Woodman 1988:117.

ened Rome's security, honour and revenues, *must* be won.³⁶ Cicero claimed that Rome's *maiores* had always developed new policies and passed new laws to deal with crises, and cited the examples of Rome's previous wars to justify his argument; this was, in his view, how Rome worked.³⁷ In the current situation, Cicero reasoned, the Romans needed to send the best military commander they had to deal with the situation – Pompeius: 'The war is necessary ... it is an important war and ... all the requisite qualifications are in the highest perfection in Cnaeus Pompeius.'³⁸ This being the case, Manilius (and for Gabinius before him) was entirely justified in taking the measures necessary to ensure Pompeius' appointment.

Countering the claim of Hortensius and Catulus that it was not proper to appoint one man to hold so large a command, especially a man who had held several other major commands, Cicero commented:

I will say nothing about how two wars of the highest importance, the Punic and Spanish wars, were successfully terminated by one and the same general, at that time when two most formidable cities, Carthage and Numantia, each a terrible menace to our Empire, were both destroyed by Scipio Aemilianus. I refrain likewise from reminding you of the more recent occasion when you and your fathers decided to vest the entire hopes of the Roman world in Gaius Marius, so that this single individual was loaded with a multiplicity of commands against Jugurtha, the Cimbri and the Teutones. And finally, let us pass on to Gnaeus Pompeius himself. Here is the man for whom Quintus Catulus objects that no new precedent ought to be established. But just consider how many new precedents have already been created in his favour – with Catulus' full approval.³⁹

In arguing that the *maiores* had always done what was necessary to protect Rome, Cicero argued that any innovation in this proposal was constitutionally legitimate and secondly that, because of the historical precedents for Pompeius taking up the Mithridatic command, the bill was actually not

³⁶ Cic. *Leg. Man.* 6, 14, 20-51, 71.

³⁷ Cic. *Leg. Man.* 6, 11, 14, 60.

³⁸ Cic. *Leg. Man.* 51.

³⁹ Cic. *Leg. Man.* 60.

particularly innovating at all.⁴⁰ Evolution, for Cicero, was a legitimate and integral part of the Roman constitution.

The difference on this occasion, as the *Pro lege Manilia* acknowledged, was that the Senate had supported Pompeius' previous appointments. However, Cicero claimed that the Roman people had the right to appoint Pompeius to this command and warned his opponents to be careful not to overrule the judgement of the people, especially after their previous employment of him.⁴¹ Cicero's words unwillingly admit the complexity of the constitutional relationship between Senate and People in terms of who was ultimately in charge of deciding upon Rome's best course of action, arguing that if the people were making the wrong decisions, then the Senate should counsel them, but if the people were making the right decisions then the Senate should bow to the authority of the *populus*. At the same time he tries to avoid this complexity and any questions on how to judge whether the people were making the right decision, by simply declaring that, on this occasion, the people had been proved right by Pompeius' success in the piracy command, to which he had been appointed by the people against the wishes of the Senate.

Catulus and Hortensius, along with other members of the Senate, appear to have argued for an alternative interpretation of the constitution. In the *Pro lege Manilia* Cicero comments that Hortensius had argued that there was no need to give one man the kind of power that the *lex Manilia* would have given Pompeius and that Catulus had argued that '[i]nnovations ... must not be made contrary to the precedents and principles of our ancestors',⁴² and so no precedents should be set for Pompeius. Dio's

⁴⁰ Blösel 2000:68-87 argues that by this kind of argument Cicero succeeded in broadening the concept of the *maiores* to apply to the whole people, previously 'owned' by the aristocracy as a justification of their authority (in the way that Catulus and Hortensius may well have done); Morstein-Marx 2004:79 note 56 and Stemmler 2000:141-205 argue for a less restricted use of *maiores*.

⁴¹ Cic. *Leg. Man.* 63: 'Let them [the senate] take care that it is not considered a most unjust and intolerable thing, that their authority in matters affecting the dignity of Gnaeus Pompeius should hitherto have been constantly approved of by you [the people], but that your judgement, and the authority of the Roman people in the case of the same man, should be disregarded by them. Especially when the Roman people can now, of its own right, defend its own authority with respect to this man against all who dispute it, because, when those very same men objected, you chose him alone of all men to appoint to the management of the war against the pirates.'

⁴² Cic. *Leg. Man.* 52 (Hortensius), 59 (Catulus).

representation of Catulus' position in the debate on the *lex Gabinia* reflects Cicero's presentation of his views and provides an opposition between the two points of view that shows two different understandings of Rome's constitution. Catulus focuses on two interconnected themes: the importance of acting in accordance with historical precedent to maintain the ancestral constitution, and the danger of setting the kind of precedent that was inherent in the *lex Gabinia*, because it would give Pompeius more power than was legal or safe, and because it would create resentment amongst others seeking magistracies and commands.⁴³

Dio shows Catulus arguing in favour of a convention by which election to a magistracy was followed by allotment of *provinciae* in a process that provided for the administration of Rome's Empire and allowed the Republic to respond to threats. Thus, Catulus asks, 'To what end, indeed, do you elect the annual officials, if you are going to make no use of them for such occasions?'⁴⁴ It seems safe to suggest that Catulus' interpretation of the constitution placed emphasis on tradition, continuity and the maintenance of constitutional convention (in contrast to Cicero's view of an evolving constitution), shown in his desire to preserve the traditional role of the annual magistracy in the constitution and the competition for election that accompanied it, rather than creating a special command.

The different ways in which Gabinius and Manilius, Catulus and Cicero interpreted Rome's constitution provide an insight into Rome's political decision-making process and into the role that it played in constitutional evolution. Different arguments could be drawn from the same pool of laws and precedents to present an audience with different understandings of constitutional action. This is particularly clear if one looks at how Dio presents Catulus using Marius as an *exemplum* to draw the opposite conclusion to that which Cicero put forward in the *Pro lege Manilia*. For Cicero, Marius was a positive example in showing the way the constitution allowed Rome to respond to remarkable events and preserve the *res publica*.⁴⁵ For Dio's Catulus, Marius was a negative figure whose positions and power created problems in Roman politics and damaged the political system.⁴⁶ It is, of course, very possible that Dio chose Marius as Catulus' example exactly because of Cicero's use of him,

⁴³ Cic. *Leg. Man.* 60-62; Dio 36.31-36.

⁴⁴ Dio 36.33.2.

⁴⁵ Cic. *Leg. Man.* 60.

⁴⁶ Dio 36.31.3-4.

but this only serves to emphasise the point that there was more than one way to interpret the Roman constitution from its various constituent parts.

Indeed, the debate over the *lex Gabinia* and *lex Manilia* seems to have centred on the ideas of the integrity or corruption of the constitution in relation to the power held by an individual.⁴⁷ On one side was the argument that constitutional change, as it occurred through Rome's various political processes, was an integral part of the constitution of the *res publica* and that Pompeius was the right man for the right time. On the other side was the argument that these changes would corrupt the *res publica*'s constitution, creating political instability by allowing an individual citizen to wield great personal power that, its proponents feared, could not be balanced by the rest of the political system. In my view, each of these laws offered an immediate solution to an ongoing problem, and called on historical precedent and Roman values in an interpretation of the constitution that privileged the role and power of the people. However, they did not lead to the establishment of a new consensus and constitutional norm, but were accompanied by violence and increasing friction between Senate, People and magistrates, and they raised Pompeius to a position of power greater than that held by any other citizen. While the *lex Gabinia* and *lex Manilia* may have been constitutional within the *res publica*, since they argued their case and were passed into law, their impact was negative in terms of the stability of Rome and they were a part of its corruption in the form we understand as republican.

Corruption and integrity: the legal destabilisation of Rome's constitution

In passing the *lex Gabinia* and the *lex Manilia*, the *populus Romanus* (taken, for the purpose of voting, as being represented by the *concilium plebis*) accepted the tribunes' interpretations of the constitution in a way that was itself a traditional part of Rome's political system, making the *plebiscita* constitutional and confirming their interpretation of the constitution in practice. It is possible, therefore, to regard them as an integral part of the evolution of the constitution of the Roman *res publica*. They were certainly a part of a process of underlying constitutional change that was integral to the transformation of Rome from the Republic to the

⁴⁷ As a 'stage' in a long-running process, these bills provide a particularly useful example because the surviving evidence, especially Cicero's speech *Pro lege Manilia* allows us access to the political and constitutional ideas expressed in the debate.

Principate. The argument that popular support legitimised decisions would later allow Augustus to argue that the establishment of the triumvirate *rei publicae constituendae* was constitutionally legitimate within the *res publica* because it was sanctioned by the people in the passage of the *lex Titia*.⁴⁸

In a system where the decision-making processes depended upon discourse and argument, and where the constitution was interpreted and developed out of a body of legal precedents, historical examples and traditional practices, the clash of interpretations that can be seen in 67 and 66 was almost certainly inevitable. However, the destabilisation of a society is not the inevitable result of constitutional debate and evolution; indeed, the constitution of the Roman *res publica* had slowly and steadily evolved for centuries. The ideal end of debates such as those that took place in 67 and 66 was for the negotiation to be followed by an acceptance of the 'winning' argument and the re-establishment of consensus around it. This was the process that had been integral to Rome's ongoing development. But things are rarely ideal and in the 60s Rome, still dealing with the consequences of the civil wars of the 80s and Sulla's dictatorship, was already riven by discord and violence. It was not the kind of situation in which a consensus could easily be reached and so, regardless of the ideological legitimacy of the successful argument or the political legitimacy of the process by which the bill was passed, the result was increased instability in the Republic, which may be viewed as evidence of constitutional corruption.

The *lex Gabinia* and *lex Manilia* overrode the traditional authority of the Senate in foreign affairs and exacerbated ongoing and increasing tension between members of the Senate and the people and their champions.⁴⁹ Although similar *plebiscita* had been passed before, they remained a matter of political debate, and these set new constitutional precedents for further tribunician and popular action in the government of the Empire which had the potential to authorise further action in this area and

⁴⁸ Aug. RG 1.4; App. Civ. 4.7.27; Ando 2010:50-52, although, as Appian shows, the *lex Titia* violated the requirement for there to be a break between the *promulgatio* and *rogatio* of the bill.

⁴⁹ This tension was not simply between the Senate and the People, as neither body was homogenous, nor between *Optimates* and *Populares*. See Stone 2005:59-94 and Robb 2010:1-33 on the nature of the so-called *Optimates* and *Populares*, and Morstein-Marx 2004:119-203 on the complex relationship between the *populus* and their leaders.

also to create future civil strife. When Roman tribunes (and others) argued successfully for the rights and powers of the people and acted upon it by appealing to the people for support for their proposals without the explicit backing of the Senate or in opposition to the majority view of the Senate, they altered the balance of power in the relationship between the Senate and People as bodies within the *res publica*, and created the kinds of situation where violence might occur, destabilising Roman political life.

In addition, by allowing the people the right to select the men they thought best for major commands, regardless of whether or not they were an elected official, the statutes threatened the link between regular magistracies and major commands and challenged conventions about the way power was held in Rome and by whom; and in particular, how much could and should be possessed by an individual citizen. They unbalanced the existing system of competition among Rome's élite, encouraging those ambitious for honour and glory (the vast majority) to appeal to the people in pursuit of their goals.⁵⁰ In allotting the commands to Pompeius, they further altered the standards for a 'successful' career in Roman public life by placing him far ahead of the competition. They deliberately sidelined existing magistrates, promagistrates and other members of the senatorial élite in favour of Pompeius, who then had the opportunity to accrue even greater glory. This both engendered greater rivalry and competition amongst the élite and also threatened to put too much power into the hands of one man, something that may be seen as undermining the principles of collegiality and annuity in office holding. This situation threatened the Republic in two ways: firstly, there was always the threat that Pompeius might abuse his power, something factored into many deliberations (for example, in the debate over the ratification of Pompeius' settlement of the east in the late 60s); and secondly, there was always the danger that others might seek to emulate him and attain similar positions – as Caesar would do in the following years. The statutes created instability in Roman politics by the position they gave to Pompeius and by contributing to a changing understanding of what one citizen could achieve in his career.

The passage of the *lex Gabinia* and *lex Manilia* set new precedents for future debate and action in Rome. The statutes themselves became constitutional authorities and altered the possible interpretations of the constitu-

⁵⁰ North 1990:18 notes how divisions in the oligarchy and the Senate strengthened the people's voice at Rome, as men turned to the *populus* in pursuit of their goals.

tion. They were legally passed, through regular constitutional processes and were successful in terms of Rome's ability to control the Eastern areas of the Empire. However, not all precedents are equal in terms of maintaining the integrity of a constitution. In the case of the *lex Gabinia* and *lex Manilia*, they significantly weakened and can also be said to have corrupted the constitution of the Roman Republic. They destabilised the relationship between the Senate, the People and the magistrates, and undermined the traditional balance of power within the élite. Under these statutes Pompeius held a remarkably large amount of power, which created problems in Rome's traditional competitive system of office holding and ran contrary to the fundamentals of that principle of the *res publica* which said that monarchy had no place at Rome. Pompeius was not a monarch, nor does he seem to have been inclined to become one, but his career was part of the rise of powerful individual figures at Rome that preceded the establishment of the Principate. The statutes also altered and contributed to unbalancing the constitutional relationships between Rome's three primary political bodies: the magistrates, the Senate and the People, which created uncertainty and instability in political life. The *res publica* continued and its constitution continued to be reinterpreted and renegotiated through the Imperial period, but the Republic – that society marked by the absence of single, all-powerful rulers – came to an end, having failed to preserve the integrity of its constitution.

Bibliography

- Ando, C. 2010. 'Republic to empire.' In M. Peachin (ed.), *The Oxford Handbook of Social Relations in the Roman World*, 37-66. Oxford: Oxford University Press.
- Arena, V. 2007. 'Invocation to liberty and invective of *Dominatus* at the end of the Roman Republic.' *BICS* 50:49-74.
- Atkins, E.M. 2005. 'Cicero.' In Rowe & Schofield 2005:477-516.
- Balmaceda, C. 2005. *Identifying Romanness: Virtus in Latin Historiography during the Late Republic and Early Empire*. D.Phil. Oxford.
- Blösel, W. 2000. 'Die Geschichte des Begriffes *mos maiorum* von den Anfängen bis zu Cicero.' In Linke & Stemmler 2000:25-97.
- Brennan, T.C. 2000. *The Praetorship in the Roman Republic*. New York & Oxford: Oxford University Press.
- Cobban, J.M. 1935. *Senate and Provinces 78-49 B.C.: Some Aspects of the Foreign Policy and Provincial Relations of the Senate during the closing Years of the Roman Republic*. Cambridge: Cambridge University Press.

- Connolly, J. 2007. *The State of Speech: Rhetoric and Political Thought in Ancient Rome*. Princeton & Oxford: Princeton University Press
- Crawford, M. 2004. 'Roman legislation. Review of Sandberg (2001).' *CR* 54:171-172.
- De Souza, P. 1999. *Piracy in the Greco-Roman World*. Cambridge: Cambridge University Press.
- Earl, D.C. 1961. *The Political Thought of Sallust*. Cambridge: Cambridge University Press.
- Ehrenberg, V. 1953. 'Imperium Maius in the Roman Republic.' *TAPA* 74(2):113-136.
- Evans, R.J. 2003. *Questioning Reputations: Essays on Nine Roman Republican Politicians*. Pretoria: Unisa Press.
- Ferguson, W.S. 1911. *Hellenistic Athens*. London.
- Fornara, C.W. 1983. *The Nature of History in Ancient Greece and Rome*. Berkeley, Los Angeles & London: University of California Press.
- Gowing, A.M. 1992. *The Triumviral Narratives of Appian and Cassius Dio*. Ann Arbor: University of Michigan Press.
- Gruen, E. 1984. *The Hellenistic World and the Coming of Rome*. Berkeley, Los Angeles & London: University of California Press.
- Gwyn, W.B. 1995. 'Political culture and constitutionalism in Britain.' In D.P. Franklin & M.J. Baun (edd.), *Political Culture and Constitutionalism: A Comparative Approach*. London: M.E. Sharpe.
- Hölkeskamp, K.-J. 2010. *Reconstructing the Roman Republic: An Ancient Political Culture and Modern Research*. Princeton & Oxford: Princeton University Press.
- Jameson, S. 1970. 'Pompey's Imperium in 67: some constitutional fictions.' *Historia* 19(5):539-360.
- Kallet-Marx, R.M. 1995. *Hegemony to Empire: The Development of the Roman Imperium in the East from 148 to 62 B.C.* Berkeley, Los Angeles & London: University of California Press.
- Kaster, R. 2007. 'Review of *Roman Manliness: Virtus and the Roman Republic* by Myles McDonnell.' *BMCR*.
<http://bmcr.brynmawr.edu/2007/2007-02-08.html>
 (issue 2007.02.08; accessed 11.10.2010).
- King, A. 2007. *The British Constitution*. Oxford: Oxford University Press.
- Last, H. 1947. 'Imperium Maius: a note.' *JRS* 37:157-164.
- Leonard, G. 2002. *The Invention of Party Politics: Federalism, Popular Sovereignty, and Constitutional Development in Jacksonian Illinois*. Chapel Hill: University of North Carolina Press.
- Lessig, L. 2006. *Code, Version 2.0*. New York: Basic Books.

- Linke, B. & Stemmler, M. (edd.). 2000. *Mos Maiorum: Untersuchungen zu den Formen der Identitätsstiftung und Stabilisierung in der römischen Republik*. Historia Einzelschriften 141. Stuttgart: Steiner Verlag.
- Lintott, A. 1993. *Imperium Romanum: Politics and Administration*. London & New York: Routledge.
- Lintott, A. 1999. *The Constitution of the Roman Republic*. Oxford: Oxford University Press.
- Loader, W. 1940. 'Pompey's command under the *lex Gabinia*.' *CR* 54(3):134-136.
- Magie, D. 1950. *Roman Rule in Asia Minor to the End of the Third Century after Christ*. Oxford: Oxford University Press.
- McDonnell, M. 2006. *Roman Manliness: Virtus and the Roman Republic*. Cambridge: Cambridge University Press.
- McDonnell, M. 2007. 'Response to Kaster, R. 'Review of *Roman Manliness: Virtus and the Roman Republic* by Myles McDonnell.' *BMCR*. <http://bmcr.brynmawr.edu/2007/2007-03-38.html> (issue: 2007.03.38; accessed 11.10.2010)
- Meier, C. 1966. *Res Publica Amissa: Eine Studie zu Verfassung und Geschichte der späten römischen Republik*. Wiesbaden: Franz Steiner Verlag GMBH.
- Millar, F. 1964. *A Study of Cassius Dio*. Oxford: Clarendon Press.
- Millar, F. 1998. *The Crowd in Rome in the Late Republic*. Ann Arbor: University of Michigan Press.
- Morstein-Marx, R. 2004. *Mass Oratory and Political Power in the Late Roman Republic*. Cambridge: Cambridge University Press.
- Mouritsen, H. 2001. *Plebs and Politics in the Late Roman Republic*. Cambridge: Cambridge University Press.
- North, J.A. 1990. 'Democratic politics in Republican Rome.' *P&P* 126:3-21.
- North, J.A. 2006. 'The constitution of the Roman Republic.' In N. Rosenstein & R. Morstein-Marx (edd), *A Companion to the Roman Republic*, 256-274. Malden, Mass.: Blackwell.
- Ormerod, H.A. 1997. *Piracy in the Ancient World: An Essay in Mediterranean History*. Baltimore: John Hopkins University Press.
- Richardson, J.S. 1986. *Hispaniae: Spain and the Development of Roman Imperialism, 218-82 B.C.* Cambridge: Cambridge University Press.
- Richardson, J.S. 2008. *The Language of Empire: Rome and the Idea of Empire from the Third Century B.C. to the Second Century A.D.* Cambridge & New York: Cambridge University Press.

- Robb, M. 2010. *Beyond Populares and Optimates: Political Language in the Late Republic*. Historia Einzelschriften 213. Stuttgart: Steiner Verlag.
- Roberts, J. 2005. 'Justice and the *polis*.' In Rowe & Schofield 2005:344-365.
- Rosenstein, N. 1995. 'Sorting out the lot in republican Rome.' *AJPh* 116(1):43-75.
- Rowe, C. & Schofield, M. (edd.), with S. Harrison & M. Lane. 2005. *The Cambridge History of Greek and Roman Political Thought*. Cambridge: Cambridge University Press.
- Sandberg, K. 2001. *Magistrates and Assemblies: A Study of Legislative Practice in Republican Rome*. Acta Instituti Finlandiae 24. Rome: Finnish Institute at Rome.
- Seager, R. 2002. *Pompey the Great: A Political Biography*. Oxford & Malden, Mass.: Blackwell.
- Sherwin-White, A.N. 1976. 'Rome, Pamphylia and Cilicia, 13-70 B.C.' *JRS* 66:1-14.
- Sherwin-White, A.N. 1984. *Roman Foreign Policy in the East: 168 B.C. to A.D. 1*. London: Duckworth.
- Stemmler, M. 2000. 'Auctoritas exempli. Zur Wechselwirkung von kanonisierten Vergangenheitsbildern und gesellschaftlicher Gegenwart in der spätrepublikanischen Rhetorik.' In Linke & Stemmler 2000:141-205.
- Stewart, R. 1998. *Public Office in Early Rome: Ritual Procedure and Political Practice*. Ann Arbor: University of Michigan Press.
- Stone, A.M. 2005. 'Optimates: an archaeology.' In K. Welch & T.W. Hillard (edd.), *Roman Crossings: Theory and Practice in the Roman Republic*, 59-94. Swansea: The Classical Press of Wales.
- Straumann, B. 2011. 'Constitutional thought in the Late Republic.' *History of Political Thought* 32(2):280-292.
- Sunstein, C. 2009. *A Constitution of Many Minds: Why the Founding Document Doesn't Mean What it Meant Before*. Princeton & Oxford: Princeton University Press.
- Syme, R. 1939. *The Roman Revolution*. Oxford: Oxford University Press.
- Williams, R. 1984. 'The appointment of Glabrio (*cos.* 67) to the Eastern command.' *Phoenix* 38:221-234.
- Wirszubski, C. 1950. *Libertas as a Political Idea at Rome during the Late Republic and Early Principate*. Cambridge: Cambridge University Press.
- Wiseman, T.P. 1979. *Clio's Cosmetics*. Leicester: Leicester University Press.
- Woodman, A.J. 1988. *Rhetoric in Classical Historiography: Four Studies*. London & Sydney: Croom Helm.