Gangsta's Paradise

Popular Politics and Gang Violence in the Late Roman Republic (63-52 BCE)

A Thesis

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Alex McGrath

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Walter Englert

Sibi et suis

And everyone who helped him as he wandered through time

List of Abbreviations

App.	Appian, *Roman History*
Ascon.	Asconius, *Commentaries on the Speeches of Cicero*
Catull.	Catullus, *Poems*
Caes. *B.C.*	Caesar, *The Civil War*
Cic. *Ad Att.*	Cicero, *Letters to Atticus*
Cic. *Ad Fam.*	Cicero, *Letters to Friends*
Cic. *Brut.*	Cicero, *Brutus*
Cic. *Cael.*	Cicero, *In Defense of Caelius*
Cic. *Cat.*	Cicero, *Against Catiline*
Cic. *De Leg. Ag.*	Cicero, *Concerning the Agrarian Law*
Cic. *de Orat.*	Cicero, *On Oratory*
Cic. *de Sen.*	Cicero, *On Old Age*
Cic. *Domo*	Cicero, *Concerning his House*
Cic. *Har. Resp.*	Cicero, *Concerning the Response of the Soothsayers*
Cic. *Leg.*	Cicero, *Laws*
Cic. *Milo*	Cicero, *In Defense of Milo*
Cic. *Mur.*	Cicero, *In Defense of Murena*
Cic. *Phil.*	Cicero, *Phillipics*
Cic. *Pis.*	Cicero, *Against Piso*
Cic. *Rab.*	Cicero, *In Defense of Rabirius*
Cic. *Red. Quir.*	Cicero, *Speech to the People after his Return*
Cic. *Red. Sen.*	Cicero, *Speech to the Senate after his Return*
Cic. *Sest.*	Cicero, *In Defense of Sestius*
Cic. *Tull.*	Cicero, *In Defense of Tullius*
Cic. *Vat.*	Cicero, *Against Vatinius*
Cic. *Verr.*	Cicero, *Against Verres*
Dio	Dio Cassius, *Roman History*

Dio. Hal.	Dionysius of Halicarnassus, *Roman Antiquities*
Hor. *Sat.*	Horace, *Satires*
Juv. *Sat.*	Juvenal, *Satires*
Livy	Livy, *From the Founding of the City*
Livy, *Per.*	Livy, *Summaries*
Luc.	Lucan, *The Civil War*
Plut. *Caes.*	Plutarch, *The Life of Caesar*
Plut. *Cat. Min.*	Plutarch, *The Life of Cato the Younger*
Plut. *C. Gracchus*	Plutarch, *The Life of Gaius Gracchus*
Plut. *Cic.*	Plutarch, *The Life of Cicero*
Plut. *Pomp.*	Plutarch, *The Life of Pompey*
Sall. *Bel. Cat.*	Sallust, *The Catilinarian War*
Sall. *Ep.*	Sallust, *Letters*
Schol. Bob. (St.)	Bobbio Scholiasts in Stangl, T. 1964. *Ciceronis Orationum Scholiastae*.
Suet. *Iul.*	Suetonius, *The Life of Julius Caesar*
Tert. *Ad Nat.*	Tertullian, *To the Nations*
Tert. *Apol.*	Tertullian, *The Apology*
Val. Max.	Valerius Maximus, *Memorable Deeds and Sayings*
Varro, *R.*	Varro, *On Agricultural Topics*

Broughton, *MRR*	Broughton, T.R.S. 1952. *The Magistrates of the Roman Republic, Vol II*.
Gruen, *LGRR*	Gruen, E. 1986. *The Last Generation of the Roman Republic*.
Lintott, *Constitution*	Lintott, A. 1999. *The Constitution of the Roman Republic*. 2nd ed.
Lintott, *Violence*	Lintott, A. 1999. *Violence in the Roman Republic*. 2nd ed.

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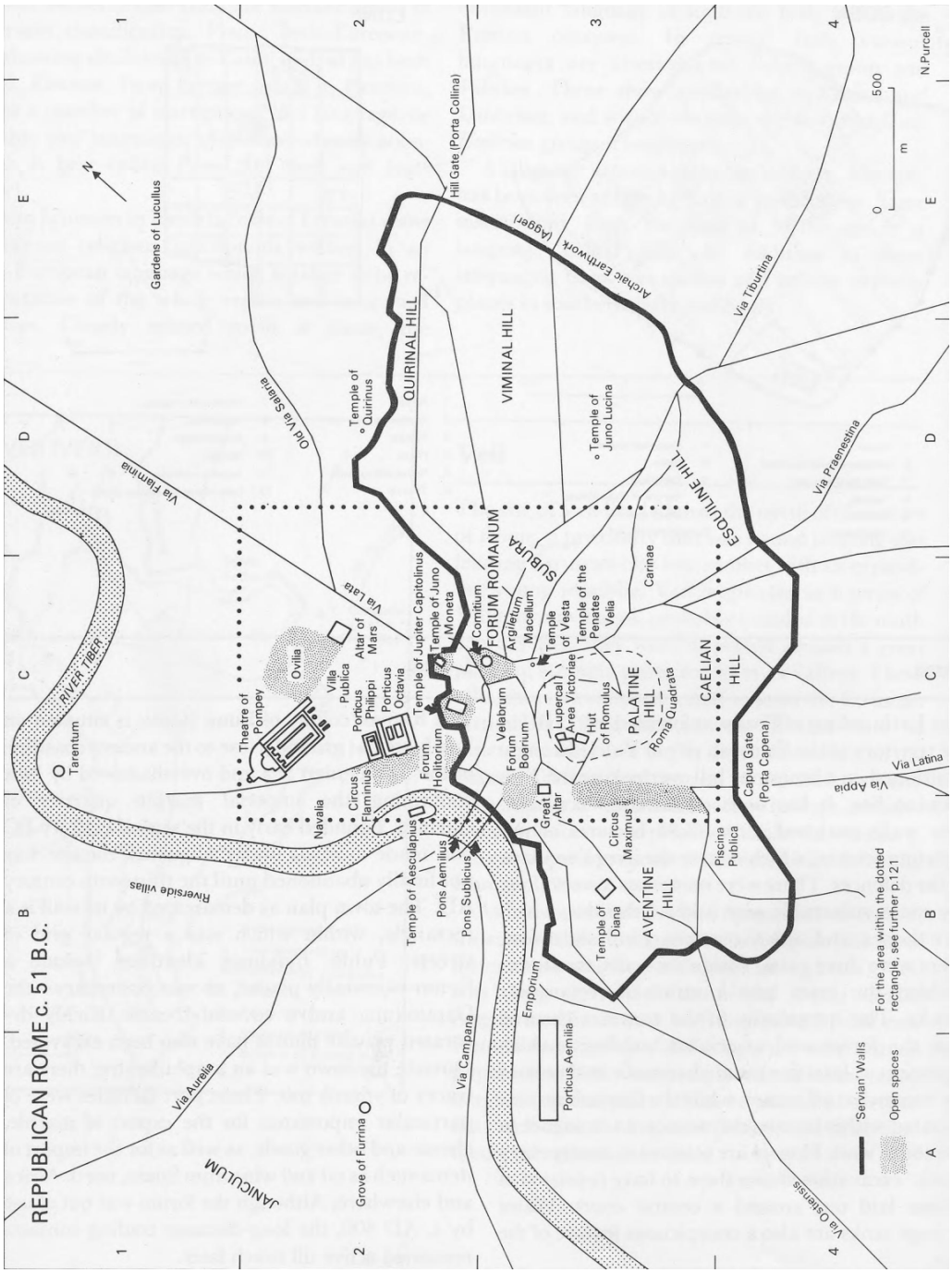
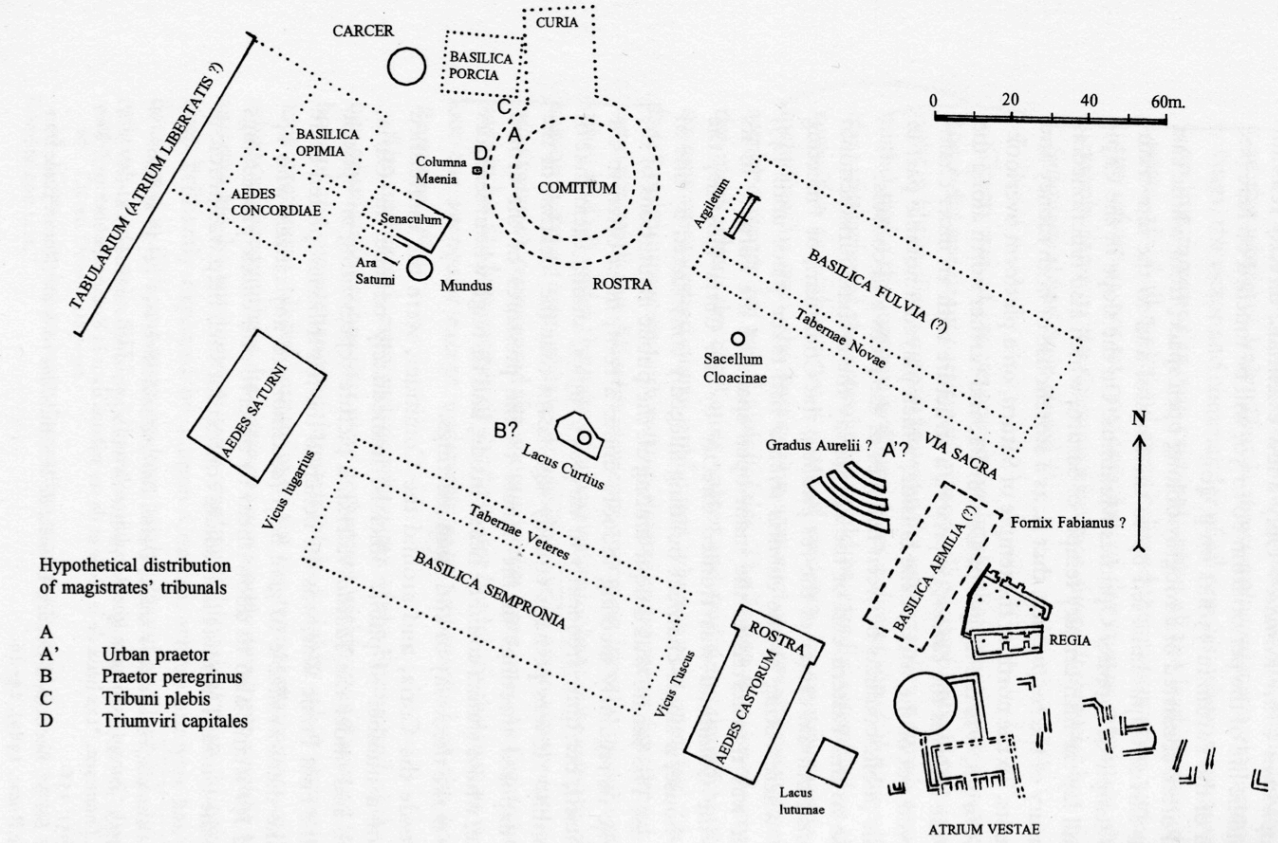
Abstract

Violence in the Roman Republic was used as a tool for the acquisition and protection of political rights. In the Late Republic, the urban plebeians became involved in mass political movements and riots, both violent and non-violent, in order to improve their livelihood in the city. This mass popular activity gave rise to factional conflicts and gang violence between those who believed in the freedom of the people (*populi libertas*), and those who supported the traditional authority of the Senate (*senatus auctoritas*). Between the Catilinarian conspiracy in 63 and the riots following Clodius' death in 52, popular participation in politics grew more intense as politicians refined strategies for organization and mobilization of the urban populace. During the Catilinarian conspiracy, Cicero and other senatorial forces protected the Republic by taking unilateral action against the conspirators that suppressed the tradition of *provocatio*, the right of any citizen to call the community to their aid. In response, popular politicians like Clodius used the rhetoric of *populi libertas* to criticize overbearing senatorial authority. As popular forces became more volatile, senatorial factions in turn arranged gangs in order to defend their political legitimacy and tradition in government. Throughout the 50's tensions between popular and senatorial forces hindered the proper functioning of the Republic, until Pompey was called in to restore order with the use of troops in the city. The escalation of violence with the goal of defending and asserting rights ended with the repression of both *populi libertas* and *senatus auctoritas*.

Maps



The City of Rome c. 51 BCE
From Talbert, Richard J.A. (1985) *Atlas of Classical History*. Macmillan: 90.



The Forum in 53 B.C. Based on the hypothetical plan of the Forum in J.M. David, *Le patronat judiciaire au dernier siècle de la République romaine* (Rome: École française de Rome, 1992). It should be stressed that there are numerous uncertainties as to the location or identity of many of the buildings. Plan adapted by kind permission of J.M. David. Drawn by Jenny Graham.

The Roman Forum c. 53 BCE
From Millar (1998), 40.

Introduction

After enjoying a lively dialogue with some friends one afternoon at the temple of Tellus in Rome, Varro was surprised to find that his absent acquaintance had been stabbed to death in the Forum, apparently by mistake. But Varro and his friends made their way home, "resenting more the misfortune of man than surprised that such a thing had happened in Rome" (*de casu humano magis querentes, quam admirantes id Romae factum, discedimus omnes*; Varro *R*. I.64). In this scene, set in the "final death throes of the Republic,"[1] Varro presents a Rome so plagued with violence that an accidental manslaughter like this had entirely lost its shock value. Instead of outrage or disbelief, Varro and his friends were all too willing to accept this act, and only offer a brief lament on the human condition.

Modern scholarship on the late Republic has often identified widespread violence as a leading cause of the disintegration of such a powerful political institution.[2] Having reached "an acme of deliberation, determination, and organization," violence in the late Republic began to take on a more precarious and destabilizing role in Rome.[3] Beginning with the murder of Tiberius Gracchus in 133 BCE,[4] one can trace an increasing proclivity for violence in the political realm, through the activities of Gaius Marius (c. 100), the events of the Social War (c. 91-87), the civil wars of the 80s, Sullan proscriptions (82-79), popular riots, conspiracies, mobs, gang violence, and finally culminating in civil war between Caesar and Pompey (49-45). For a society whose social norms were heavily influenced by the *mos maiorum*, the customs and precedents of the ancestors, once violence had been introduced into political action, it quickly became precedent, which could easily justify future use in a related conflict. Stemming from as far back as the Conflict of Orders in the fifth and fourth centuries BCE, violent political action was not

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[1] For a discussion on the narrative date of Varro's *de re Rustica*, see Jessica Kapteyn, (2015) "All Italy an Orchard: Landscape and the State in Varro's *de re Rustica*." (PhD diss., University of Washington), 44. Kapteyn dates the narrative between 44-37 BCE.

[2] For example, see Lintott, *Violence,* 175-203; Gruen, *LGRR* 405-448, and Brunt (1988), 78-81: "War, as Thucydides said, is a teacher of violence…and war had become a habit."

[3] Andrew Lintott (1999), *Violence in the Late Republic,* 2nd ed. Oxford, 196.

[4] All dates will be BCE, unless otherwise noted.

exclusively considered negative. It was a tool available for those who had been wronged, and thus functioned as a positive force in balancing Roman society and preserving the framework of the Republic.[5] Each violent event or action, whatever its specific historical context or ideological motivation, could be justified by the person who committed it as an ideal republican action whose end was the restoration and revitalization of the *res publica*.

Perhaps the most divisive issue in these violent conflicts involved rowdy crowds and hired gangs whose presence at political assemblies often led to chaos. While these mobs may have appeared violent and dangerous to the contemporary audience—indeed they were—a distinctly Roman ideology supported their actions and behavior. It was grounded in republican sentiments, such as tradition (*mos maiorum*), freedom (*libertas*), and honor (*dignitas*), and had developed through centuries of conflict between plebeian citizens and patrician magistrates. Joy Connolly makes the important distinction between 'political thought,' 'ideology,' and "values espoused by the governing class at Rome."[6] In each of these categories, the same set of concepts and terms (such as *virtus, dignitas, libertas, honestas, splendor, decus, laus, gloria*)[7] all have a variety of dynamic and multifaceted meanings, all of which combine to form the basic image of Roman political identity. Roman politicians appealed to these vaguely defined but highly desirable qualities in their oratory. These and other qualities—however each agent held and defined them—were what constituted that agent's ideology. They made this ideology manifest in their political activity and the rhetoric through which they communicated with the people of Rome. In other words, Roman ideology signaled a set of Roman political beliefs, while rhetoric appropriated these signals to the speaker's purpose, which might be more or less in line with prevailing beliefs among the audience.

Oratory and rhetoric were vital in the performance of this Roman ideology. *Contiones*, public meetings of citizens and magistrates, enabled political dialogue in

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[5] Lintott, *Violence*, xii. For the development of this idea, first by Machiavelli in the *Discorsi* (i. 5), see also Andrew Lintott, (1999) *The Constitution of the Roman Republic*, 2nd ed. Oxford, 233-251. See also, Joy Connolly, (2015) *The Life of Roman Republicanism*. Princeton, 23-64, who discusses the ability of the republican governing structure to resist stagnation and periods of gross inequality between the patrician and plebeian orders. See Ch. 1 for more about the Conflict of Orders.

[6] Connolly (2015), 111.

[7] Loose translations, respectively: "virtue, honor, liberty, integrity, excellence, splendor, merit, glory."

Rome and the distribution of ideological principles. Only a current office-holder could convene *contiones*, which were usually held in the open air of the Forum, and only magistrates were allowed to speak.[8] Speech was the main purpose of these meetings, and they also provided the opportunity for citizens to vote on legislation, elect magistrates, or hear legal cases.[9] The *contio* provided an opportunity for all Roman citizens to remain informed about current issues, and even participate themselves. Fergus Millar sees *contiones* as key public spaces where "rival conceptions of state and society, and rival policies as regards both internal structures and external relations, were openly debated before the crowd in the Forum."[10] However, Henrik Mouritsen has argued that *contiones* were in practice not forums for open debate, but rather "stage-managed political demonstrations," in which the presiding magistrate would pre-arrange the close audience, so that his oratory would have the greatest effect on others in the Forum.[11] These two conceptions of the *contio* are not irreconcilable. Rather, the *contio* served as an open space where magistrates offered ideas and information to a listening crowd, who could react in whatever way their beliefs compelled them. In large part, the presiding magistrate influenced the atmosphere of the *contio*, whether he chose to deliver ideas which were divisive along partisan lines, or others which would tolerate further discussion and compromise in order to effectively pass into law.

In *contiones*, magistrates used their best rhetoric to communicate and justify their activities to the urban population of Rome. Their speeches expressed ideological values, walking the line between precedent and innovation, legality and illegality, in order to motivate action and affect change for the good. The orator had a great deal of power in influencing the audience to action. Cicero asks about the skill of orators: "who better to incite action, who better to soothe the incited?" (Cic. *de Orat*. 1.202). If a speech was not well-received (or if it had its intended effect), the crowd could move to violence and destruction.

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[8] Presiding magistrates could call on others, including private citizens, to speak during a *contio*, but this was not common. For more see Fergus Millar (1998) *The Crowd in Late Republican Rome*. University of Michigan, 46.
[9] Lily Ross Taylor (1966) *Roman Voting Assemblies*. University of Michigan, 15-33.
[10] Millar (1998), 7.
[11] Henrik Mouritsen (2001), *Plebs and Politics in the Late Roman Republic,* Cambridge, 50.

Collective violence was an important mode of establishing and preserving one's rights. As early at the First Secession of the plebeians in 494, the people used protective and defensive forms of violence against the patricians in order to secure civil rights and a public voice. This type of violence, commonly referred to as *provocatio*, was refined over the years as a call for help to the community. As a plebian political tactic, it emphasized their solidarity in the face of continued magisterial oppression. Initially an illegal manifestation of force to gain rights, the principles of *provocatio* were gradually codified, refined, and integrated into the legal process as a way of ensuring that all parties had their voices heard. While the notion of using *provocatio* as a means to organize a fighting force was never explicitly legalized, it continued to be considered legitimate extra-legally if it had sufficient community support. By the Late Republic, *provocatio* had become "the ideological flagship of Roman liberty."[12]

Throughout the life of the Republic, *provocatio* allowed the plebeians to speak out and fight back against their patrician oppressors. This contention between the plebeian and patrician orders gave meaning to the values which Republican ideologies espoused, constantly testing them in a crucible that ensured their survival and development through times of internal and external pressure. Patricians, naturally in a privileged position to win a magistracy because of their wealth and repute, often abused their power to the detriment of urban plebs. But plebeian protests could easily disrupt the governing process in order to bring the issues of oppression to the forefront of public consideration. Since it was necessary for this contention to be perpetual so that all citizens could always preserve their rights, there was "a dangerous potential slip from disruption to violence," through which this thesis runs.[13]

By the late Republic, political beliefs and attitudes had coalesced into two dominant ideologies, the first dictating the imperative to preserve *populi libertas* (the liberty of the people), and the second to follow *senatus auctoritas* (the authority of the Senate). Echoed in the rhetoric of the leading politicians, these ideologies governed the interaction between politicians and the people. *Populares* politicians regularly appealed

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[12] Hans Beck (2011), "Consular Power and the Roman Constitution," in *Consuls and* Res Publica, 79.
[13] Connolly (2015), 63-64. This contention arises mainly from "a dual commitment to freedom and to the hierarchies and inequalities that threaten it." (63).

to the people for a base of political power, while *optimates*, or conservative, politicians emphasized senatorial authority. Since these ideologies were both Roman, they shared many elements between each other, such as the value of liberty (*libertas*), justice (*ius*), and honor (*dignitas*), but their fundamental differences lay in the methods by which each party preserved and extended these values to the greater Republic. For example, Clodius, one of the *populares*, appealed to the population of urban plebs in Rome by providing them with opportunities to gain *dignitas* for themselves, pass laws in their-own interests, and defend their *libertas* against the threat of senatorial unilateralism. On the other hand, conservative politicians like Cicero used senatorial authority to preserve the *libertas* of many at the cost of a few, while invoking ancient laws and honorable precedents in order to justify their action. In the public sphere of activity, orators communicated, appropriated, and utilized these ideas in their rhetoric. Whenever a magistrate chose to arrange a *contio* as a partisan affair, as Clodius began to do in the 50s, tensions between popular and senatorial parties grew and occasionally snapped, leading to bloodshed in the Forum.

It is ironic that the *contio*, a space for communication, could actually help to further the destruction of the Republican tradition. While this is certainly the case, the ideologies that supported these violent actions were often grounded in justice. The regularity of retribution as a mode of justification reveals social and political patterns of behavior that can make sense of the increasing use of violence in this period. For 89 years, between the assassination of Tiberius Gracchus in 133 and that of Julius Caesar in 44, the chief instigators of political violence believed they were acting for the good of the Republic, upholding and extending the values of the *res publica*. This justification feels weak, in part because it was so commonly used as an excuse, and in part because it is so vague and open to interpretation. But nonetheless it often had enough resonance to be convincing and permit violent action in the moment. What made an act, an individual, or an ideology so threatening to powerful political actors that they saw no reasonable reaction other than violent retaliation?

This question applies not only to assassination and other acts of political violence, but also to the everyday realm of private violence that resulted in the death of Varro's friend. Violence was common outside of the political sphere of the Republic, and it

functioned in a top-down manner, with force being used more often by elites against lower classes. Still, the lower classes could follow their own channels of *provocatio*, through which violence could protect, defend, and aid the victims of elite violence.[14] Violence—by which I mean instances of physical harm brought about by forceful action and displays of power—was a daily sight in Rome, the product of socially sanctioned relationships (master/slave, authority/deviant) or public spectacle (gladiator games, public judicial torture). According to Max Weber, violence and the display of physical force is only legitimate insofar as the sovereign power has a monopoly over its use.[15] The factors that determine this legitimization, which the modern state has made its goal to embody, are tradition, charisma, and the law. With the proper control of these three items, the sovereign power can make their violence the most palatable, and inspire obedience among the populace.[16] In the Roman Republic, the aristocratic senatorial class traditionally held sovereign power, expressing their domination and superiority in master/slave relationships and in the violent entertainment that they provided for the citizens. However, throughout the Republic, and especially after the repressive dictatorship of Sulla in the 80s, the common people occupied a special role in which their powers of suffrage, assembly, and liberty amounted to a sense of popular sovereignty in competition with senatorial privileges.[17]

While the traditional power of the Senate was championed by conservative politicians in the Late Republic, many *populares* supported charismatic demagogues such as Clodius, who were able to cultivate this popular sovereignty and direct it against the oppressive tendencies of the Senate. Through the course of the Republic, both senatorial and popular partisans set laws in place that checked reckless use of physical force, but by the 60s and 50s, these laws had lost any independent sovereignty and become open to interpretation by both factions. Nobody in the Republic held a monopoly on the

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[14] For more on violence in social relations from the Republic through the Empire, especially between master/slave, see Garret Fagan, (2011) "Violence in Roman Social Relations" in *Oxford Handbook of Social Relations in the Roman World*. M. Peachin, (ed.). Oxford: 485-9.
[15] M. Weber. (1964). *Essays in Sociology*. H. H. Gerth, C. Wright Mills (trans, eds.). Oxford: 77-128.
[16] Weber (1964), 78-79.
[17] Millar (1998), 1-12.

legitimate use of force in the city.[18] Many thought that they did, but reactions to their violent acts demonstrated otherwise. Everyone considered their own violence a legitimate tool, which they could justify through rhetorical pleas to ideological principles.[19] Especially for the people, violence was constantly present and thought of as the ultimate means to an end, whenever an overweening force of power impinged on their liberty as Roman citizens. It was this republican struggle between senatorial oligarchy and popular democracy that led to the proliferation of violence, not the violence that created the crisis.[20]

In the final decades of the Republic, popular politics took on a violent quality in response to the perception of overbearing senatorial authority. Between the Catilinarian conspiracy in 63 and the trial and exile of Milo in 52, the political involvement of lower-class plebeians rose, and so did the instances of popular riots. *Populares* politicians like Clodius, who aimed to acquire *dignitas* through appeals to the popular masses, began to organize the people into groups that facilitated easy mobilization, and dramatically increased the potential for public political participation in Rome. This organization, and its subsequent appearance in violent riots, caused opposing politicians who favored senatorial authority and stability to form gangs of their own, by which they might suppress the popular violence.

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[18] While the armies spread violence abroad, they were not allowed to enter the city as an army, unless under special permission. Armies were controlled and maintained by individual elites, who received direction from the Senate. When the army returned to Rome, the general would act in conjunction with the Senate to procure benefits for their troops, who often remained loyal to the general. The retired soldier's position as a non-elite meant that they often joined in with less-enfranchised plebeians in demonstrations for political benefactions. Especially in the disputes over land bills, the soldiers acted violently in accordance with *provocatio*. In this way, control of the army had little effect on universally legitimate violence, and even contributed to the tension that formed the basis of republican government. For more see Brunt (1988), "The Army and the Land in the Roman Revolution" in *The Fall of the Roman Republic*.

[19] I am using the verbs "legitimate" and "justify" in slightly different senses. Violence is legitimate in a Weberian sense, if there is a sovereign power appealing to notions of tradition, charisma, or law (Weber (1964), 78-9). Justification, however, is a more subjective process, in which one person argues on familiar terms that their violence was legitimate. Legitimacy lies in ideology, while justification in rhetoric. In this way, neither can ever be universally accepted among Romans, who share enough ideological beliefs for the violence to persist, but too few for its use to be agreed upon. Contrary to Hannah Arendt, I argue that, for the Romans, violence can be legitimate (in theory) and but never universally justified. Our disagreement, however, arises from a difference in vocabulary, in which Arendt is much more attuned than me. For more see Arendt, H. (1969) *On Violence*. Harcourt, 35-56.

[20] Nippel, W. (1995). *Public Order in Ancient Rome*. Cambridge: 46.

In this thesis, I argue that the violent gangs of the Late Republic emerged from a resurgence of popular politics and popular sovereignty. This new popular activity found a natural mode of expression through traditional methods of *provocatio*, some of which were too violent for conservative senators to tolerate. As *optimates* began to form counter-gangs, hostile partisan rhetoric increasingly led to street skirmishes between political enemies. What had begun as a passionate popular movement ended as a violent factional conflict. In my first chapter, I explore the cultural context of violence in Republican Rome, and look at the function of *provocatio* in the controversy surrounding Cicero's repression of the Catilinarian conspiracy. In my second chapter, I explore how Clodius organized the urban populace, and how he used rhetoric to create such a large popular movement. In my third chapter, I close out the decade of the 50s BCE by viewing popular action in terms of crowd behavior, which escalated the chaos to such a degree that the Republican structure was destabilized and desperately in need of emergency relief, which Pompey and his army provided. While it put an end to the cycle of gang violence, Pompey's sole consulship weakened the political capabilities of the people and the Senate, and set the stage for a final round of civil wars and Augustus' establishment of the principate.

Throughout this study, I utilize the records and ideas of both ancient and modern scholars. For the ancient authors, a few words are necessary. First, every ancient writer had a reason to write, and this reason should be considered when assessing any of their 'historical facts.' The recognition of genre (speech, biography, history, etc.) is the first step to parsing out historical truth from narrative artifice. Second, many tropes throughout ancient authors exist, appearing regularly in order to communicate common themes, or avoid difficult issues. For example, imperial annalists writing about violence in the late Republic often described the movement of violence in such a way that "created a method to avoid the question of what really happened or who really did what, of whose singular action it was that led to the unstoppable chain of events known to the historian."[21] There are also problems with each ancient author. Most ancient sources for this period, such as Cassius Dio, Plutarch, and Asconius, were written one- to two-

[21] For more on the tropic movement of violence, see Isak Hammar (2015) "Rolling Thunder: Movement, Violence and Narrative in the History of the Late Republic." In *The Moving City*.

hundred years after the fact and use Cicero as a primary source. Cicero's aristocratic worldview did not tend to equally represent all strata of Roman society, and his surviving texts present problems. While his letters may contain his more candid opinions, all of his speeches were edited to an unknown extent after delivery so that they he could distribute them around Italy.[22] Whenever possible, I use a variety of different authors when looking at specific events in order to minimize unintentional biases and misinformation.

The ideas and expressions of political ideologies are incredibly important for understanding the proliferation of violence in the Late Republic. By opening our scope beyond a simple examination of great generals and broken institutions, and (to the extent possible) looking also at the behavior and values of common citizens, a more nuanced picture of the Late Republic emerges. Violence was commonplace not because everyone else was doing it, nor because it was the most effective way to triumph in the political game. Rather, it was because it had traditionally been employed as a successful method for asserting, establishing, and defending one's rights and one's *libertas*. We find in the Late Republic a cultural ethos that supported violence and justified it by circumstance, expediency, and a conception of what was right. We also, however, find many opposing conceptions of what is right.[23]

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[22] Lintott, A. (2008) *Cicero as Evidence*. Oxford. 17-19.

[23] For discussion of expediency of an action, or the extent to which the ends justify the means, see Lintott, *Violence*, 35-66; for justification on circumstance, see Fagan (2011), 478-9**.**

Action and Reaction

In this chapter, I study the historical and cultural framework of Roman violence. Through series of actions and reactions, Romans used violence as a means to secure political rights. Historically, these rights were disputed between the plebeian and patrician orders to such an extent that fighting for rights became a legitimate extra-legal mode of solving disputes. Still governed by cultural norms, violence took on an air of controversy as the plebeians and senatorial aristocrats disagreed on its legitimate use. Based on values of community, legitimate violence developed into two camps: the people's right to protect their freedom, and the Senate's right to defend the Republic.

▲

A funny thing happened on the way to the Forum. On an otherwise unremarkable day, the poet Horace was accosted by some man who needed his help (Hor. *Sat* 1.9.77-8). Horace did not at all care about this pest, or his problems, and tried as much as he could to shake him off. The man was unwilling to leave, despite the fact that he had a bond-hearing to attend. Before they wander out of the Forum, the man's accuser stops them, and asks Horace if he will serve as a witness to the fact that the man was evading judicial summons. Horace happily agrees and continues home. The man, however, is dragged off to a trial, the result of which will certainly not be in his favor, especially since he had attempted evasion. The man risked so much simply to talk to Horace because he needed assistance in a difficult legal situation. Alone in court, likely with no money, he called out for community assistance, *provocatio*. Horace's "cultural cachet" caught the man's attention.[1] He might have been able to persuade the young poet to contribute some resources to his legal battle, whether money, character witnesses, or men with which to form a fighting gang. Unfortunately, Horace decided to lend his celebrated reputation to the man's accuser, who can now press additional charges of evasion with Horace as a witness.

In the Roman world, asking for help was not always so unsuccessful. *Provocatio*, a public appeal for assistance, was common in the Republic, especially among those who were otherwise resourceless in the face of overbearing authority. The most efficient way

[1] Anthony Corbeill (2015) "A Shouting and Bustling on All Sides (Hor. *Sat* 1.9.77-8): Everyday Justice in the Streets of Republican Rome." in *The Moving City*. 97-98.

to help out a fellow citizen was to lend your strength, and so a physical force was often the result of effective pleas for aid. "Self-help" is a term applied by Andrew Lintott to forms of violence that seek recompense for an offense against persons, their property, or their *dignitas*.[2] Processes of self-help are in themselves pseudo-legal procedures, based on a tradition of archaic laws and institutions protecting individual rights.[3] Violent action in the form of self-help was as much a legitimate use of force as the violence found in other social relationships, such as the master/slave relationship, and it supplied the basis for, and supported the success of, the Roman legal procedure. The accuser in Horace's satire dragged the pauper away because it was his legal right to use any and all means necessary to assure that the defendant appeared in court.[4] In order to fight back, the poor man wanted to tap into Horace's elite privilege in order to quickly summon a crowd to help him out of his sticky situation.[5] This impulse to find a defensive or offensive force in the face of danger was present throughout the Republic, always an option for challenging an injustice, and preserving freedom as a Roman.

In order to understand self-help in context of the Late Republic, it is helpful to understand the position of violence in the Roman world. Violence permeated Roman culture in social relationships, in public spectacles, and daily life in the city. Violence manifested itself in an inherent power differential in Roman society that fell along class lines, often emphasizing the power of wealth and the aristocratic class. Demonstrations of power ranged from such social privileges as owning and disciplining slaves, having massive retinues of friends and allies, and possessing the resources at hand to contend for a magistracy. These displays of power were not instruments of oppression in themselves, but they all provided a strong and constant force should the aristocrat need to call for help. With such resources, "might literally made right."[6]

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[2] Lintott, *Violence*, 22-25. Self-help (*Selbsthilfe*) is the term of G.I. Luzzatto; Lintott is translating the concept into English.
[3] Lintott, *Violence*, 24-34.
[4] Lintott, *Violence,* 34. Also Corbeill (2015), 93: "The use of physical strength [in XII Tables 1.2, 3.2], accompanied by the summoning of witnesses as a means of augmenting that strength, corresponds to those two points during which the legal process is most apt to fail on account of Rome's lack of police force: first, when a plaintiff initially summons a defendant to court and, second, when the verdict of that court needs to be enforced."
[5] Corbeill (2015), 97-98.
[6] Corbeill (2015), 97.

Interpersonal violence was often initiated across class lines from the top down. Garrett Fagan argues with evidence ranging from Cicero to Apuleius that "private disputes, especially where a social disparity applied, could (and did) end in violence."[7] Lucius, transformed from an aristocratic youth into an ass in Apuleius' *Metamorphosis*, is thrown down to the world of the lower-classes, where he witnesses like a fly on the wall, and even experiences himself, all sorts of violence and cruelties at the hands of officials, wealthy landowners, brigands, and slaves.[8] Similarly, Cicero, two centuries earlier, expresses outrage that C. Verres might crucify a Roman citizen, but nonchalance at the crucifixion of a slave (Cic. *Verr*. 2.5.160-72; *Verr* 2.5.7).

In the Roman Republic, the class lines that divided the rulers and the ruled were, in theory, permeable. Senatorial privilege was not the sole domain of aristocratic patricians.[9] As a result of hard-earned rights during the Conflict of Orders, plebeians gained the ability to participate in magisterial politics, climb the *cursus honorum,* and gain public renown regardless of their ancestry. Many *equites*, wealthy plebeians and other non-patricians from around Italy, attained petty magistracies, and gained entry into the Senate. Some, like Cicero, even rose all the way to the consulship. But in actuality such opportunities were reserved for the few and the tactful. Money and a family name did greatly help get one elected into the more conspicuous and influential higher offices.[10]

Despite the difficulty of a lower-class plebeian ascending the *cursus honorum*, it was not a lost cause. Faced with patrician oppression, plebeians in the early Republic had struggled and managed to gain many rights. When the plebs first seceded from the city in the early fifth century, they did not have many resources, but they were willing and able to fight for their *libertas* and a chance for political representation. Creating the tradition

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[7] Fagan (2011), 480. Fagan takes the fictional 2nd c. CE world of Apuleius as a mirror for the social world of its author: "ancient anecdotes and fictions can act as mirrors that reflect social attitudes, assumptions, and realities, even if the immediate context is highly dubious or even fantastical." Fagan convincingly shows that the fictional world of the ass can still inform us of the attitudes towards violence in the late Republic, half a world away. See Fagan (2011), 469-470, for more discussion of the use of fiction in historical studies.

[8] Fagan (2011), 481. For a comprehensive list of all acts of violence in Apuleius' *Metamorphosis,* see Fagan (2011), 472-5.

[9] Millar (1998), 5-7.

[10] See how expensive Cicero's ideal election campaign would be in the *Pro Murena*. Cic. *Mur*. 73-78: "the Roman people loath private luxury, but love public magnificence."

of *provocatio* and the office of the tribune, the plebs gathered in solidarity to defend their suppressed rights.

As he progressed along the *cursus honorum*, a politician was conspicuous and influential. He could only advance if the people agreed with his policies and appreciated the favors (*beneficia*) he bestowed. In response to a magistrate's public speeches, activities, and general comportment, the on-looking crowd could viscerally react against him. However, as *contiones* changed from places for open debate into partisan gatherings, the crowds began to attend the meetings already sympathetic to the speaker's cause.[11] Before such a sympathetic crowd, magistrates could instigate and, ideally, direct the movement of people. This moment of privilege gave popular magistrates a huge upper hand in matters where they felt that their *dignitas* or the safety of the Republic had been violated. In their rhetoric, they could appeal to the sentiment of *provocatio* and build a self-help network in order to legitimate their behavior.

Through the process of legitimizing an instance of violence, politicians created a contentious political atmosphere. Someone is always the victim of violence, and they are none too pleased whenever a fellow politician claims that their loss is the gain of the Republic. The nature of *provocatio* allowed such victims to gather their own force and fight back to restore their lost rights. Throughout the city of Rome, a whole social network could be exploited to get self-help and private justice if a victim of any class could sufficiently gather enough community support. In an escalating drama of violent actions and reactions, the very process that helped to secure rights for some began slowly to weaken the rights of every Roman citizen. As one man fought for his rights, another fought back, until it seemed that everyone was fighting everybody.

A History of (Roman) Violence

If rhetoric played a major factor in the decision to engage in violent behavior, then the roots of the supporting ideologies must have extended deep into the historical identity of the actor. In his study *Violence in Republican Rome*, Andrew Lintott explores

[11] Mouritsen (2001), 50.

a tradition of violence that extends back to the Conflict of Orders. Starting with the XII Tables, and then moving to stories from later annalists, Lintott situates self-help in a tradition of extra-legal expression. He sees it as "the unilateral assertion of personal rights without appeal to the power of the judiciary."[12] If this is true, then at some point in Roman history, a large number of urban residents must have felt strongly that their rights were being suppressed along legal or social channels, in response to which group solidarity and collective violent action was necessary for survival.

The Conflict of Orders matches this description. To what little primary source material for this early Republican period remains Kurt Raaflaub has added a comparative anthropological approach that sets Roman development alongside similar phenomena found in Archaic Athens.[13] At the heart of the conflict, as the initial spark for dissension, Raaflaub posits a harsh class divide between the patrician aristocracy, who had "overwhelming economic, social, jurisdictional, and political power," and the plebeian common folk, farmers, and hoplite-soldiers.[14] The relationship between the patrician and plebian orders at this period in time was symbiotic, if not parasitic. The plebs produced the food and fought the wars, while the patricians administered the city, and survived off of the work of the plebs. The patricians were in no way self-sufficient, yet, through an oppressive system of debt-bondage, food-hoarding, and capricious, unaccountable magistrates, managed to alienate the plebeians. Facing such hardships, with the odds stacked against them, the plebs seceded (*secessio*) from the city in 494, gathering on the *Mons Sacer*, in order to consolidate their forces for the defense and protection of their livelihood.[15]

The action of the *secessio* is an important symbolic action that emphasizes the solidarity among the plebs. *Secessio* is more than just physically leaving the city. It has

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[12] Lintott, *Violence*, 23.
[13] Keith Raaflaub, (1986). "From Protection and Defense to Offense and Participation: Stages in the Conflict of Orders." *Social Struggle in Archaic Rome: New Perspectives on the Conflict of Orders*. Raaflaub, K, ed. University of California Berkeley.
[14] Rauflaub (1986), 210-225.
[15] Raaflaub, 206. Raaflaub asserts that from the outset of the Conflict there was no rich plebian class, who desired a share in the political power, motivated their constituents to riot for it, and "made themselves the champions of their oppressed brethren." (P.A. Brunt (1971), cited by Raaflaub). Rather, the Conflict is most intelligible to historians if we understand that there was no "substantial nonpatrician, but otherwise comparable, rich and noble upper class." (Raaflaub (1986), 205).

strong overtones of a military strike. Refusal to fight for the patricians certainly would have gotten their attention, and the secession would have been a powerful step for organizing an "anti-patrician strike force."[16] On the *Mons Sacer*, the plebeians followed a solemn ritual, took a sacred oath to protect one another, and stood in solidarity. To lead them, the plebs created the office of the *tribunus plebis*, tribune of the plebs. The sole duty of the tribune was to "protect their fellow plebeians against abuse of power by the patricians and their magistrates."[17] The plebs agreed on the basic powers of a tribune, such *ius auxilii*, the right to assist, and *sacrosantitas*, the right of the inviolable body, both of which formed along the lines of self-help.[18]

The relationship between the tribune and the plebs was such that each would protect the other in times of crisis. The tribunes would stand to defend an individual plebeian against the abuse of the patricians, while the plebs should gather as a group to assist a tribune who had fallen into danger. And it appears that this relationship worked. When Consul Marcius Coriolanus refused to endorse a grain distribution bill during a famine unless the plebs made concessions on recently acquired tribunician abilities, the people were outraged at the threat of lost political progress. The people would have killed Coriolanus on the spot if the tribunes had not interceded with a judicial procedure. Livy describes a standoff outside of the Curia in which the people massed together, ready to attack Coriolanus, with the senators overpowered by the passionate mob of plebs. The tribunes managed to avoid large-scale violence in the moment and divert the conflict to an examination during a Council of the Plebs (*concillium plebis*). But when Coriolanus

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[16] Raaflaub (1986), 218.
[17] Raaflaub (1986), 218.
[18] See Lintott, *Violence*, 24. Also Lintott, *Constitution*, 121-129, for the origin and primary duties of the tribune. Most commonly, *sacrosanctitas* was employed defensively as *intercessio*, the literal "interposing of the tribune's person in order to block the action of other magistrates in their public capacity" (Lintott, *Constitution,* 124).

refused his summons to court, the angry crowd condemned him and he went into exile with the Volsci (Livy 2.35).[19]

Defense, protection, and self-help appear to be the purpose of initial plebian organization. The plebs used violence against patricians in response to large power differentials, and showed a desire to level the playing field. Not until the plebs had found their voice could they further the struggle, and they eventually fought for political participation, social opportunities, and physical codification of the most important laws. After this first stage of the Conflict, the plebs continued to fight for, and obtain, all of these things.[20]

The institutions which the plebs created in the first *secession* survived through the life of the Republic, and were constantly developed and refined. Collective solidarity among the plebs was an important force in defending their gains. As the Roman legal institution began to coalesce, violence as a means "to secure a man's natural or legal rights was recognized as a proper way of freeing him from undeserved restriction."[21] *Vindicatio* was essentially the process of asserting a right to something. The root of *vindicatio* is *vis*, the common word for violence, or, perhaps better, force. It is "not a threat but a claim of superior power."[22] As the claim of right by virtue of superior force, *vindicatio* formed the basis for much of the Roman legal system, as well as master/slave relations and the creditor/debtor relationship.[23] Under the context of the *nexum*, the system of plebeian debt-slavery in the early Republic, it is apparent that the secession of

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[19] Raaflaub (1986), 219 suggests that the stories from Livy that describe the trials conducted by the tribunes in the *concilium plebis* against patrician magistrates, who were condemned and executed after a formal procedure, conceal the brutal reality of "the lynching by avenging plebeians of those who had violated the *sacrosanctitas* of the tribunes." Indeed, many of Livy's stories of trials by the *concilium plebis* suspiciously end in self-exile or suicide. See for example, the case of Caeso Quinctius, bitter enemy of the *plebs*, who went into exile before his trial (Livy 3.13); and the case of Appius Claudius who committed suicide awaiting trial for having committed a free Roman to slavery (Livy 3.56-58).

[20] For an account of their progress and accomplishments see Raaflaub (1986), 221-237.

[21] Lintott, *Violence,* 29. See, Lintott *Violence*, 130; 107-148 for a full discussion of the changes of executive, legislative, and juridical attitudes towards legitimate violence.

[22] Lintott, *Violence,* 30 mentions the argument of G. von Beseler who distinguishes between two types of force: force that binds together, and force that breaks apart. *Vindicatio* is the force that breaks apart and offers a new force to hold a new system in order.

[23] Lintott, *Violence*, 32-4. While the basic structure of *vindicatio* is this assertion of rights, it developed throughout Roman history to have many other legal definitions, such as the process by which someone is legally punished, as well as the punishment itself. The term is able to be applied to property disputes and capital offenses because "at the bottom, the same form of procedure was being used."

the plebs was not simply a protective and defensive measure, but also one that declared the authority of the patrician creditors invalid when used to harm the plebs. Using the various forms of *vindicatio*, popular justice, and eventually political methods, the plebs were able to abolish the *nexum* around a century and a half after they had first seceded to the *Mons Sacer*.[24]

In the Middle Republic, violence continued to be an integral mode of establishing rights, but was increasingly perceived as something "in itself a bad thing, which because of its threat to the public interest cannot be left to private repression but must be subject to jurisdiction."[25] While this opinion applied to the way that the upper and middle classes behaved towards each other, the basic principle of self-help remained the cohesive force that bound together the urban plebs who continued to face oppression by the magistrates. Outside of the law, violence remained a justifiable final recourse, if it were deployed only in cases of unjust repression.[26] In order to establish liberty and justice for their underprivileged order, the plebeians pushed the extremes of social action by continuing to protest and riot. By the final years of the Republic, the forms of violence that the urban plebs used for the purpose of self-help and popular justice had been cultivated through centuries of tradition and refinement.

Vindicatio can take many forms, and, for Lintott, the violence of popular justice in Rome was more or less of two types: "some more aggressive to exact punishment, others more defensive, whose first aim is to prevent harm, though punishment may follow."[27] Along the more aggressive line of action, a crowd might throw stones or other debris at a hated man, an action called *lapidatio*. In this way, an angry crowd hurled tiles, sticks, and stones at Saturninus in 100, because he seemed to be striving for power undue to his office as tribune (App. 1.32). One could also set fire to a deviant's home while shouting insulting phrases (*occentatio*), as the Sicilians responded to Verres' cruelties as governor

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[24] See Raaflaub (1986), 208. See also *ibid*. n. 23 for a brief bibliography on the *nexum* and how it was dismantled.
[25] Lintott, *Violence,* 163. Beginning with Gaius Gracchus in 122, strong laws such as the *lex Sempronia* addressed physical harm of Roman citizens by magistrates. These set up emergency courts (*quaestiones*) for the trial of capital crimes, whose verdict would be subject to approval by plebiscite.
[26] Self-help as an extra-legal phenomenon weakened the sovereignty of law. See more below, in discussion about popular mobs and gangs, and how they could disrupt the legal system when unsatisfied. Such disruptions were rare, and result of extreme popular dissatisfaction.
[27] Lintott, *Violence,* 6-7.

(Cic. *Verr*. 2.1.69, 94). Both of these actions could easily result in the death of the target—indeed that may have been the drive behind them. This was reprehensible, but only if the action was premeditated. If it was an immediate and spontaneous reaction, it was treated with more leniency.[28] In a comment about some stones that were thrown in a *contio* on the grain supply, Cicero treats the riot as something unfortunate, but understandable, insofar as it arose from feelings of desperation and absolute famine, although some were spurred on to violence by the nefarious machinations of Clodius (Cic. *Domo* 11-12).

Offensive action could be less lethal. *Flagitatio*, the act of demanding something by shouting, was a common defensive act that could at the same time identify a threat, and gather a mob for louder chants and further action. In order to get his books back from a thieving *moecha* (whore), Catullus gathers all of his hendecasyllables, which throw insults from all around her (*undique*), and shout: "Give me back my books, you filthy whore! Give them back! (*moecha putida, redde codicillo,/ redde, putida moecha, codicillos,* Catull. 42). In this way, Catullus was able to demand justice while identifying a criminal woman for the community. Similarly, Cicero relates a chant that he heard between Clodius and his followers, in which Pompey was insulted for his lecherous, licentious, and idiotic behavior (Cic. *Ad Quint*. 2.3.2; *Ad Fam* 1.5b.1). The meaning and implications of Clodius actions will be considered in later chapters, but for now it is sufficient to note that his methods were a survival from the spontaneous self-help traditions of the early Republic, on which he was able to capitalize by creating solidarity among his supporters and giving momentum to his popular movement.[29]

Defensive methods of popular justice function along the lines of *flagitatio*, in that both aimed to gather support from friends, neighbors, or bystanders in response to an ill suffered by an individual. Livy describes many instances of *fidem implorare* (imploring

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[28] See Fagan (2011), 482-485. Also Lintott, *Violence*, 8. On the principle of *vis vim repellere* (repulsion of violence with violence), an action must be carried out in immediate response to the offense. Otherwise, the power differential becomes unstable, and any matters will shift into a state of static normalcy, and a new force will be legitimate.

[29] Lintott, *Violence*, 10.

good faith) and *provocatio* from the Conflict of the Orders.[30] For example, after a group of patricians murdered the tribune Genucius, and the other tribunes refused to take protective, defensive, and retributive action on behalf of their Order, plebeian citizen Publius Volero called forth the body of the plebs to defend him from an undeserved demotion in the military. The plebs, discomforted by the silence of their representatives in the government, absorbed him into their massive protection while he shouted "*provoco et fidem plebis imploro*!" ("Help me! I call upon your faith as plebs!" Livy 2. 55). In this case, Volero simply cried for the aid of his fellow citizens for protection from offenses against his *dignitas* as a soldier, and his *libertas* as a citizen. The identification of who is acting in the wrong need not be so easy. Someone who is the target of extra-legal action could himself call for community aid, creating two groups fighting under equally valid interpretations of *provocatio*. Both self-help actions and those of popular justice were formally undefined and thus open to interpretation. Often times, the best way to stop everything from escalating into indiscriminate violence was to move the issue over to the law courts, where the physical imposition of the crowd, while still present in the conflict, was much less immanently threating.[31] Livy records that Appius Claudius had tried to arrest a girl, but after facing the laments of her nurses and the hostile response of the plebeians, he was forced to change the scene of the dispute to the courts of law, where the threat of violence had been repressed by legal codification (Livy 3.44).[32]

While violence was an important traditional method for solving disputes, those individuals in charge of the political apparatus gradually felt a need to repress violent behavior and reprocess it as explicitly legal justice. Marcus Lucullus, *praetor* of 76, declared an edict against private land disputes and slave warfare on the large and wealthy

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[30] Livy's stories relate to, and are likely informed by, issues of legitimacy that Romans still faced in the Late Republic. For more about Livy as a source for the Conflict of Orders, see Raaflaub (1986), 203. In short, the Augustan historian saw the two-hundred-year conflict as a set of strides towards a constant purpose with varying intensity, rather than taking account of the varying "quality and objectives" of plebeian tactics against patricians. For Livy, the conflict remained static and hardly as dynamic as such a violent prolonged conflict should be.

[31] In *contiones*, activity was guided by a presiding magistrate. However, the crowd had ample opportunity to express their opinion by cheering and jeering at the proceedings. Examples of popular activity in the 50's demonstrate this well (Ch. 2 and 3).

[32] See Lintott *Violence,* 12. This is the same Appius Claudius who allegedly committed suicide while awaiting the verdict from the *concilium plebis* (see note, above).

estates in rural Italy, which had grown too severe for social forces alone to regulate.[33] By Lucullus' praetorship, the massive landholdings of wealthy Roman citizens had led to private violence that had escalated past the point of property disputes, and become a tool for personal gain. For Cicero, who cited Lucullus' edict while defending his client against a slave attack by an eager neighbor in Southern Italy (Cic. *Tull*. 5-12), the distinction between private and public violence was the degree to which the violence damaged the community. The parameters of this distinction were not set in concrete, nor did they reflect the universal values of republican ideology. Rather, they are Cicero's opinions, and dependent on his larger argument for the specific trial and his own political experience. In other words, he is arguing not only under his own definition of violence, which is contingent on his present case, but he is trying to persuade the judges to agree with his definition. It is the fact that he must make this effort that is worth noting.[34]

Other laws existed for the repression of violence, such as the *Lex Lutatia* and the *Lex Plautia*, but these laws dealt with the legitimacy of violence after it had been committed, and were employed only after any violent behavior, including reactions**,** had settled down.[35] The *lex Lutatia* was passed around 78, and covered situations in which violence was applied directly in a physical attack on the Senate, magistrates, or public property. The *lex Plautia* came a decade or so later, with a broader definition of *vis* so that the competence of the *vis* court could extend to any case of violence *contra rem publicam*.[36] The revision of the law concerning violence is interesting because it seems to have been an attempt to narrow the definition of illegal violence to acts that harm the Republic. In reality it extended the definition to include more than just a physical assault of a magistrate, senator, or a disruptive occupation of a public space previously covered by the *lex Lutatia*, to include a wider array of possible actions, including the limits and

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[33] Lintott *Violence*, 129. On these *latifundi*, land disputes would be carried out by large gangs of armed slaves, and would result in an almost full scale battle. Whereas land disputes in early Rome had hardly accounted for any fatalities, slaughters like that in the Silva Sila in Bruttium in southern Italy, which gained the attention of Cicero way back in Rome (Cic. *Brut*. 85.), began to happen with greater frequency.

[34] Lintott, *Violence*, 130 notes that situations involving personal violence were not under the direct jurisdiction of the law. Rather, a dispute needed to be brought into court by one party, and meanwhile "any penalties inflicted on the offenders were seen as restitution to the injured for the loss he had suffered."

[35] See Lintott, *Violence,* 107-124 for a discussion on the legal history of the suppression of violence.

[36] Lintott, *Violence,* 121.

proper use of tribunician *sacrosanctitas*. In practice, this imprecise definition meant that the law was practically ineffective in the face of a well-constructed argument—or well-numbered force—and many defendants in cases *de vi* were not found guilty.[37]

There were also many legal restrictions on rowdy public behavior and gangsterism.[38] It was forbidden to openly carry weapons in the city, and after certain states of emergency, such as the Catilinarian conspiracy or Clodius' death, weapons were outright banned. Furthermore, criminal intent became a criminal offense. These laws were not enforced regularly, but rather became the duty of a presiding magistrate whenever their crowd became disruptive.[39] Under a Senate ruling from 92, a magistrate was obliged to dissolve a rowdy *contio*, or else be responsible for their damages (Cic. *Leg*. 4.32-3). These measures were employed in order to curtail the mutation of listening crowds into angry mobs, but their efficacy lay in the magistrate's willingness to enforce them, and in the establishment's comfort with openly confronting a popular magistrate. As the violence of the 50s demonstrates, popular power was too great of a resource to ignore, and too strong of a force to oppose.

Outside of the law-courts, certain high-ranking magistrates such as the consuls and praetors could actualize their *imperium* by enforcing their right to detain individuals (*coercito*) should their actions restrict his capabilities as a magistrate.[40] However, matters hardly played out so smoothly, because every act of magisterial *coercito* could be subject to tribunician *auxilium* or popular response in the form of *provocatio*.[41] M. Bibulus, the recalcitrant co-consul of Caesar in 59, tried to use his lictors and whatever other people he could gather to establish a strong physical presence in the Forum on the day that the

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[37] P.J.J. Vanderbroek (1987). *Popular Leadership and Collective Behavior in the Late Roman Republic (ca*. 80-50 BC). J.C Gieben: Amsterdam, 155 notes that verdicts depended less on the circumstances of the case, and more on the composition of the jury.
[38] Nippel (1995). 51-55.
[39] Nippel (1995), 55.
[40] Lintott, *Violence,* 89-93. *Imperium* is one of those words that is almost untranslatable. I prefer "sovereignty." Besides the cognate imperial connotations, *imperium* can also refer to any capability of command one man has over another. This chain of command extends and culminates in consular *imperium*, which trumps all else.
[41] Beck (2011), 77-96 cites laws of *provocatio* that arose around the 3rd and 2nd c. BCE in order to counter the overweening *imperium* of the consul. The perpetual conflict between magisterial *imperium* and responsive *provocatio* is just another factor of the system of conflicts that sustained Roman *concordia*.

people would vote on Caesar's controversial agrarian bill. Although Bibulus entered the Forum with an impressive retinue, Caesar's supporters and the large crowd gathered in the Forum were not fooled by his flagrant display of *imperium*, and, after he had forced his way through the crowd to the rostra on the Temple of Castor and Pollux, they certainly did not appreciate his opposition to the bill. So they threw stones at him and his supporters, and broke his *fasces*.[42] The political ramifications of this scene, and what it means for our understanding of the behavior of gangs, will be considered in later chapters, but for now it is important to note that the crowd responded negatively to a visible use of force by a magistrate, so negatively that they resorted to the traditional methods of voicing their distaste and protecting their own interests: throwing stones and shouting insults. Even in the political drama of the Late Republic, traditional forms of popular justice were alive and thriving as a mode for popular expression, especially in the Forum and other public areas where crowds tended to gather, and stakes tended to be high.

Popular meetings in the Forum, Campus Martius, or other large open spaces were the primary scene for violence in the Late Republic, in large part because of the heavy ideological importance of these spaces as the political stage for the management of the entire empire. *Contiones*, the meetings held in these traditional locations, provided the opportunity for the people to vote on bills, elect magistrates, witness judicial trials, or just listen to political ideas and debate. The Forum in particular was the center of popular Roman politics, and so the people who gathered there on a regular basis would always be able to witness some aspect of their government in action.[43] Since the magistrates held their offices as a *beneficium* (service) for the people, they were held accountable for their actions and behavior in office.[44] The people could throw stones at Bibulus and break his

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[42] Dio 38.6. Plut. *Pomp*. 48; *Cat. Mi*. 32; also Cic. *Pis*. 28. See also, Ch. 2 for more on Caesar's and Bibulus' year as consul.

[43] Millar (1998), 30: The Forum is the literal center of the Roman state. By the Late Republic, Roman territory spanned the entire Italian peninsula. After the Social War many Italians gained the right to vote in one of the 31 rural *tribus*, and in theory any of them could come to the Forum to vote. In practice, however, travelling to Rome regularly would have been feasible only for the proximate and the wealthy. Millar estimates that about one third of all Roman citizens could come to the Forum with some regularity. Despite very apparent class conflict in this period, "what served to limit political participation was not class, but distance." The spatial privilege was apparent even to Cicero, *cf*. Cic. *Domo* 89-90.

[44] Millar (1998), 102. *Cf*. Cic. *De Leg. Ag*. 2.1.1.

fasces because they no longer believed that his politics were a reflection of their will. His opposition to Caesar's popular legislation did not serve the thoughts and ideas of the people. Dio reports that the plebs "fell back before him, partly out of respect and partly because they thought he would not actually oppose them" (Dio 38.6). They did not initially harm Bibulus because the *imperium* and *dignitas* of his office communicated political potential, and that was just what the plebs needed at the moment. But when they realized that Bibulus intended to oppose their will, they violently reacted. In this way, power was in the hands of the people, and it was entirely legitimate, in their eyes, for them to forcibly remove an individual magistrate who disagreed with their collective opinion.

In the eyes of the magistrates, however, such forcible action from a large and indiscriminate crowd could not help the Republic, but by its very nature, would destroy its institutions. Apart from the coercive powers which they could use if their duties were being obstructed—albeit to little effect—especially high-ranking magistrates could appeal to the Senate for a *senatus consultum ultimum* (*SCU*). This ultimate decree declared a state of emergency, and empowered the consuls, or any other magistrate explicitly named, to act however they saw fit to secure the safety of the Republic.[45] There were options based and developed on precedent that a consul could resort to, but the most effective course of action was to use violence to suppress violence: the consuls could arm citizens and begin a man-hunt for the enemy of the state, in order to kill him or throw him out of the city, like Opimius had done against Gaius Gracchus in 121.[46] Alternatively, the consuls could take the enemies into custody for a later trial, summary or judicial. This is how Cicero handled the Catilinarian threat. The extent to which the *senatus consultum ultimum* allowed for illegal action to be taken is just as unclear to today's audience as the contemporary one. Cicero could have sent his armed band to hunt and kill the

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[45] Lintott, *Violence*, 149-174, for a broader discussion and references to studies of the original wording of the decree. While the decree was never fully defined, the general idea of the decree seems to have been to give the whole *res publica* to the consul, as if it were a province. From here "[the consuls] should use their discretion in taking emergency measures for the state's safety" (Lintott, *Violence*, 151).

[46] Lintott, *Violence,* 165. This precedent was first set by Scipio Nasica, a private citizen, against Tiberius Gracchus in 133. See Nippel (1995), 57. While Tiberius had been killed by Scipio Nasica, Gaius committed suicide after escaping Opimius and his angry mob.

Catilinarian conspirators, but instead he decided to detain, try, and execute them with help from the Senate. He did so either because he was unsure whether the decree was in itself a justification for the death of Roman citizens, because he wanted senatorial support and a quasi-judicial trial to relieve him of some potential opprobrium, or simply because he considered mass movement like that to be in itself a dangerous and reprehensible action.[47]

The *senatus consultum ultimum* was in essence a blank cheque, providing the potential for unbounded action, but at the same time introducing uncertainty and discomfort over the absence of any concrete legal measure. As with magisterial *coercito* and even personal self-help, the use of violence after an ultimate decree could itself be subject to judicial counter-action, or even counter-violence in the form of self-help. While the killings of many alleged tyrants in Roman history were often controversially received, counter-action tended to be more along legal lines than battle lines.[48] This began to change in the late Republic. If the wider body of Roman citizens did not agree that the assassination had been in their political interests, or if they felt that it was a hostile move against them, they could take counter-action through political demonstrations or legal suits, and they could also riot and violently target their perceived enemies. While the actors in such senatorially-spurred lynch mobs may have found tenuous legal support for their actions in the *SCU*, every individual's attitude toward their role in Republican politics anticipated how that violence would be received in the city at large. Depending on a Roman's ideological perspective—how much they see their *dignitas* violated, how much they feel their *libertas* threatened, however much they perceive the functioning of the political apparatus as a manifestation of their political ideals—he might measure the legitimacy of a violent action on an altogether different standard than the violent actor.

In the aftermath of Cicero's consulship in 63, no one justification universally legitimized violence. Rather, a person's role in the action, whether actor, victim, or spectator, influenced how that violence resonated with them, and if they perceived the

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[47] Lintott, *Violence,* 165-6. See below for a more fleshed out discussion on Cicero's actions during the conspiracy.

[48] Lintott *Violence,* 160-175. Despite overwhelming popular support, Gaius Gracchus waited until he was tribune, 10 years after his brother Tiberius' murder, to form a legal case against Scipio Nasica (Plut. *C. Gracchus*. 3).

violence as a facet of normal Republican government. There was certainly enough historical precedent for a Roman to take violent action in order to secure a right or right a wrong, and fully believe that this action was a legitimate one to take. But oddly enough the laws of motion also apply to violence: for every action there is an equal and opposite reaction. A violent action can be understood as legitimate by the actor, but the victim would necessarily have seen it differently. Victimhood was one of the main justifications for violent action, and in many political scenes of the Late Republic, violence comes from those who see themselves as the victim of previous political machinations.[49] However, while it is easy to qualify the reaction of actors and victims, it is less so for those who witness, but do not partake in, the act. The audience's response will be informed by their status in Roman society, the effect of the violence on their daily life, and, in short, whatever ideology fueled their basic political participation. It is the audience of violence that is the most unpredictable. However they receive a violent action, and however they act in response affected the aftermath of the whole ordeal. Broad popular support was necessary to implement change with some degree of success, but by entirely neglecting the thoughts of people, a politician could not only cause further violent destruction, but even lead to the downfall of the Republic. If any political actor wanted to engage in politics with any lasting effect, he would need the support of the masses. Otherwise, he was just a terrorist, destroying the Republic one throw at a time.

Burning Down the House

The conflict over the legitimacy of a violent action, especially one committed with the express approval of the Senate, came to a head in the year of Cicero's consulship, 63, infamous as the year of Catiline's conspiracy to burn Rome, and of Cicero's diligent politicking to prevent that catastrophe. Catiline was a young aristocrat, whose role in the Sullan dictatorship had garnered him money and celebrity. While

[49] Take the example of Bibulus, above. Bibulus was intending to perform his political duties, but Caesar's mob violently rejected his actions, because they perceived that they would be the victim of his political actions. Bibulus, after having stones thrown at him and his fasces broken, unleashed his own retinue on this unruly and disrespectful mob that wanted to defame his magistracy.

licentious rumors of his early life circulated around Rome, he was an expert politician who was able to stay in tune with political grievances of many around the city. In a position of popularity but with no political power, Catiline planned to take Rome by force and install a new and improved political system.[50]

One of Cicero's main tools in combating the threat of the conspirators was the special power that the Senate had invested in him by a *senatus consultum ultimum*. Throughout his Catillinarian speeches, Cicero defers to precedent and higher authorities, such as the Senate, the gods, and the people, all of whom witness the action that he takes, and whose traditional powers, if consulted, would provide his action with unassailable legitimacy. However, Cicero did not take immediate action when he was invested with special powers by the Senate, but rather waited for 18 days before bringing the matter before the people, in order to learn as much of the conspiracy as possible. Cicero's hesitancy to move quickly against the enemy, as Opimius or Marius had done before, demonstrates an anxiety over the potential aftermath of such a violent course of action. If Cicero were to bring violence into the city, even in response to such a dangerous threat, then how could he be sure that the Republic would remain safe after the visible threat had been crushed? How could he be certain that no larger threat lurked in the shadows of the conspiracy which might threaten the state with the risk of violent retaliation?

The Trial of Rabirius

Before there was even talk of conspiracy, the legitimacy of senatorial violence was under juridical review. Early in 63, the tribune Titus Labienus, a self-proclaimed champion of the people, brought a charge against Gaius Rabirius for *perduellio* (treason) in the murder of Lucius Saturninus almost forty years prior in 100. Saturninus had actually been put to death after an *SCU* had authorized consuls Gaius Marius and Lucius

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[50] Charles Odahl (2010) *Cicero and the Catilinarian Conspiracy*. Routledge: 18-25.

Valerius Flaccus to arm the population, and at the time no one contested the death.[51] Cicero defended Rabirius, who was a senator at the time of the killing, against this charge. His argument was less concerned with the details of the killing and Rabirius' exact movement throughout the whole ordeal, than with the fact that the whole accusation was in reality a challenge to *senatus auctoritas* and the institutions that supported the *imperium* of Senate, of the consuls, and of all good citizens who combat the evils that threaten the state (Cic. *Rab*. 2). Since he was consul, Cicero saw it as his duty to defend these institutions and ensure the continued safety of the Republic.

At stake in this trial was the very legitimacy of putting a Roman citizen to death: who could do it and for what reasons? These were issues that would resurface later this same year. The details of Labienus' argument have not survived, but Cicero at numerous points in his speech addresses Labienus and his ideas. Both Cicero and Labienus have well constructed arguments that justify the killing of a Roman citizen. For Cicero, death can be meted out only when there is sufficient danger to the political fabric of the Republic (Cic. *Rab*. 20). Labienus appears to have argued along a different line, that the traditional punishment for *perduellio* and citizen murder called for execution, specifically crucifixion (Cic. *Rab*. 11).[52] Fergus Millar connects the argument of Labienus to common *popularis* arguments that violence instigated by the consuls against Roman citizens was not legitimate unless it had the sanction of a vote by the people.[53] Aside from citing various precedents and laws, such as the Porcian Laws that had reaffirmed the right of *provocatio*,[54] Cicero refuted Labienus' argument by attacking his stance as a *popularis*

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[51] Historical evidence for the death of Saturninus is ultimately unclear, because of the tropic bounds of movement that later annalists imposed on the narrative. Hammar (2015), 80-81 notes that this violence was the result of popular participation. The Senate intended the *SCU* to be applied only to Saturninus, as the Gracchi had been targeted before. However, Saturninus put up a chase thorough Rome, during which the people were not explicitly lead or directed by a magistrate, and proceeded to riot through the whole city. The chaos demonstrates how "the violence introduced by the elite in 133 had now spread to the people."

[52] Later in the speech Cicero concedes that if Rabirius were to be convicted, he would not face execution. Thanks to his own political advocacy, Cicero had made sure that Labienus was unable to pursue this course of action. Exile was the alternative (Cic. *Rab*. 17).

[53] Millar (1998), 106.

[54] The *leges Porciae*, likely carried by M. Porcius Cato the Censor, were passed sometime in the early 2nd c. BCE, and extended the legal capabilities of *provocatio* to moments of unjust magisterial *coercito* such as scourging and other corporal punishments. In this way, the law allowed for the plebeians to trump the authority of magistrates and decide the fate of their own bodies. For more see Lintott, *Violence*, 89-97.

politician who supposedly had only the best interests of the people at heart. Whereas the killing of Saturninus was something that was decided upon by the good citizens, and carried out only insofar as the Republic was in danger, the execution of Rabirius would be a devolution back into the dark ages of the monarchy, when the people had not lived under the sweet light of *libertas* (Cic. *Rab*. 13).

The narrative of this trial is complex, and the citizen body played an important role. Cassius Dio examined the trial in great detail (Dio 37.26-28). Dio reports that the tribunes were eager to dismantle the power and authority of the Senate, so they targeted a single senator involved in the *SCU* and intended to subject him to the same punishment to which he had subjected Saturninus.[55] The Senate was incensed by this accusation, and even more so when they learned that two young *popularis* senators had been appointed as the *duumviri* who would preside over and ultimately judge the trial: Julius Caesar and his brother Lucius. They had been appointed to this position by the current praetor, an appointment contrary to law since the people traditionally had the power to choose their judges.[56] The *duumviri* found Rabirius guilty, so the defendant choose to appeal before a popular assembly.[57]

Cicero gave his defense speech before this assembly of the people. As the body which Labienus claimed to have represented, the people's sovereignty was in a state of limbo. On the one hand, if the people agreed with Labienus that the Senate cannot enact violence against citizens without the approval of the citizen body, then they would be submitting the legal right of their inviolable bodies to the judgment of a plebiscite.[58] But on the other hand, if they agreed with Cicero, then they would have to acquiesce to the

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[55] Dio's wording is a bit confusing here. In explaining the action of the tribunes he says "For the investigation of acts, which had received the approval of the Senate and had been committed so many years' prior, tended to give immunity to those who might attempt to imitate Saturninus' conduct, and to render ineffective the punishments for such deeds" (Dio 37.26). I interpret the quote to mean that Saturninus was ordered to be killed, because he had killed Roman citizens. But Saturninus was himself a citizen, so the citizen that killed him should be subject to the same punishment.

[56] Rabirius' trial is the only certain historical example of a trial *de perduellio*. As such we cannot be certain of Dio's claim that it was the people's lawful capability to appoint the *duumviri*. For more on the *duumviri*, see Judy Gaughan (2010) *Murder was Not a Crime: Homicide and Power in the Roman Republic*, 106-108, who argues that *duumviri* were appointed *ad hoc* to preside over homicide trials that would otherwise incur opprobrium for another magistrate.

[57] See Millar (1998), 106-8 for more on this "cooperative venture" between Labienus and Caesar.

[58] This was covered in the *provocatio* laws of the *lex Porcia*. Cicero says that "the *lex Porcia* wrested citizen liberty from the lictors. Labienus hands it to the executioner." (Cic. *Rab*. 12).

Senate whenever the Senate found something dangerous and threatening enough to the Republic that would justify citizen murder. The people's sovereignty, their ability to decide the circumstances of their livelihood and safety in *contio*, would, ironically, dictate how the *imperium* of the Senate and magistrates could be applied to citizens in times of crisis.

At the trial, Cicero addressed a jury constituted of urban plebs as well as those who had come from the farthest reaches of Italy to support Rabirius (Cic. *Rab*. 8). In addition to whatever people came specifically to support Rabirius, many in the audience seem to have been persuaded, or at least quieted, by Cicero's argument, and he interpreted their silence as tacit support (Cic. *Rab*. 18).[59] For Cicero, the voices of the people (or lack thereof) in the *contio* communicated the anxiety felt by the whole city; their silence indicated how seriously they considered the crimes committed by radicals like Saturninus, and how willing they would be for a competent institution to deal with such *maiestas* (high-treason; Cic. *Rab*. 35). Whatever the result of this case might have been—the *contio* was disbanded early because of a (fake) threat of foreign invasion, and Labienus, for unknown reasons, chose not to take further action (Dio. 37.27)—it is clear that issues of popular sovereignty, homeland security, and legitimate murder occupied a precarious position in the minds of the Romans. The friction between senatorial action and popular approval was such that it had always been a part of Republican politics, but following this case, issues over the legitimacy of violence often tended towards resolution by violence.[60]

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[59] Despite the large support for Rabirius, a few people shouted dissent at Cicero's claim that Saturninus was an enemy of the people. (Cic. *Rab*. 18). Vanderbroek (1987), 231 notes that this is the only case where the direct public reaction to a speech is recorded in the speech itself. Popular reaction to a speech, however, was an incredibly vital aspect of the performance of politics, and indicated popular reception of that speech.

[60] Millar (1998) briefly addresses this trial. He notes that "a major issue of internal sovereignty was at stake, and while we can observe the complex arguments from historic precedents that are employed, we are unable to be sure of the precise context or of whether any of these arguments were convincing to the people" (Millar (1998), 108). Lintott, *Violence,* 159 concludes from this trial that the *SCU* was the most emphatic of self-help procedures. While self-help was on occasion justified, the ultimate decree must not only be followed by those to whom it is addressed, but also "demands the obedience of *privati* to those same magistrates."

The Catilinarian Conspiracy

The questions of who had the right to execute citizens and under what circumstances acquired an even more immediate relevance following this trial. After the Senate issued their ultimate decree in response to knowledge of Catiline forming an army in Etruria, Cicero found himself in the very same predicament he had hypothetically supposed at the end of his defense for Rabirius (Cic. *Rab*. 35): what should a consul do when someone causes a massacre of citizens, and seizes the city with armed forces? The only thing to do is act as Marius did, and exhort the Senate and the people to take up arms and defend the republic. But what if there is only a vague indication of armed revolt, no apparent weapons, no sign yet of radical violence, and no disruption in normal political activity? How might a consul take action against a well hidden conspiracy?

Cicero would have known nothing about any planned conspiracy unless it had been for certain informants loyal to the Republic. One conspirator, Quintus Curius, was having an illicit affair with one Fulvia, who learned of the horrible plots, and began to spread rumors about future chaos and danger.[61] With the rumor of conspiracy and terror sweeping across the city, Sallust reports that the people were terrified enough to put aside their jealousy and pride and elect Cicero, a new man from a new family, to the consulship (Sall. *Bel*. *Cat*. 23).

In July 63, around a year after these rumors began, Catiline lost the consular elections, and he and his supporters were outraged at the defeat. The conspirators all began to double their efforts to take over the Republic. Informed by more leaks, Cicero realized that there were two options to deal with this vague threat: either he could expose what little he knew about the conspiracy to the people, in hope that they join him in taking up arms in defense of the Republic; or he could continue to investigate the rumors independently, in order to accurately identify who was guilty of conspiracy. If he were to follow the first line of action, Cicero knew that there would be someone who would accuse him of acting with too much haste and severity (Cic. *Cat*. I. 5). At the time, the

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[61] See Sall. *Bel*. *Cat*. 23-6 for more on Cicero's alliance with Quintus Curius and Fulvia, both of whose participation in the conspiracy had been leaked to Cicero, who then was able to convince them to become his informants. This Fulvia is likely not the one who was married to Clodius, and later Marc Antony.

extent of the conspiracy was entirely unknown, so if any one of Catiline's supporters were overlooked in the purge of enemies, then the purge would be entirely ineffective, leaving at least one radical behind to continue Catiline's legacy and presumably employ more violence.[62] But if Cicero were to wait, then he would risk the possibility of the conspiracy coming to fruition before he had adequately prepared defenses. Moreover, if he continued to pursue a private investigation, he risked future accusations that he never consulted the people about such a public calamity. Luckily, Cicero found the perfect opportunity to expose part of the conspiracy to the Senate and the people after a plot against his own life was thwarted by his network of friends and informants.

Cicero used this opportunity to present tangible evidence that Catiline and his cronies posed a threat to the Republic. Cicero needed such physical evidence to point to in order to effectively accuse and pursue Catiline because, as reluctant as Cicero was to admit it, Catiline presented himself expertly as an agreeable politician. He had something to offer everyone. As Cicero admitted in his defense of Marcus Caelius, seven years later, so many people were charmed by Catiline because:

> *versare suam naturam et regere ad tempus atque huc et illuc torquere ac flectere, cum tristibus severe, cum remissis iucunde, cum senibus graviter, cum iuventute comiter, cum facinerosis audaciter, cum libidinosis luxuriose vivere.*
>
> he could guide and bend his natural character as occasion required, speaking seriously with the austere, lightheartedly with the lax, gravely to the old, amicably to the young, boldly with the criminals, and dissolutely with the depraved. (Cic. *Cael.* 13)

[62] Cicero does not mind if this violent reaction targets himself, for that is a risk inherent in his office. However, he cannot allow the threat of greater violence in Rome, and so sees it as his duty to minimize chaos and destruction.

Sallust corroborates Catiline's appeal to the masses of Rome, who, according to him, were so depraved and disillusioned with the ills of Roman society that they were ready and willing to follow Catiline in his revolution (Sallust *Bel. Cat.* 37).[63]

Who were these disillusioned Romans willing to follow Catiline with the hope of a better life? Cicero and Sallust describe roughly the same types of people who supported Catiline. They were wealthy debtors with all of their money tied up in land, wealthy debtors with no money at all, retired military thugs who wished a return to Sullan times, and the general rabble of criminals, thieves, and troublemakers (Cic. *Cat.* II, 17-23; Sall. *Bel. Cat.* 37). However, neither of these authors question why these people support Catiline. Recently, Erich Gruen has identified two groups of people functioning within the conspiracy.[64] First are the leaders of the conspiracy, who seem to be unique in that they faced no economic hardships. Rather, "disgruntlement, indignation, and an avaricious political appetite" fueled their drive.[65] Opposed to these leaders were the members of the general population who faced some sort of economic difficulties. Either they were buried in debt, or they were still suffering from financial losses resultant from Sullan proscriptions, or simply landless veterans. Following the failure of a land distribution bill early in 63, many of these downtrodden plebs, as well as sympathetic young aristocrats, must have felt frustration at their government and wished for some form of change.[66] In this case, Catiline's charms would have only been a bonus for the citizens trying to improve their livelihood.

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[63] Sallust seems to think that the people were actually willing to give up whatever political power they had because of the difficulty and inherent risk of political participation in this period. His lament that everyone who proclaimed to be fighting for the rights of a particular group (Senate, urban, rural plebs, etc.) was actually vying for their own interests (Sall. *Bel. Cat.* 38-9*)*, reminds me of Juvenal's comment on the willingness of the plebs to hand over power simply in order to receive bread and circuses (Juv. *Sat.* 10. 77-81). Both of these statements are too reductive of the true behavior and attitudes of the plebs, who likely were aware of the growing emphasis on personal glory and private wealth in the Late Republic.

[64] Gruen, *LGRR*, 420-431.

[65] *Ibid.*

[66] Cicero spoke to the people about this bill (Cic. *de Leg. Ag.*), where he argued that it was not a bill that reflects the good will (*beneficium*) of the people, but rather a limited faction. Millar (1998) 102-105 follows Cicero and calls the methods of this so-called *popularis* faction "perversions, or inversions of known *popularis* measures of the past."

Another problem when dealing with ancient references to the people is "the patent lack of interest in them shown by the ancient writers."[67] The terminology of the ancient sources when referring to "the people" is always rather vague and all encompassing. Millar brings up the distinction between the urban plebs living in Rome, whose close proximity to the political spaces made their political participation much easier than for the Italian plebs, who lived all over Italy, and had recently been granted voting privileges (*suffragium*) after the Social War.[68] While Catiline certainly had appeal among both urban and Italian plebs, Millar identifies the Italians as some of the more passionate participants in the conspiracy, pointing to Catiline's dependence on Etruria for both a military force that would hold their lines until the very last, and also for a political force that might get him elected to the consulship.[69] At the consular election for 62, Cicero described Catiline's supporters as "an army (*exercitu*) of colonists from Arrenium and Faesulae" (Cic. *Mur*. 49-53).[70] Regardless of Catiline's political actions and intentions, he appears to have had a very strong and wide base of support among the lower classes of Roman citizens, who could vote, fight, and were displeased with the *status quo* of a senatorial oligarchy.[71]

None of this is to say that everyone supported Catiline. Catiline's behavior, and that of his pseudo-army of vagabonds and criminals, at the consular elections was so uncouth and vaguely threatening that Cicero called for the temporary dissolution of the electoral body until Catiline's motives could be uncovered (Cic. *Mur*. 49-53). Cicero

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[67] Mouritsen (2001), 17.

[68] See Taylor (1966), Millar (1998), 1-49, and Rachel Feig Vishnia (2012) *Roman Elections in the Age of Cicero*, Routledge, 105-149 for more on Roman voting practices and customs; for more on the Social War, see P.A. Brunt (1988) "Italian Aims at the Time of the Social War" in *The Fall of the Roman Republic*.

[69] Millar (1998), 111. All throughout Sallust's narrative, Catiline associates with rural plebs, who have made the journey to Rome in order to vote for him. For the devotion of Catiline's army to their commander, see Sall. *Bel. Cat*. 61.

[70] Despite Cicero's rhetorically emphatic description of the evil Catiline in this passage, the custom of canvassing for votes all throughout Italy was common in Cicero's time, and even used by the orator himself in order to successfully gain the consulship. For more see Millar (1998), 94-100. Also see Cicero's *Pro Murena* for a representation of customary electoral practices.

[71] Slaves most certainly did not join in the conspiracy. Cicero never speaks transparently about them, indicating that he is unsure in the moment whether slaves were involved. Cicero brings up the issue despite his ignorance because the threat of slave revolt was a very real and tangible threat to the Romans, who probably lived through Spartacus' revolt in the late 70s. Rumors of slaves are a fabrication that play along social anxieties. Catiline refused to enlist slaves for the very reason that they would dissuade his current army of citizens. For more see Gruen, *LGRR*, 428-9.

questioned Catiline in a Senate meeting the next day, to which Catiline, feeling quite attacked, responded "Inasmuch as I have been cornered and am being driven to desperation by my enemies, I shall put out the fire besetting me with destruction (*ruina*)."[72] So disturbed by this implicitly threatening response, Cicero feared an immediate attack on the Republic. Even though he did not have the extraordinary powers of a *senatus consultum* supporting him at the time, he put on a breastplate, gathered a strong band (*praesidium*) of noble youths and friends (*amici*), and marched around the city in order to rally the citizens of Rome to the aid and defense of both the consul and the Republic, which is exactly what the citizens did (Cic. *Mur*. 52). In this moment of a perceived threat to the Republic, Cicero resorted to *provocatio*. By calling for assistance in the name of the Republic, Cicero implored the faith (*fidem implorare*, cf. Cic. *Rab*. 3) of the citizens to defend himself and themselves against the threat of destruction. While no physical violence actually resulted from this whole ordeal, Cicero justified his violent posture by citing the defensive and protective benefits his *praesidium* provided. As the orator presents it, Catiline postured towards violence in the election because he wanted more power, but Cicero did so because he wanted to preserve the republican political institution and avoid whatever mysterious tyranny Catiline had planned.

However the urban plebs felt about Catiline's politics prior to the conspiracy, attitudes changed drastically after Cicero revealed what he had learned in his *Third Catilinarian*, delivered before the people on December 3, about three weeks after his first and second orations on the subject.[73] In this speech Cicero set out his full narrative of the events to the people for the first time: what he learned the conspirators had planned, how he had investigated the matters, and that the chief conspirators were now in custody awaiting punishment. While Cicero was unable to say what punishment they would receive, he emphasized the clemency (*lenitate*) of the Senate in selecting and detaining only nine conspirators of the many malcontents in Rome (Cic. *Cat*. III, 15). It was important for him to present his and the Senate's action as clement because of the

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[72] *Ruina* refers to the practice of demolishing houses in the path of a fire, in order to stop the fire's progress. Sall. *Bel*. *Cat*. 31 places this quote in a different scene than how Cicero describes it in the *Pro Murena*. In Sallust's narrative, Catiline responds with this line to Cicero's *First Catilinarian*, delivered in November, before darting out of the Senate and the city.

[73] The *First Catilinarian* was delivered to the Senate on November 8, the *Second* to the People on the next day, November 9. See Millar (1998), 110-111 for a more detailed chronology.

sentiment he expressed in the previous *Catilinarians*, that if he were to take forceful action against any of the conspirators, then more conspirators might be waiting in the shadows for violent retribution (Cic. *Cat*. II. 3). Now that Cicero had either apprehended or driven the most dangerous radicals from the city, it was safe to address the people and expose the conspirators' horrible plans. Despite Sallust's otherwise colorful and somewhat disparaging comments on the Roman crowd, his representation of this scene is a powerful one:

> *Interea plebs, coniuratione patefacta, quae primo cupida rerum novarum nimis bello favebat, mutata mente Catilinae consilia exsecrari, Ciceronem ad caelum tollere; veluti ex servitute erepta gaudium atque laetitiam agitabat.*
>
> After the disclosure of the conspiracy, the plebs, who at first had desired revolution and been all too supportive for war, now changed their minds and denounced the plots of Catiline, while extolling Cicero to high heaven, showing joy and exultation as if they had been freed from slavery. (Sallust, *Bell. Cat*. 48)

What were these plans of Catiline which, exposed by Cicero, disturbed the people so much that they rallied behind the consul for the safety of the very political institution which they had just desired to overturn?

In brief, Catiline planned to burn down parts of the city, including the houses of chief politicians, slaughter these politicians, and then join an army that would attack and take the damaged city by force. Sons were to attack their fathers, citizen was exhorted to fight citizen, and bloodshed, smoke, and confusion were to be the downfall of the Republic (Sall. *Bel. Cat*. 43). The beginning of the chaos would be a *contio*, in which the plebian tribune Lucius Bestia would condemn the conduct of Cicero and place the responsibility for a horrible war upon him. On the following night, once Bestia's comments had had sufficient time to register with the people and fester in their minds, the conspirators would rally groups and begin the terrible work. It is interesting to note that the chaos would begin on a constitutional note. In this planned *contio*, Bestia was essentially calling upon the citizens for assistance against the over zealous Cicero, who was in some way damaging their livelihood. *Provocatio* in this sense was a traditional and justifiable action, but the means by which the conspirators planned to right the wrongs were entirely out of proportion to the threat that they faced. In fact, the very

nature of this *provocatio* as a result of a planned conspiracy lent an unjustifiable and entirely illegitimate quality to its efficacy. The violence had been premeditated, and as such was unforgivable.[74]

The secretive nature of the conspiracy, and the cruelty at which it aimed, is what so effectively changed the minds of the plebs. According to Sallust, they took issue with the rampant destruction that would follow the conflagration, which would destroy more goods than it could produce for them (Sall. *Bel. Cat.* 48). Apart from the implication that the plebs seem to be only interested in what they can best profit from the quickest, Sallust's presentation of the crowd's reaction indicates the relative ignorance about the details of Catiline's plans, and even to the fact that Catiline had a violent plan at all. In his first speech, Cicero had informed the Senate of a meeting at the house of Laeca, at which Catiline had planned the war and delegated the destruction of the city (Cic. *Cat* I. 9). The plans for fire and blood that Catiline and his fellow conspirators had created were unknown to all but themselves, and would have continued to be if not for Cicero. Without the consul's intervention, perhaps Bestia would have successfully mobilized the plebs against the large and menacing senatorial oligarchy. But as it was, Cicero got to the people first, and was able to rally them to his own cause, the defense and safety of the Republic.

Cicero performed his defense of the Republic in a way unlike any other who had the same responsibilities in a similar time of crisis. Whereas Lucius Opimius had not waited a day to take up arms against Gaius Gracchus because of "vague suspicions of treason" (*propter quasdam seditionum suspiciones*), nor Gaius Marius and Lucius Valerius against Saturninus, nor Servilius Ahala against Maelius,[75] Cicero waited eighteen days on the *senatus consultum* to even bring an accusation against Catiline (Cic.

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[74] See Fagan (2011), 82-485; Lintott, *Violence*, 9; Above.

[75] This is a reference to an issue in Conflict of Orders. Ahala was the Master of Horse, the second in command, in Cincinnatus' dictatorship. He killed Maelius, a wealthy plebian, because he was selling grain for a low price during a particularly harsh famine. Ahala justified this killing by accusing Maelius of striving for undue power (Livy 4, 13-16). Cicero brings up this story on other occasions, usually to present a legitimate killing of one striving for regal power: cf. Cic. *Milo*, 3; and Cic. *de Sen.* 16.

Cat. I, 4).[76] As we have seen, he waited for so long because he wanted to learn as much as he could about the conspiracy, and find the best way to eliminate the threat without horrible repercussions towards either himself or the Republic. However, even after Cicero had presented the first indications of conspiracy to the Senate and the people in the *First* and *Second Catilinarians* he still did not advocate for assault, but for defense. He eschewed the possibility of *tumultus*, a state-of-emergency procedure to arm the citizens which Marius, for example, had used against Saturninus, in favor of *praesidium*, a defensive body of citizens and friends that were commonly found around high-ranking politicians or other notable people in danger (Cic. *Cat*. I, 1; II, 28).[77]

Cicero wanted no fighting in the city whatsoever. In the first two *Catilinarians*, he repeatedly called for Catiline and his sympathizers to leave the city, form their army outside the confines of civic life, and fight their war as the enemies of the state that they really were. By exposing the plot to Rome, and allowing the conspirators to flee the city, Cicero created a situation where "you could see your enemy clearly and fight him in the open" (Cic. *Cat*. II, 4). With the enemies of the state thus spatially removed from the polity, Cicero created a situation in which the death of Roman citizens could be legitimate. The conspirators could go into voluntary and perpetual exile, or they could join Catiline's army against the Republic, whereby they would actively reject any rights and laws that protected their life under the Republican constitution. If they remained in the city to continue their sedition, then Cicero claims that their execution would be all the more justifiable, because there are ordinances of long standing which provide the penalties for such hideous crimes against the Republic (Cic. *Cat*. II, 27).[78] Cicero's colleague, Antonius, along with a few legions had already been dispatched to confront Catiline's army in Eturia, and Cicero would see to it himself that "not even a common

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[76] It is impossible to know if Cicero's emphasis on clemency appeared in his original speeches or not, since he edited, published, and circulated them shortly after the affair. If it only appeared in the published editions, it would be an appropriate *post hoc* justification for his action. For more on editing published speeches to include things either the speaker could not say, or chose not to say publically, see Mouritsen (2013) "From Meeting to Text," in *Community and Communication*, 63-82.

[77] Lintott, *Violence,* 90-91 elaborates on the difference between *praesidium* and *tumultus*. The former might be used in situations of minor violence, but its operations were limited "spatially and legally." The latter was much more rare. Involving the full mobilization of the citizen body, complete with distribution of weapons, *tumultus* was essentially "the only method of conscripting soldiers at short notice."

[78] It would be interesting to know if these same precedents were cited by Labienus in Rabirius' trial.

criminal suffer the penalty for his crime in the city," unless the threat against the Republic was so manifest that he, the Senate, and the gods could not maintain this policy of clemency (Cic. *Cat*. II, 28). None of this is to say that Cicero was a non-violent pacifist. By offering the conspirators a second-chance outside of the city, Cicero constructed and placed the conspirators in a new social identity closer to "enemy" (*hostis*) than "Roman." With this alternate identity, the conspirators would have none of the legal or social protections that applied to Roman citizens. Their deaths would be legitimate, because in life they offered a uniquely dangerous, and very real, threat to the Republic.

Cicero relegates violent behavior to a space outside of the city. Violence and fighting had no place inside the Servian walls, where citizens should find a peaceful, or at the least civil, space of public and social activity. Catiline represented such a threat to the Republic because he was able to abuse the system of government for his own benefit.

> *Ille erat unus timendus ex istis omnibus, sed tam diu dum urbis moenibus continebatur. Omnia norat, omnium aditus tenebat; appellare, temptare, sollicitare poterat, audebat.*
>
> Catiline was the only one out of [all the conspirators] to be feared but only insofar as he was within the walls of Rome. He knew everything, he could go anywhere. He had the ability and nerve to approach men, sound them out, and win them over. (Cic. *Cat*. III, 16)

In itself, the politicking skills of Catiline posed no real threat to the Republic, because those skills were the foundation of republican political practice, based on networks, community, and agreements of mutual benefit. Rather, for Cicero, it was the insidiousness and unbridled ambition of Catiline's character that made him so dangerous to the current institutions, especially since he had already climbed the *cursus honorum* and thus had enough *dignitas* to affect political change (Cic. *Cat*. III, 16). As a recognizable political actor who regularly appeared in the Forum, Catiline was one of the many magisterial orators who had the privilege to speak to the crowd in *contio*, motivate them to action, and even influence where that action could go. This authoritative position could allow him to instigate the crowd and start a riot, if he chose to do so.[79] By removing

[79] Hammar (2015), 75-87 suggests that "the elite themselves are at fault for the instigation of popular violence. The way they conduct their business of state is what causes popular sedition."

Catiline from the political space of the city, he would no longer have his dangerous ability nor be able to expand his conspiratorial network any further.

It is worth repeating that Cicero did not advocate for a policy of non-violence. The threat to the Republic was too great for Cicero to allow Catiline to continue living as a Roman, and he even feigned surprise at himself for not having already killed Catiline, although so much precedent existed to have justified that action (Cic. *Cat*. I, 2). However, the threat that Catiline posed was not so concentrated as in the previous cases of Republican emergency. Catiline was the head of a conspiratorial 'beast,' and a whole body existed that followed his will, which might even be able to act after the head's destruction, lashing out with violent retribution (Cic. *Cat*. I, 5). And like a chicken running around without its head, this decapitated beast would act with about as much (or as little) measure, precision, and tact as one might expect.

The chaos that could envelop Rome after an assassination of Catiline was an important factor that motivated Cicero to act as he did. As the self-proclaimed savior of the Republic, he wanted not just to preserve the institutions and buildings, but also the citizens and general population. His chief goal was to avoid the result of previous civil wars: the inevitable pile of corpses whose number choked the streets of the Forum and whose blood stained the pavement (Cic. *Cat*. III, 24). After forcing Catiline to leave the city, Cicero encouraged the urban plebs at Rome to stay vigilant and defend their homes (Cic. *Cat*. II, 25). The few weeks in between Catiline's expulsion and the full uncovering of the plot must have been quite stressful, since it was a period of mystery, confusion, and looming danger. Sallust paints a picture where men and women both run through the street, beating their breasts, and cursing such terror and despair (Sall. *Bel*. *Cat*. 31). But once Cicero uncovered the whole plot and apprehended the most dangerous conspirators, he found great reason to celebrate, because the Republic "had been rescued from the cruelest and most pitiable deaths…without bloodshed, without an army, and without fighting" (Cic. *Cat*. III, 23). This statement may have been a bit premature, since later there was an army, and there was fighting, and Catiline's entire army, apart from some deserters, was wiped out in Etruria. But Cicero's main goal to expel the violent threat from the city succeeded without violence. By creating such a stark, spatial division between Roman and conspirator/*hostis*, Cicero could comfortably pursue the idea of

execution without much concern for the legality of punishment in regards to Roman citizens. If one could prove that another had taken up arms against the Republic, then a number of laws provided for their trial and punishment.[80]

Now that the conspiracy had been exposed and the conspirators apprehended, the tricky question of what to do with the prisoners remained. Based on the social attitudes towards violence, punishment for their crime should be no less than they deserved. Cicero had been hesitant to pursue justice along the lines of self-help procedures, like *provocatio*, to quickly and decisively put down danger.[81] He avoided crowd-based action throughout the whole ordeal, and focused more on the investigative capabilities inherent to his office, and whatever additional power was given to him by the Senate. With evidence from the Allobroges envoy apprehended on the Mulvian Bridge, and the confession of Titus Volturcius, Cicero and the Senate were finally able to identify the leaders of the plot among their own ranks (Sall. *Bel. Cat.* 47-49). The conspirators were given over to individual senators for detainment,[82] and Cicero proposed a debate in the Senate to address the matter of punishment. Discussion of the matter in the orderly and ritual scene of the senatorial meeting would make the decision to execute the citizen-conspirators seem cooler and more reasoned than the impulses of a hot-blooded lynch mob in the literal pursuit of the public enemy. On the other hand, keeping the matter exclusively in the Senate entirely shut out the voice of the people.

In this meeting, represented by Sallust, a debate emerged concerning the proper measure of punishment and the nature of cruelty (Sall. *Bell. Cat.* 50-55; Cic. *Cat.* IV). Consul elect Decimus Iunius Silanus was the first to speak, urging the Senate to vote in favor of capital punishment (*summum supplicium*). Caesar then responds to this proposal

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[80] For example, the *Lex Plautia*. See above.

[81] Interestingly, Cicero does imply his wish for the aid of armed citizens should any remaining dissidents focus on Cicero as the sole object of their violence (Cic. *Cat.* III, 28). While he is speaking about a hypothetical scenario, he appeals along the lines of self-help: If the citizens see their savior in peril, they should save him, using whatever force may be necessary. Cicero has already authorized violent retaliation by his own admission to seek out and destroy evil before the evil strikes what is good.

[82] The terminology for this detainment is *in custodiis*, or "under guardianship." It roughly equates to a more rigid form of the personal justice discussed above. It is the plaintiff's responsibility to assure an accused will show up to trial, so keeping the accused with you at all time was a safe bet. The conspirators were obviously too dangerous to be set free, so they must be watched until their trial. For more see Corbeill (2015), 93, and Nippel (1995), 52.

by arguing for an alternative: life-imprisonment (*vincula*). In Sallust's recreation of the debate, the young senator says that Silanus' proposal seemed "not cruel—for against such men what can be cruel? —but foreign to the republic" (*non crudelis—quid enim in talis homines crudele fieri potest?—sed aliena a re publica nostra videtur*, Sall. *Bel. Cat.* 51.17). Cruelty, for Caesar, was legitimate in the present moment, because the conspirators would have behaved with just as much cruelty; along the lines of a *lex talionis*, an eye for an eye, cruel punishment awaits the conspirators. However, there were laws that forbid the execution of a citizen before appeal to a popular assembly, laws that strictly forbid the summary execution that was currently being discussed. And if they took this matter before the people, there was a chance they might let the conspirators off the hook. Caesar cites a *lex Porcia*, possibly the same that Cicero cited when attacking Labienus' proposal for the execution of Rabirius (Cic. *Rab.* 11-13). Given the illegality of summary execution, and the irresponsibility of releasing such criminals to the world, Caesar proposes the original alternative of life imprisonment throughout the towns of Italy, confiscation of all property, and a total refusal to ever hear their cases again, on the appeal of the Senate or the people, and to declare any such action treasonous (*contra rem publicam et salute omnium*, Sall. *Bell. Cat.* 51.43). They can keep hold of their bare life, but let them be stripped of their political and social capabilities.

This proposal gained some traction at first, but then Cicero and Marcus Cato came forward and advocated for the death penalty. They argued that this novel punishment, life-imprisonment, was more cruel than swift execution, because it required the coerced compliance of towns all around Italy to accept the burden of dangerous and controversial criminals. What's more, the interdict against future appeal unnecessarily violated popular sovereignty, at the same time as preserving the conspirators lives, which would only be tenuously held by Italian forces. At any moment they could be potential targets of future and unpredictable popular action (Cic *Cat.* IV, 11).

The conspirators must also be treated by the *boni* just as unruly slaves are treated by their masters. Cicero argued that any man who did not take retributive action against a slave that plotted to kill his entire family and run off with all of his goods was unfeeling and made of stone (*importunus ac ferrus*, Cic. *Cat.* IV, 12). Similarly, in Sallust's debate, Cato argues for punishment as if the conspirators had been caught red-handed, a

circumstance where it was entirely legal for a citizen to mete out death to another citizen, provided that the criminal posed a sufficient threat (Sall. *Bel. Civ*. 52).[83] Plutarch, supposedly summarizing from the only speech ever published by Cato, gives the old senator very vociferous and passionate words against the political character of Caesar, which he perceives as too lenient and favoring the conspirators who subjected Rome to great fear and danger (φόνων μεγάλων καὶ κινδύνων, Plut. *Cato Min*. 23). Both Cicero and Cato argued that the conspirators should be subject to the same social norms that govern violence daily on the streets. Since they intended to destroy the homeland, it only made sense against the cultural logic at the time that the homeland attempt to destroy them in return, for the sake of defense and security.

But these speeches overlook a key legal necessity. Cicero grossly misrepresents the *lex Sempronia*, passed by Tiberius Gracchus to ensure that no Roman citizen could be sentenced to death without appeal to the people (Cic. *Cat*. IV, 10). Cicero claims that the conspirators have rejected their citizenship by their seditious actions, but this claim functions on the very assumption that Gracchus' bill sought to suppress. A citizen cannot be treated as anything other than a citizen with the right to appeal to the people.[84] While Cicero might be able to boast that he had removed all *hostes* from the city in order to fight the civil war away from the polity, the law still holds that it is the people who should have the right to determine how their fellow citizens are treated.[85] Cicero's rhetoric glides over this necessity. By so firmly presenting the conflict as a war rather than a political conspiracy, he was able to successfully persuade the Senate to vote for execution.

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[83] From the XII Tables (1.18), it was entirely permissible to kill a thief, "provided that the confrontation occurs at night, or that the victim has acted in self defense." Such action is permissible in the day-time only if *provocatio* had been employed and a crowd gathered to witness the act. (Corbeill (2015), 92). See also Lintott, *Violence,* 13.

[84] The Sempronian Law reads: "Let the head of citizens not be judged without the order of the people" (*ne de capite civium iniussu populi iudicaretur*). This law applied to those citizens who had already been condemned by a jury, composed of exclusively senatorial jurors. When this law was brought up in court it usually addressed whether or not a *SCU* and the motive to secure safety for the Republic was sufficient to justify citizen murder. It did not address the legality of an *SCU*. For more see Cic *de Or*. 2. 132; also Gaughan (2010), 104, 119-20. In all recorded cases of such trials, there was never a verdict.

[85] A quote from Thomas Paine: "He that would make his own liberty secure, must guard even his enemy from oppression; for if he violates this duty, he establishes a precedent that will reach to himself." (*Dissertation of the 1st Principle of Government*, 1795).

They carried out the sentence the same night as the debate. Plutarch provides a narrative of the execution, which has a certain drama that captures the aura of the Forum in such troubling times.

> First [Cicero] took Lentulus from the Palatine down along the Via Sacra through the middle of the Forum, with the men of the highest authority surrounding him as a bodyguard, while the people shuddered at the events and passed along in silence, especially the youths, since they thought they were being initiated with fear and trembling into some ancient mysteries of an aristocratic regime. (Plut. *Cic*. 22)

As Plutarch presents the scene, the people were unsure of what was happening. The debate in the Curia for the execution had concluded just moments prior, and the news of the proceedings was only just beginning to seep out into the crowd in the Forum. Each conspirator was escorted across the Forum in same slow procession, and for the entire procedure the crowd continued to look on in silence and anxiety. To make the fact known after the executions, Cicero mounted the Rostra and shouted "Vixerunt!" ("They have lived, [and live no longer]"). At this, the crowd exploded with joy and celebration and escorted the triumphant Cicero back to his Palatine home. Functioning under the adrenaline rush of a near-death experience, the Senate and the People welcomed the execution and the immediate relief from danger. But as time passed, people began to question the shady activities of the Senate, whose meeting they had not been privy to, and whose actions had bypassed their legal powers. It did not take long for the discomfort to become a hot topic for public debate in the Forum.

Rising Dissent

At first, many senators resented Caesar for his unusual proposal. A short time after the conspiracy, senators and *equites* confronted Caesar, and threatened him to such a degree that he summoned the plebs to help him (Plut. *Caes*. 8). He had previously been pursuing a *popularis* political career, so the people responded well to his request. The plebs were outraged that the Senate would attack their political representative so easily, and Caesar helped to stir up the people by vociferously denouncing the Senate in *contio*. In order to soothe the tension, M. Cato proposed a grain bill that would supply everyone

in Rome with a guaranteed affordable grain ration (Plut. *Cato Min*. 26). Many were satisfied by this request, and ceased to see their government as hostile to their interests.

The Tribune Quintus Metellus Nepos was the first to attack Cicero's actions regarding the execution. Upon Cicero's exit from office, Metellus vetoed his final address to the people. His specific reasons for doing so are unclear, but Dio attributes it to the injustice of citizen execution without the consent of the people (Dio 37. 42). Cicero wrote about this event a few years later in a speech against Piso. He says that he used the opportunity of the oath required by every magistrate leaving office to include a little more than was customary, taking the opportunity to remind the audience that the *res publica* and Rome had been saved by his sole efforts (Cic. *Piso*, 4-7, *Ad Fam*. 5.2.6-8). The response of the people was such that Cicero imagined the whole population of Rome enthusiastically escorting him home. Cicero deftly and paradoxically turned the veto of an opposing tribune into a chance to address the people and engage "in a dialogue in which the people could make a formal response."[86] To Cicero's benefit, the crowd agreed with him in the moment and lauded his speech and service as consul. They saw no reason to follow Metellus Nepos and engage in violent retribution of neglected rights. It would only be a few more years before the tribune Clodius could rally the support necessary to bring popular justice down on Cicero.

With the conspiracy finally quelled and all its participants either killed or expelled from the city, peace could finally return to Rome, at least in theory. But Metellus Nepos was not pleased with the stunt that Cicero pulled at his exit *contio*. He continued to denounce Cicero, the Senate, and the perilous state of the Republic. As a remedy for the instability that he perceived, he introduced separate motions in the Senate and to the people for recalling Pompey from Asia with his army. They might bring order to this state of confusion. Fearful that Metellus was trying to use Pompey and his army as a tool to gain personal power, the tribunes Cato and Quintus Minucius agreed to veto the motion. During the vote in the Senate, they instructed the clerk who read aloud the bills to stop reading Metellus' bill. After the clerk put down the bill, an infuriated Metellus picked it up and continued to read it out. Cato seized the bill from his hands, but Metellus

[86] Millar (1998), 113.

had the text memorized. In order to physically stop him from speaking, Minucius plugged Metellus' mouth with his hand. While this action was constitutionally legitimate, based on the powers of a tribune's bodily *sacrosanctitas*, none of the present crowd saw it as such. Tensions erupted, and the two sides, those who supported Metellus and his bill, and those who supported Cato and his veto, fought a battle with stones and clubs. Plutarch says that Metellus, supported by Caesar, was able to seize the Forum and begin the voting procedure, only for it to be disrupted and disbanded by Cato's reinforcements (Plut. *Cato Min*. 27-29). The Senate soon reconvened, and gave the consuls charge of city, so that it might suffer no harm (Dio 37.43).

With this *senatus consultum*, we come full circle back to the beginning of Cicero's dilemma, but now the enemy is much less clear. Far from being hidden in the shadows, plotting to overthrow everything good in life, political enemies were fellow citizens, who disagreed on past action. Ideologically, they approached matters of politics differently, with the result that whatever opinions arose after a controversy could be diametrically opposed, and to such a degree that they could lead to even more violence. Whatever threat Catiline and the conspirators posed for the Republic did not justify the summary execution of Roman citizens. But at the same time, dangerous radicals could not roam the world freely, especially when their plots could become a reality. There was no easy option for Cicero or the Senate to follow. All they could do was act with as much purpose, efficiency, and precedent as they could, in order to minimize fallout danger, whether it come from radical dissidents, or the constitutional body of the people.

Operation: *Libertas*

In this chapter, I analyze how plebian tribune Clodius organized and mobilized a popular movement with the rhetoric of popular liberty. Through relevant and helpful legislation, Clodius established a connection with urban plebs, in whom he was able to revive a sentiment of popular sovereignty. Opposed to Cicero's investment in senatorial authority and his summary executions of the Catilinarian conspirators, Clodius' crowd reaffirmed the people's right to appeal to the community and sent him into exile. Discomforted over the power and potential of this rising popular movement, senators arranged a counter-force. The contention between popular and senatorial forces set off the cycle of gang violence. The primary points of contention: popular liberty and senatorial authority.

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Four years after the Catilinarian conspiracy, many Romans still felt uneasy that citizens had been summarily executed. In denying the accused conspirators any sort of public trial before the people prior to their execution, the Senate had entirely overlooked the principle of *provocatio*, the traditional right of a Roman to call the community to his aid. With a trial, the conspirators could have made their (albeit, weak) case to the people, arguing that the Senate's unilateral action illegally neglected the voice of the *populus Romanus*. Following the death of the conspirators, the Senate received harsh criticism in *contiones* from *popularis* politicians like Caesar and Metellus Nepos, a partisan of Pompey, but the people were largely unresponsive, having been placated by a new grain dole, and fearing future terror besides.[1] The atmosphere changed, however, when M. Antonius, Cicero's consular colleague in 63, was recalled from his pro-magistracy and tried on a charge of *repetundis* (extortion).

While the official charge was misgovernment and extortion in Macedonia, there was powerful symbolic background to this trial.[2] As one of the leading magistrates of a controversial year, the legitimacy of Antonius' governing practices reflected on the legitimacy of that entire administration. The prosecution team, a group of promising young orators including M. Caelius, was supported behind the scenes by efforts from

[1] See Plut. *Caes*. 8, *Cat. Min*. 26.
[2] Gruen (1973) "The Trial of Antonius." *Latomus* 32:2, 301-310.

Caesar, Pompey, and Crassus.[3] This new coalition, later termed the 'triumvirate,' was just beginning to use its combined wealth and influence to assert itself in the political sphere. Their alliance did not prefigure any immediate doom for the Republic, but merely shifted alliances and concentrated a great deal of power in a few men. With their combined resources, Caesar was able to push a great deal of legislation during in consulship in 59, including land distribution bills, debt remission, and the commissioning of the first regular newsletter, the *Acta Senatus*.[4] However, he passed many of these bills in blatant disregard for traditional procedures and legitimate measures of obstruction, lending an air of hostility to the public sphere from those who opposed the coalition.[5]

Cicero was one of their chief opponents. Since he had previously contended with Caesar over the legitimacy of his repressive actions while consul in 63, Cicero naturally felt uneasy when the *populares* made this legal attack on his colleague.[6] While Cicero had his reservations about the possibility of taking up the defense of Antonius honorably, he nonetheless decided to defend him, and his own reputation, by extension.[7] He delivered a scathing invective against Caesar, whom he viewed as responsible for the whole ordeal (Dio 38.10.4).[8] Whether or not the charge actually had such a political motivation, Cicero brought it to the fore by berating Caesar. Offended but not enraged, Caesar and Pompey took their revenge on the very same day by transferring Cicero's bitter enemy into a position where he might easily attain the *tribunus plebis*, one of the most influential magistracies in Rome: Publius Clodius Pulcher was now a plebeian (Cic. *Domo* 41).[9]

Clodius quickly gained the tribunate, and from there assaulted *senatus auctoritas* on a platform of popular sovereignty. Through a thoughtful and organized legislative plan, Clodius revived an urban breed of popular politics, over which he held a great deal

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[3] Gruen (1973), 304-306.
[4] Broughton, MRR:2, 188. While no copies of the *Acta Senatus* survive, later historians such as Asconius used them as sources.
[5] For more on the formation and reception of the triumvirate, see Gruen, *LGRR*, 83-95.
[6] Gruen (1973), 304.
[7] Cic. *Att*. 12.1. For more on Cicero's uneasy relationship with Antonius, see Gruen (1973), 304-5.
[8] Cicero references this defense in a few of his later speeches, but with a (feigned) shock that Caesar had misinterpreted and overblown his well meaning criticism. See Cic. *Domo* 41.
[9] For more on Clodius adoption, see Tatum, (1999) *The Patrician Tribune*, UNC Press: Chapel Hill, 103-107.

of influence. By re-forming the *collegia*, guilds and neighborhood associations comprised of working class plebeians, Clodius provided himself with a popular force that could mobilize quickly and effectively. His *celebritas*, the public renown that developed though an agreeable political stance, grew to such a degree that he could call upon his followers for any sort of public demonstration. In *contiones*, his crowd could pass controversial, and often partisan, pieces of legislation, including the exile of Cicero, and even block the legislation of others using violence and chaos. Outside of voting *contiones*, they could raise a ruckus against politicians whom they perceived as abusing their *auctoritas*. The groups that Clodius collected fought to preserve their *libertas*, freedom from magisterial oppression. Clodius organized them along traditional lines, in response to perceived senatorial abuses of power, and, as a consequence, brought popular sovereignty to the fore in republican political discussions.

Clodius' development of popular politics in and around the *contio* escalated political tensions to a new level. As an unprecedented management of urban resources, Clodius' methods did not resonate well with many *optimate* politicians. When Clodius' mob began to outnumber and out-influence their political opponents at meetings in the Forum, the more conservative and wealthier voting population began to feel silenced. They tried the standard methods of obstruction, such as vetoes or calling for the auspices, but to no avail. Clodius' mob was passionate, and had no qualms against using violence for their own security and prosperity.

This violence was contagious. Once they realized that it could overpower traditional obstructive measures, Titus Annius Milo and Publius Sestius, both tribunes of the plebs who aligned themselves with the Senate, hired battle-trained gangs to suppress Clodius' crowd-driven political activity. Through the rest of the decade, personal feuds over public matters fueled the the contention between these forces, leading to clashes in the Forum and on the streets of Rome. While intense violence lacked immediate precedent in Roman memory, it was heavily influenced by class conflict and personal ambition. The tensions between marginalized urban plebeians, prominent aristocrats, and wealthy military leaders lead to an ideological conflict that contested the placement of political power at Rome. In the Forum, the political crowd demonstrated the value that they placed on *libertas*, and the dangers they perceived in overbearing *senatus auctorias*.

In order for these demonstrations to have any effect, the plebeians needed to be heard. Actions spoke louder than words, especially when performed by a massive, and occasionally violent, crowd.

In the 50's, collective violence began to trickle outside of the Forum and formal *contiones*. Attacking houses and jumping enemies on the street became a valuable tactic for competing politicians to intimidate their opponents. Aside from specific targeted attacks, the evidence of this collective violence does not explicitly illuminate whether there was a trend towards premeditated demonstrations or spontaneous riots during this decade.[10] Even with regards to the violent behavior of gangs, it is unclear how large these gangs were, and how large of a popular crowd would gather around to observe their planned demonstration. From our sources, it is impossible to differentiate between active gang and passive crowd.[11] With the rise of mobile and rowdy gangs, however, violence became a tool that politicians could use to block the activities of their enemies and strive towards their own goals.

Of course, each of these goals needed to be framed in rhetorically persuasive terms. Cicero is the best example of this. The surviving speeches which he delivered in the 50s are remarkably diverse in type, ranging from Senate or popular addresses, legal arguments, and even religious appeals. Throughout all of these speeches, his disdain for Clodius and the *Clodiani* is palpable. He frames each of their activities in terms of its damage to Republican traditions and institutions, while he repeatedly lauds Milo and Sestius for taking the necessary, if regrettable, step of matching Clodius in force.[12] For him, the safety and integrity of the *res publica* took precedence over everything else, and Milo was simply trying to quell the chaos that Clodius had begun. But Clodius would say that the actions of Milo, Sestius, and Cicero repressed the people's liberty. By executing citizens without trial, and by arranging gangs of gladiators and beast fighters to squash crowds of Roman citizens, Cicero, Milo, and Sestius had demonstrated a total disregard for the liberty of the people. In response, Clodius encouraged the people to reestablish

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[10] Lintott, *Violence*, 74.
[11] G. Aldrete. (2012). "Riots" in *Cambridge Companion to Ancient Rome*. P. Erdkamp (ed.). Cambridge.
[12] See Cic. *Sest*. 88-92: "if we would have violence abolished, law must prevail…; but if we dislike the admiration for justice, or if there is none, force must rule." (92).

their rights through whatever means necessary. It is no surprise that Cicero found his rhetoric threatening.[13]

Later historians and biographers including Plutarch and Dio Cassius follow Cicero, and present the violence of this decade as something dramatic and polarized, but this may be an exaggeration. P.J.J. Vanderbroek has noted that out of approximately 60 recorded riots that occurred between the years 80 and 50, only 10 were so intense that they have recorded casualties.[14] Furthermore, the nature of our evidence is such that what has been recorded is what was most exceptional. As a result, the record of such powerful events as riots and violence has likely been exaggerated. Cicero himself admitted to such "embroidery" (*soleo pingere*; Cic. *Ad Att*. 1.14.3). Nevertheless, this rhetoric does not corrupt our evidence. Rather, it reveals the power and gravity of these violent events in the Roman imagination.

Through a synoptic lens, Roman politics functioned as usual throughout the 50s. A sense of *dignitas* motivated a politician's public action, oratory rallied supporters to him, contention between classes applied pressure to the standing institutions that helped solidify rights, and precedent stood behind the justification for every public decision. But upon closer examination, many of these aspects changed in small ways. With the introduction of forces in the city, public politicians could more viscerally affirm their *dignitas* with massive retinues and intimidation tactics. A public speech could strike contention and bring parties to blows, or could placate intense passions. Popular force, originally a component of Rome's perpetual contention between the governing and the working classes, became commodified in such a way that the man with the strongest gang won the public glory. Perhaps most significantly, innovators took to the field, who were willing to try new and potentially dangerous methods that could win them, and maybe their supporters, the better life and livelihood that political action promised. The landscape remained the same, but the atmosphere changed. With an arsenal of unprecedented resources at hand, politicians put ideology at the forefront of their government and risked the lives of their supporters for the sake of a better Republic.

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[13] See below for more on Cicero's perceived threats from Clodius.
[14] Vanderbroek (1987), 148.

Enter Clodius

Before Clodius organized tight bands of popular activists, he engineered a political program that would ingratiate himself to the urban population. Throughout his political career, especially during his tribunate of 58, he developed a pragmatic *popularis* stance that attempted to make significant headway in improving the quality of life for plebeians in the city. Acting to preserve both political powers, such as *provocatio* and *dignitas*, and tangible needs, like sufficient and affordable food, Clodius embodied the values that urban plebeians needed in Rome. As a result of his tribunate, the people could live a fuller and more political life, while Clodius could apply their loyalty to his-own public renown.

The Bona Dea Scandal

Clodius became a public sensation when, in 61, he was tried under a charge of *incestum* (sacrilege) for intruding on the festival of the *Bona Dea* (Good Goddess) in Caesar's home and allegedly attempting to rape Caesar's wife.[15] While the fact of guilt was undeniable, Clodius and his friends took issue with the attempt to bring his issue in front of a public court. Aside from the offense to Roman sensibilities, the only illegal aspect of Clodius' shenanigans was the violation of the *pax deorum*, which was mended by Caesar's refusal to bring the charge to court.[16] Nevertheless, many in the Senate wished to see him publicly reprimanded. Without a strict framework for legal interpretation of religious violations, they promulgated a bill that would set up a special tribunal to try Clodius for *incestum*. This charge was technically the violation of a Vestal Virgin, but in this case it was expanded on shaky grounds to include disturbance of the Bona Dea ritual.[17]

Throughout the course of this trial, Clodius' defense team criticized the overreaching authority of the Senate in taking him to trial over a private matter that had

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[15] For a full account of the Bona Dea scandal, see Tatum (1999), 62-86.
[16] Tatum (1999), 65-67. Cicero mentions Clodius for the first time immediately after the scandal, in a short quip about how shameful such an act was (Cic. *Ad Att*. 1.12).
[17] Tatum (1999), 74-75. The senators chose to pursue this line of attack because the Vestals were in attendance at the Bona Dea rights.

been resolved on quiet terms with Caesar. They made the trial into a public sensation by framing the Senate's interpretation of the law as an excessive display of authority. On this line of argument, they tapped into the growing discomfort towards *senatus auctoritas* resulting from the Catilinarian executions two years prior. Clodius' team specifically contested the way the Senate was arranging the jury. Originally, the Senate proposed that the urban *praetor* would select the jury.[18] Clodius' defense team did not want the fate of the case to be in the hands of a *praetor* who sympathized with the Senate, so they lobbied for jury selection by lot, which would produce a more equal jury of their peers.[19] Endorsing Clodius' proposal, the tribune Q. Fufius Calenus held many *contiones* propounding on the original bill's unfair extension of senatorial power into the private lives of free Roman citizens. Cicero describes him as an out-of-touch tribune (*levissimus*), because of his blatant *popularis* rhetoric against *senatus auctoritas*.[20]

The result of these *contiones* was a general resentment of the Senate. Clodius' supporters spread this resentment by invoking the recent conspiracy, in which the consul had summarily executed Roman citizens on charges that had been discovered and discussed privately. Clodius delivered speeches with the goal of generating *invidia Ciceronis* (resentment of Cicero), in which he accused Cicero of having "fully informed himself" about the Catilinarian conspiracy (*me tantum comperisse omnia criminabatur*; Cic. *Ad Att*. 1.14.5). This quip originated in the orator's own words following the conspiracy, and was soon appropriated by Caesar and others to comment on the enormity and overbearing implications of *senatus auctoritas*.[21] Cicero's actions, although supported by a *senatus consultum*, had directly violated the liberty and safety of the people. Rhetoric emphasizing *populi libertas* and scorning *senatus auctoritas* appeared to have its intended effect. Clodius was eventually acquitted by a narrow margin. He emerged from the trial with many new public enemies, chief among them Cicero.

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[18] The *praetor* was a low senior magistracy, attainable before the consulship. Their duty was to administrate the courts and oversee disputes between citizens. This was a coveted magistracy along the *cursus honorum* and so attracted many ambitious aristocrats, who were favorably disposed to the Senate. For more, see Lintott, *Constitution,* 147.
[19] Cic. *Ad Att*. 1.14.
[20] Cic. *Ad Att*. 1.14.2; also Tatum (1999), 77.
[21] Cic. *Cat* 1.10, 27; 3.4; For Caesar's appropriation see Suet. *Iul*. 74.2; Cic. *Fam* 5.5.2. See also Tatum (1999), 278, note 127.

Hostilities with the eminent orator would define the following decade, climaxing in Cicero's dramatic exile and the destruction of his home for the construction of a shrine to *libertas*.

Caesar and the Triumvirate

As consul in 59, Caesar utilized this sentiment of popular liberty to pass legislation that favored the people. In order to gather enough votes, Caesar capitalized on his celebrity from his *popularis* political career. He added to this support by forming an informal alliance with two of the most popular and powerful men in Rome, Gnaeus Pompey and Marcus Crassus. By joining these two, he created a support base of loyal veterans with whom he could push through his legislation. He found further support with Publius Vatinius, a tribune of the plebs, who was able to contribute more popular force to Caesar's movement. After publically revealing the coalition in *contio*, Caesar proceeded to circumvent much of the Senate's authority and use the votes of the people to pass his legislation. Caesar was so intent on these goals that he resorted to violence in order to suppress the *imperium* and *auctoritas* of his colleague Bibulus.[22]

Many of Caesar's organization and mobilization tactics looked both forwards and backwards, prefiguring the rise of the gangs but still relying on precedent. In using retired soldiers, both his own and Pompey's, to increase his faction's body count, Caesar anticipated the use of gangs, but still relied on precedent set by historical *populares* like Marius and Saturninus. This force, while it had "the double bond of self-interest and loyalty," was unlike Clodius' because it was unable to be constantly present in the city.[23] Nevertheless, Caesar's use of troops to intimidate opposition and stack popular votes in his favor worked to great effect, nullifying the auspicial obstruction which Bibulus attempted to impose.

Once Bibulus realized his inability to work with his colleague by standard political methods, he resorted to obstruction of Caesar's laws by constantly watching the

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[22] Plut. *Caes*. 14; *Cat. Min*. 26-28; Dio 38.2.3, 38.5.4-3; 38.6. See also Vanderbroek (1987), 152-3: "Collective violence should be considered the ultimate means…not a goal in itself."

[23] Lintott, *Violence,* 75; 189-190. Regarding the event of 59, Lintott sees great similarity to the events of 100, both of which saw a tribune (Vatinius/Saturninus) working with a consul (Caesar/Marius) to override traditional *senatus auctoritas* and pass agrarian legislation (189).

skies for bad omens. This process, *obnuntatio*, was vital for preserving a political legitimacy traditionally granted by religious institutions.[24] By constantly watching the skies for bad omens, Bibulus was holding the *res publica* in permanent limbo. To any conservative Roman this would mean that politics must be at a standstill. Caesar, however, ignored the obstruction and continued to pass his legislation with the support he had arranged. With a loyal crowd that paid no heed to any action of the opposition, Caesar was able to pass legislation and keep it in effect.

After being thrown from the rostra, having his *fasces* broken, and a bucket of dung poured over his head, Bibulus retreated from public life for the remainder of his term.[25] Whenever he did appear, he was in squalor and dressed in the black mourning toga. This was one method by which a Roman citizen might passively appeal to the people for *provocatio*.[26] Apparently offended by this passive protest, Caesar tried to persuade a *contio* to attack Bibulus' house. However, Caesar was unable to evoke any reaction from the crowd. This anecdote comes from one of Cicero's letters to Atticus, so it must be taken with a grain of salt (Cic. *Ad Att*. 2.21.4). Whether Caesar actually intended to motivate a group of listeners in the Forum to attack Bibulus' house, or whether he gave an inflammatory speech that Cicero misinterpreted is impossible to tell. But we can see that popular reactions to *contiones* depended on the crowd. Unless a magistrate organized a *contio* in advance, he could not know who would be present, nor be certain what their reaction would be.[27] While Caesar could rely on veteran soldiers to be present for scheduled votes, he did not have sufficient renown among the important demographic of urban Roman citizens to affect large-scale spontaneous action.

There are two important conclusions from the political chaos of this year. First, that organization and mobilization were important for political activity, and second, that these factors could easily override any obstruction measures. Political vetoes and

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[24] Sometime in the middle second century, rites of the auspices had been legally codified in the *Lex Aelia* and *Fufia*. In 98, the power of *obnuntatio* was reaffirmed, through the passage of the *lex Caecilia Didia*, which held no citizen responsible for upholding laws that were passed improperly. See Lintott, *Constitution*, 62.
[25] Dio 38.6; Plut. *Pomp*. 48; *Cat. Min*. 32. Cicero is concerned that this is terrorism (*metu;* Cic. *Ad Att*. 2.19.).
[26] See above Ch. 1, and Lintott, *Violence*, 16-21.
[27] Millar (1999), 131.

obnuntatio had no constitutional defense against violence. While such repression was not a feature new and unique to this year, the circumvention of traditional procedure precipitated the rise of gangs. Clodius and his supporters continued this trend when fighting Milo's attempt to obstruct elections late in 57, but by then Milo had realized that the only way to counter Clodius' forces was to build a force for himself.

If violence could so easily have repressed measures of obstruction in the past, why did it become so common in the 50s? There are many answers to this question, all of which emphasize different aspects of Roman society that were present in this period. Vanderbroek posits that the Senate and other political institutions had lost legitimacy in the eyes of the Romans, on account of their incompetence in handling the many exigencies of empire. This led to a loss of social control and the rise of influential individuals.[28] Along the same line, Millar argues that, following the dark period of Sulla's dictatorship, the people felt a new passion for political action that necessitated innovative and blunt maneuvers through a political institution that was not designed for their easy participation.[29] Alternatively, T.P. Wiseman suggests that the preponderance of cruel and violent sights around Rome had reached such a degree, due the increasing population and density, that violence in the Forum seemed less severe than it would have a century prior.[30]

All of these were likely at play when Caesar won his bid for the consulship. As a *popularis* politician, much of his program was designed around the plebs, who by the nature of the Roman state, needed to work a little extra to participate in the political game. The support which Caesar gave the plebs was reflected back onto him, and he gained *celebritas* as he inflated his *dignitas*. Ever since the Gracchi this *popularis* route had been a viable option for gaining *dignitas* and rising through the *cursus honorum*. So it was no revolution when Clodius ascended to the tribunate, and began a legislative program that would win him wide support among Rome's dense urban population, including plebeians, *equites*, and senators.[31]

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[28] Vanderbroek (1987), 159.
[29] See Millar (1999), 197-226, in which he asks "what sort of democracy" Rome should be qualified as. Mouritsen (2001), 7 respond to this question that "democracy would seem to represent an ideal rather than an obtainable goal."
[30] See Wiseman, T.P (1985) *Catullus and His World*. Cambridge, 1-15: "A World Not Ours."
[31] Dio 38.12.8; Also Tatum (1999), 135.

Clodius the Tribune

What was revolutionary, ironically, was the lack of controversy and violence with which Clodius passed his initial legislation.[32] Save for threats of vetoes or *obnuntatio* from Cicero and his tribune supporter Lucius Ninnius, none opposed his bills.[33] Cicero took issue with the legislation on the grounds that it would give Clodius a great deal of power to follow through on his threats towards the orator.[34] Cicero and Ninnius opposed these bills on a legitimate grounds, but due to the general lack of opposition to these bills, Clodius was able to persuade Cicero to call off Ninnius' veto.[35] Without opposition, he was able to quickly pass four bills that appealed to the entire spectrum of the Roman populace, especially the marginalized middle and lower class plebeians. The four bills were: *lex de collegia, lex de frumentaria, lex de agendo populi,* and *lex de censoria nota*. The first two appealed to the plebs, while the second two were intended for the aristocratic classes.

Cicero and Ninnius focused their opposition on the *lex de collegia*, on the grounds that it was in direct violation of a *senatus consultum* passed in 64. *Collegia* were community organizations of religious, professional, and neighborhood affiliations, whose constituents were working urban residents of Rome.[36] The membership network of a *collegia* included freeborn, freedmen, and even slaves, and was centralized on an appointed leader, who was permitted to wear the robes of a magistrate during the annual festival of the Compitalia.[37] In the past, *popularis* politicians had used these urban organizations to mobilize large groups in the city and facilitate controversial votes. Their organizational network allowed for quick dispersal of information, rumor, and plans.[38] In 67, during the celebration of the Compitalia, C. Manilius recruited supporters through the

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[32] Tatum (1999), 136 says they were proposed with an air of "balance."
[33] Dio 38.14.1.
[34] Tatum (1999), 136-7. For Clodius' threats towards Cicero, of which none are specified, see Cic. *Ad Att*. 1.14; 2.1.4; 2.9.1; 2.19; 2.20.2; 2.21.6; 2.22. See more below.
[35] Dio 38.14.1-2. Tatum (1999), 137 notes that Cicero was likely not opposed to Clodius' entire program, only the *lex de collegia*, on grounds that it violated an earlier Senate ban on *collegia* (see more below).
[36] Lintott, *Violence*, 78-83; Tatum (1999), 114-119; Vanderbroek (1987), 112-114.
[37] Ascon. 7.
[38] Vanderbroek (1987), 112-114; 151. Vanderbroek notes that small groups like *collegia* were vital for the spread of riots in the Late Republic.

collegia and forced through a controversial bill that would have distributed urban freedmen's votes around the rural tribes. Such a bill was audacious, because of the effect it would have on the demographics of the voting tribes, suddenly tipping the scales in favor of urban constituents.[39] Senators later abrogated this bill, but a similar event happened the next year. In response to such outrageous behavior, the Senate passed a *senatus consultum* that prohibited the meeting of certain *collegia* and the celebration of the Compitalia.[40] It is not clear which *collegia* were banned, but it should be noted that the Compitalia was a celebration that was not centralized in any one particular public space in Rome. The festival appealed mostly to the lower echelons of Roman society, and likely had some connection to neighborhood *vici* and the private sphere of living.[41] With this decree, the Senate targeted and repressed the political potential of the poor, working, and rowdy population.[42]

Seven year later, Clodius successfully re-formed the forbidden *collegia* and revived the Compitalia. By means of his first bill, he set out a plan to enroll new and existing *collegia* into an exhaustive record (*tota urbe descriptio*; Cic. *Domo* 129), neighborhood by neighborhood (*vicatim*; Cic Sest. 34). During this enrollment, the *collegia* were further divided into *centuriatae* and *decuriatae*, military references that reveal not the offensive stance that the *collegia* will take for Clodius, but a symbolic attempt to bestow the honors of such a valued tradition on working Romans.[43] The members of these *collegia* were likely individuals who had no other easy access to political activity. Without *collegia*, plebeians living on the outskirts of the city, beyond the Aventine hill, for example, would never be regularly informed about activities in the

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[39] Ascon. 45 calls this bill "incredibly deplorable" (*perditissima*).
[40] Cic. *Sest*. 34; *Red. Sen*. 33; *Ad Att*. 3.15.4; *Pis*. 8; Dio 38.13.2.
[41] Tatum (1999), 117: While the Senate likely allowed future *collegia* to be labeled as subversive, "it is no longer reasonable to conclude that all but a few *collegia* were made illegal at this time." Tatum argues that the Senate's decree targeted the rowdy plebeians. The plebs were not pleased about this repression; in 61, a tribune failed to gain enough aristocratic support to restart the celebration of the Compitalia (Cic. *Piso* 9; Ascon. 7). For more, J.B. Lott (2004). *Neighborhoods of Augustan Rome*. Cambridge: 12-14.
[42] Dionysius of Halicarnassus, a later historian, connects the Senate's act of repression with the same action by the evil king Tarquinius Superbus (Dio. Hal. 4.43.2).
[43] From Cic. *Sest*, 34. Tatum (1999), 118 says that Cicero's words are charged with the rhetorical goal of making Clodius look like public enemy number one, so it might be possible that these words are not actually how Clodius choose to call the sub-organizations.

Forum. If an important *contio* were called spontaneously, a key plebeian demographic would be stranded and ignorant, a thirty-minute walk from the Forum. With the revival of their neighborhood organizations and guilds, information and rumor could spread more quickly through formalized networks of communication, leading to more political participation.[44] With their access to politics formally reestablished, the lower classes rediscovered opportunities to cultivate a sense of *dignitas* and local prestige, which they could not sow in expensive and competitive magisterial election campaigns. With their public life enhanced, the *plebs urbana* felt grateful and obliged to the legislating tribune.[45]

Working plebs on the fringe of the city were not the only people who gained from the re-formation of the *collegia*. The connection between *collegia* and neighborhood *vici* extends this benefit to all citizens in Rome. As "voluntary associations" *collegia* were likely as many and diverse as the population of Rome at this time.[46] Membership in a *collegia* was limited to those who had the necessary professional skills or taken the required religious vows. Freeborn, freedmen, wealthy, poor, plebeian, patrician, and even slaves could all find membership in their ranks.[47] However, there was a population boom around the turn of the second century, and the wealthy population began competing with a rising population of freeborn, freedmen, and slaves migrating from Rome's new territories.[48] In the "dimly lit" neighborhoods of Republican Rome, Lott sees a network, focused on popular politicians, that embodied the force of the new and massively diverse urban population of Rome, and and which fought against the traditional political

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[44] Unfortunately, the details of these formal networks are not known to us. Our aristocratic sources neglect to explain the form and nuances of various *collegia*. Tatum warns of "overly schematic descriptions" (Tatum (1999), 118). We do know from Asconius that *collegia* and *vici* each had an individual, magisterial leader, who could lead his small group in political action (Vanderbroek (1987), 112-114). Lott finds no evidence to suggest that *magistri viciorum* were not selected during this ban; however, the repression of the Compitalia suggests that their authority was greatly curtailed (Lott (2004), 55).

[45] Tatum (1999), 119.

[46] Lott (2004), 1-27.

[47] Lintott, *Violence,* 78-88.

[48] Lott (2004), 15 suggests that by Augustus' Principate, there were likely between 300 and 500 *vici*, each with a resident count of 2,800-3,800 people, who lived and worked under the similar conditions (15). Conservatively, the total population of the city was 750,000. For comparison, the population of Rome 200 years earlier (200 BCE) is estimated to be around 200,000 (Cornell (2000), 47).

structures.[49] This is why, in an attempt to balance the political scales, Manilius had forced legislation to redistribute freedman votes in 67 from the four urban tribes into the twenty-nine rural tribes. Manilius had ultimately been unsuccessful, because his goal was too audacious and his methods too severe. Clodius, however, was able to re-form the organizations of freeborn, freedmen, and slave workers, in such a way that would allow for him to collect his urban supporters under a single political force.

It is important that Clodius passed his *lex de collegia* peacefully. If he had prearranged for these organizations to violently pass this bill, then he would have risked its abrogation. In contrast to Manilius' earlier deployment of *collegia* with force and violence, the peacefulness of this process contributed to the general lack of opposition and controversy. However, Clodius' methods for obtaining this support may not have been wholly traditional either. Clodius passed this legislation at the beginning of his tribunate in early January, immediately after the celebration of the New Year's Compitalia. Clodius had gotten permission to celebrate this from the consuls Piso and Gabinius.[50] By "sensationalizing" his legislation program at the festival, Clodius was able to recruit many urban voters to appear in the Forum on voting day and have a say in their daily livelihood.[51]

Also helpful in this regard was the legislation that Clodius coupled with the *lex de collegia*, the *lex frumentaria*. This bill was wildly popular, because it was the first ever to provide a monthly dole of grain for free to every Roman citizen. While the city was not facing any severe shortage of grain, tensions were high regarding the price of the supply and threat of speculators.[52] The fear and paranoia which these fostered could drive a mob

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[49] Lott (2004), 46-60: "A great deal of communication and organization must have taken place in the *vici* themselves before residents came together in a centralized location like the Forum to act on the municipal level" (59).

[50] Interestingly, and seemingly unrelated, on the same day as the Compitalia of 58, there was a riot which arose from Gabinius' ban of eastern cult worship. Termed the "Isis Riot" by Vanderbroek, (1987), 124, B-39), the rioters were likely immigrant citizens (freedmen) who had cultivated their discontent in the public meeting spaces of the *vici*. Assuming that Gabinius would not have supported the celebration of the Compitalia, this riot, which ended up at his door, could have distracted him and others from repressing the celebrations. The main "primary" source is Tertullian, who wrote in the 2nd c. CE (*Ad Nat*. 1.10-17-18; *Apol*. 6.8).

[51] Tatum (1999), 136; Lott (2004), 59. The Compitalia was highly politicized event. There, Manilius had recruited much of his force.

[52] Tatum (1999), 119-125. For more on speculation in the Roman world, see P. Garnsey (1989). *Famine and Food Supply in the Graeco-Roman World*. Cambridge: 205-208.

to riot, often without instigation from above.[53] When a political leader did decide to initiate action on the issue of grain supply and prices, the effects on the public psyche were powerful. Riled up in fear over a continuation of the Catilinarian conspiracy, as well as high grain prices, Marcus Cato had soothed the minds and tempers of the plebs by instituting a monthly grain dole with a fixed price, avoiding a potential riot that Caesar was trying to capitalize on.[54]

Clodius' plan to provide a free allowance of grain was undoubtedly expensive for the Roman treasury, but the bill was so popular that none dared to interpose with a veto.[55] The dole applied not only to impoverished plebs, but to all ranks of Roman society. With such a generous bill, Clodius found great favor with the hungry citizens of Rome. Furthermore, he was able to compound this favor with the members of the *collegia* by using their organizational structure to facilitate grain distribution. Although we do not know the exact methods he used, his catalog of *collegia* likely served as a ground plan for the grain distribution, district by district.[56] In his speech *De Domo Sua,* Cicero purports that Clodius installed his friend Sextus Cloelius to the position of *curator annonae* (Curator of the Grain), who would be responsible for Rome's grain supply (Cic. *Domo* 25). While such an office was likely informal (as opposed to the formal office bestowed on Pompey in 57), the use of Cloelius to head the distribution of grain connects the process to the *collegia*. Cloelius had previously appeared in *toga praetexta*, the toga of a magistrate, at the Compitalia of 58, suggesting that he was a *magistri vici*, the leader of a *collegia*.[57] By recognizing the usefulness of the *collegia* and entrusting them with the important task of grain distribution, Clodius once again provided them an opportunity to cultivate *dignitas* and local fame. All the more reason for them to love him.

The other two bills of Clodius' program were directed less at gaining a base of popular urban support and more at facilitating necessary political reforms that would find favor with the upper classes. The *lex de censoria nota* provided stipulations that

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[53] Adrete (2012), 428-429.
[54] Plut. *Caes*. 8, *Cat. Min*. 26.
[55] Tatum (1999), 122.
[56] Tatum (1999), 124. For an earlier record of grain distribution by neighborhood in 203 BCE, see Livy 30.26.5-6.
[57] Ascon. 7. There is no record of Cloelius ever holding a magistracy which would have otherwise permitted the *toga praetexta*.

prevented censors from eliminating members from the Senate without a public trial, a provision that comforted many of the more licentious senators.[58] With this law, Clodius brought one of the most authoritative aspects of the Senate into the public eye, and subjected the authority of the censors to the judgment of the people. The *lex de agendo cum populo* (also known as the *lex de obnuntatione*) placed restrictions and guidelines on the use of the auspices as an obstructional measure.[59] This legislation was heavily influenced by the events of the previous year, in which Bibulus staunchly opposed every one of Caesar's actions, who responded in turn. Considering the behavior of Bibulus, Caesar, and the college of augurs, who repeatedly made their announcements informally via letters or messengers rather than through a formal response, Tatum concludes that the rules governing *obnuntatio* were "imperfectly understood" by most magistrates and in desperate need of codification.[60] Clodius provided such guidelines, by demanding that an obstructer announce his intention to watch for bad omens in person before the commencement of an assembly. This solved the dangerous precedent which Bibulus had set by obstructing an entire year's worth of politics without leaving his home. These two laws had less of an explicit *popularis* appeal, but still contributed to Clodius' popularity because of their pragmatic nature in exposing the activities of the Senate to the larger community of Rome.

In general, Clodius' initial legislative program was "acutely relevant."[61] Not only did he spend his efforts on the improvement of the plebeian condition, but he aimed at nothing more than the broad and nonspecific goal of popular favor while increasing the transparency of the Senate. He did not intend a revolution with this legislation. Rather, he pursued the avenue of addressing relevant issues in order to gain *dignitas* and *celebritas* that would allow him to advance his own career. The novelty of his methods lay in his appeal to the issues of the urban plebs. Instead of pushing land bills that would help rural farmers, or move citizens outside of Rome, Clodius took up the cause of the working urban resident, who needed a better livelihood and stronger say in political action in the

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[58] For more see Tatum (1999), 133-135.
[59] Tatum (1999), 125-133. Cicero's description of the law as one which outright abolished the *auspicia* is an absurd exaggeration.
[60] Tatum (1999), 130.
[61] Tatum (1999), 114.

city. By providing these, Clodius won the favor of an organized group of urban residents, who would never be more than two hours away from mobilizing in large numbers.

The speed and intensity of potential mobilization is not reason enough to say that Clodius arranged this whole program in order to control a structure that could be violently exploited for his own gain. Simply having urban support was enough for a Roman politician like Clodius to feel comfortable and accomplished. Even Cicero is on the record of saying that politicians can achieve sufficient *dignitas* simply by ensuring that urban citizens are able to enjoy their subsidized welfare and voting privileges in security.[62] What pushed Clodius to violent mobilization of these forces was an ideological dispute that stemmed from the summary execution of the Catilinarian conspirators. Over the year of his tribunate, ideas such as *provocatio* and *populi libertas* became the pivot point for Clodius' mobilization. He had in his mind an image of Roman politics in which sovereignty lay with the people, honor with himself, and justice dealt to all who would hinder this vision. He would stop short of nothing to make it reality.

Exit Cicero

While Clodius was passing this legislation, the conservative members of the Senate finally caught their breath after Caesar's tumultuous consulship. Since Bibulus had blocked the process of legitimate government through *obnuntatio*, they now had to tend to the controversial task of contesting Caesar's accomplishments. The most logical way to go about this problem of legitimacy would have been through the law courts, since there each party could argue their case, and a jury would decide who was right. However, Caesar had passed a bill in which the people granted him a five year proconsulship in Gaul; with such a magistracy, Caesar was immune to all charges and accusations.[63] In order to obliquely challenge Caesar's tenure, his opponents brought charges against Publius Vatinius, who had served as tribune of the plebs in 59 and helped

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[62] Lintott, *Violence*, 197. See Cic. *De Lege Agraria* II.

[63] Any magistrate who held *imperium* (in the formal sense) was immune from judicial action. This included promagistracies. See A. Karakocali. (2013) "Magistrates: The Most Important Political body of the Roman Republic." In *Ankara Bar Review 2012/13*, 74-76.

Caesar forcefully push through many bills.[64] The charge was violation of the *lex Licinia Iunia*, which prescribed a three week waiting period (*trinundium*) in between the introduction of and vote on any legislation, as well as of some unnamed *lex de vi*.[65]

Vatinius acknowledged these charges but refused to allow the prosecution to make any headway. The praetor who filed the charge, C. Memmius, had arranged for the chief juror (*quaesitor*) to be chosen by lot. This was contrary to a new method that Vatinius had recently legalized in his tribunate, where the *quaesitor* would be chosen by process of elimination.[66] On this point of contention, Vatinius refused to answer the charge and appealed to the tribune of the plebs for *auxilium* (assistance) in the face of magisterial oppression. This was a move entirely without precedent, and one which threatened the stable legitimacy of the law courts.[67] Clodius, by far the most powerful of the ten tribunes because of the wild success of his legislation, had a difficult choice: should he uphold the law by handing Vatinius over to the prosecution, or should he repay Caesar, who had supplied him many favors, including his transfer to the plebeian order?[68]

Clodius chose to repay the favors that had allowed him to reach his success. To take such a public stance against normal judicial procedures, Clodius needed to have enough support to ensure that his *auxilium* would indeed prevent Vatinius from being charged, and to ensure that he did not ruin his political career by alienating many of Caesar's enemies. He found the necessary support among the urban population, and in surprising numbers. After Clodius granted his *auxilium*, Memmius offered or threatened to offer opposition, in response to which Clodius called the plebs to his aide. It is unclear

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[64] Tatum (1999), 140-1. Gruen, *LGRR*, 292 suggests that this charge was anti-triumvirate propaganda.
[65] Cic. *Vat*. 33; Schol. Bob. 150 (St.). The charge *de vi* is not mentioned by Cicero, only by the Bobbio Scholiast, who wrote sometime in the 6th c. CE. Therefore, the reality of the *de vi* charge may be suspect; however, Vatinius' violent activity would likely have been on people's minds during the trial.
[66] Schol. Bob. 150 (St.) says that the terms of the *lex Vatinia de alternis consiliis* were neither sufficiently clear nor defined (*non satis aperte neque distincte apparebat*). The actual text does not survive. However, the controversy generated over it in this case suggests that it was not a wholly understood or well executed law. For more see Tatum (1999), 140.
[67] Cic. *Vat*. 33: Since Cicero delivers this criticism in a published cross-examination, it is impossible to know if he withholds information. Perhaps such a thing had happened in the distant past when plebs had a constant need to call for *auxilium*. Regardless, the circumstances under which Vatinius appealed for *auxilium* were certainly extraordinary in regards to the recent past. Millar (1998), 142 calls this act one of "subversion."
[68] Another favor was Caesar's willingness not to charge Clodius after the Bona Dea Scandal. For more see Tatum (1999) 62-86, and above.

what Clodius expected from this, but the reaction was that the *plebs urbana* "violently enforced the tribune's *auxilium*."[69] The crowd, including Vatinius, stormed the *quaesitor*'s seat, overturned benches, shattered voting urns, and chased Memmius from the Forum.[70] From here, Vatinius left the city as a legate for Caesar, regaining his judicial immunity.

The Clodiani

This event demonstrated just how much support Clodius had won with his legislation, and revealed to the tribune the extent to which he could use this force. But how much did this forceful support overlap with the almost universal approval he had won through his legislation? Unfortunately, Cicero's letters and speeches do not reveal anything about the true nature of this force, other than the semantic valences of his vocabulary. Cicero often refers to Clodius' most active group of followers as his *opera* or *manus*. While *manus*, an armed squadron, is almost exclusively a forceful and violent term, *operae* have the broader connotation of a group of hired men.[71] Varro defines the *opera* as a day's labor for the worker (Varro *R*. 1.18). This rustic association lends Cicero's use of the term a pejorative sense, which belittles the passionate urban mob by representing them as a gang of hired fists employed entirely at the whim of Clodius. Cicero uses these terms to describe Clodius' band of followers before and after his tribunate, a fact which speaks more about Cicero's moral judgment of Clodius than about Clodius' actual entourage.[72] Cicero's "persuasive evocations" cannot allow us to separate peaceful citizen from an angry mob; they are all rabble.[73]

However, Cicero's rhetoric does reveal that Clodius' use of his close followers was somewhat unorthodox from the beginning of his career. Clodius had previously caused a disruption at the vote for his verdict in the Bona Dea trial by using his group of

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[69] Tatum (1999), 141. Vanderbroek suggests that some of Caesar's troops could have entered the city for the purpose of supporting Vatinius (Vanderbroek (1987), 244).
[70] Cic. *Vat*. 34. It is unclear what action Clodius took during this riot, after he had called for the plebs.
[71] See L&S *manus*: 2.A.2; F.; M.; N.; L&S *opera*: 1.A; 2.B-C.
[72] See Cic. *Ad Att* 1.16.3 and 1.14.5.
[73] Cicero's rhetoric influences that of later historians. The standard Greek word from Dio and Plutarch for this sort of gang is χεῖρα, which has similar sell-sword connotations. For more see Vanderbroek, 115.

friends (*operae*) to influence the votes and distribute pre-marked ballots.[74] Tatum has suggested that this disruption was not the product of nefarious gang activity, but rather of the collusion from the magistrates' assistants, who were simply carrying out their appointed function.[75] Their position depended upon an appointment by the consul M. Pupius Piso, Clodius' friend and supporter of his cause. Rather than a gang of thugs intimidating voters, it is likely that these men were using their positions of power to influence the outcome of an ideologically controversial case.

He also cultivated an unorthodox relationship with the people. Throughout the entirety of his political career, Clodius held *contiones* in which he behaved both traditionally and in an extreme fashion simultaneously. James Tan has shown how *contiones* are a space in which a political speaker can build group solidarity, and create a rift between his supporters and those of his opponents.[76] Traditionally, magistrates would hold these meetings to communicate their and the Senate's activities to the people. With a large crowd in attendance, the magistrate had an opportunity to advertise his activities and construct the foundations of their legitimacy.[77] The people participated in these *contiones* by listening to the magistrates speak, and forming their own opinions based on what they hear from everybody. These public meetings cultivated a sense of civic identity by reinforcing the basic ideology of the Republic: that all matters belonged to the public.

Clodius took the symbolic construction of the *contio* to an extreme level by breaking down the boundaries between his audience and himself, so that they did not create a Roman solidarity, but rather a Clodian one. The frequency with which he held *contiones*, as well as the informality with which he proceeded through them, helped him foster a loyal relationship with his audience. The popularity which he received as a result of his tribunician legislation helped to increase the size and energy of this audience. He led *contiones* as if the power differential between plebeians and aristocrats did not exist. He lead his crowds in *flagitationes*, call-and-response chants, and he would even read out

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[74] Cic. *Ad Att* 1.16.3 and 1.14.5.
[75] Tatum (1999), 79.
[76] J. Tan (2013). "Publius Clodius and the *Contio*" in *Community and Communication*. Steel, Van der Bloom (eds). Oxford.
[77] Both Cicero and Clodius used the example of divine favor. For example, Cic. *Har. Resp*. 8, in which Cicero recounts Clodius' claims that he "owns" divine favor, and then proceeds to reply through the entire speech that they in fact belong to himself. See Tan (2013), 131.

and comment on letters which he had received from Caesar in Gaul.[78] Furthermore, his reliance on the *contio* as a constitutional tool for political action helped to "deactivate" the boundaries between *collegia*, *vici*, and *contio*, which had formed as a result senatorial oppression from the years prior.[79] Now that the people could organize themselves again, they could participate in politics with a more assertive presence. The end result was an active crowd that stood loyal next to Clodius whenever he called.

Another result of this dependence on open air, informal *contiones* was a marked increase in violence. By dissolving the boundaries between himself and his audience, Clodius was able to reinforce the boundaries that separated his group and his opposition. Furthermore, the pre-arranged loyalty of his crowd made it easy to motivate a gathered crowd to action. The force was assembled and ready for whatever Clodius wished. The cause of this violence cannot be reduced singularly to Clodius' desire for political gain, although that definitely played a part.[80] Rather, Clodius consistently demonstrated a receptivity to the thoughts and opinions of his urban constituents (who were just as responsible as Clodius for the destruction their mob would cause). In the case of Vatinius' trial, the crowd which responded to Clodius' call was one that had frequently heard his rhetoric, who had recently benefitted from his generous and practical legislation, and who found new means and a new reason to engage in political activity. Their excitement to come to the aid of their tribune demonstrates that plebs valued his safety and preservation. He was their political representative, and it was their responsibility to defend him. The circumstances of a political trial also provided the opportunity for symbolic acts of protest against the Senate and the courts, including strewing juror's benches, smashing voting urns, and chasing the opposition from the Forum.

While the people may have been acting in thanks to their patron, the motives of Clodius' closer and wealthier friends were not so pure. Clodius was able to rely upon a constant city-wide force because of his friends, who served as proxies to the

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[78] Tan (2013), 123-125 calls Clodius' style "contional ventriloquism." Cicero would later follow Clodius' suit when delivering the 13th Phillipic, in which he commented line-by-line on a letter he had received from Marc Antony (Cic. *Phil*. 13).
[79] Tan (2013), 132.
[80] Tan (2013), 131: It is certainly not false that, for Clodius, "*contiones* mobilized muscle, which enabled violence, which enabled control, which enabled more *contiones*."

neighborhoods and regions of the Rome. These subordinates were constantly in contact with the masters of *collegiae* and *vici*, and able to inform them of important meetings and events. Their role was to keep their constituents ready for mobilization, and to prepare them to fight for their rights by staying in tune with popular grievances.[81] This sort of networked organization was not innovative, but the recent reformation of the *collegia* lent it an especially potent effect. Vanderbroek has demonstrated how division of labor is evident in situations of collective behavior and violence throughout the Late Republic: "leaders direct the actions, small groups act as an active nucleus, and the rest of the crowd forms a more or less passive body of bystanders."[82] The people responded well to magistrates who could competently perform their duties, especially when it was to their benefit. They followed the best decision makers, troubleshooters, policy makers, and public performers.[83] Clodius, who had proposed generous policies that addressed relevant issues, as well as held frequent and intimate *contiones* that garnered him a loyal crowd, fits this description.

Clodius had many subordinates, whom Cicero names throughout his career when speaking about the movements of the *Clodiani*. Most of these can be identified as well-to-do freedmen, and some even attained lesser magistracies.[84] Cicero calls one of them, L. Sergius, the *concitator tabernariorum* (the inciter of the shopkeepers), because of his role in gathering the plebs closest to the Forum whenever Clodius was going to hold a meeting (Cic. *Domo* 13). The *tabernarii* and *mercenarii* were relatively wealthy plebeian shopkeepers and craftsmen with well placed shops immediately surrounding the Forum. They would have sympathized with Clodius' appeals to *populi libertas,* and benefited from Clodius' revival of *collegia* because of the potential for political recognition and *dignitas*.[85] Clodius used Sex. Cloelius to facilitate the organization of *collegia*, the

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[81] Tan (2013), 124: "The *contio* of Clodius became a site from which the opinions and emotions fomented in other interactive sites were broadcast to the rest of Rome."
[82] Vanderbroek (1987), 150. For more on collective behavior, especially during riots, see Aldrete (2012).
[83] Vanderbroek (1987), 124-138, 143. Vanderbroek proposes Pompey as the poster-child for ideal leadership qualities.
[84] Lintott, *Violence*, 83. Among the surviving names are Cloelius, Lentidius, Titius, Gellius, Firmidius. The magisterial supporters are L. Sergius, M. Lollius, Q. Pompeius Rufus, C. Sallustius Crispus (a.k.a. the historian Sallust), and T. Munatius Plancus. These men are mentioned in Cic. *Domo* 13, 25; *Sest.* 80, 112; Ascon. 49.
[85] Tatum (1999), 143-148.

distribution method of grain, and assist in many future popular movements, including the razing of Cicero's house. Cloelius may even have been the leader of a *collegium* before he befriended Clodius (Ascon. 46c). With leaders such as these, he could coordinate movement throughout the city and also place loud rabble-rousers in crowds in order foment action and best guide the movement of the crowd through the city.[86] Whatever their relationship to Clodius before he garnered *celebritas*, these "Clodian activists" were able to maintain and direct a standing political force in Rome at his beck and call.[87]

Clodius was also engaged with members of the upper classes, especially the same disillusioned demographic that Catiline had courted. Cicero never missed the opportunity to connect the evils of his two nemeses. While Cicero publically recognized Clodius' efforts as *quaestor* in 63 in helping him uncover the conspiracy, he often correlated Clodius with the conspirators in his rhetoric, accusing him of collusion in court, and sympathy on the streets.[88] Although Cicero draws wild connections, Clodius did associate with those who would had been initially sympathetic to Catiline.[89] It is important to remember that Catiline's violent conspiracy was hidden from most of Rome, especially aristocratic youth, and that his ideas about the issues of the day were relevant and poignant. Catiline had appealed to their concerns and opinions about the government, but had failed to follow through on effecting any reforms. Clodius has shown his potential for both drastic and constitutional change in his initial legislation, and also demonstrated an affinity for the general opinion of the city that appealed to the younger generation. According to Cicero, they called him *felix Catilina* ('productive Catiline;' Cic. *Domo* 72.)

Despite his benefactions, the people of Rome were under no obligation to protect Clodius with force or join in his protests. Before throwing themselves into dangerous and potentially violent political activity, a working plebeian had to consider the possibility of

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[86] Vanderbroek (1987), 151 calls these intermediary leader "claqueurs."
[87] Nippel (1995), 80.
[88] On Clodius' role in the Catilinarian conspiracy, see Cic. *Red. Quir.* 12; Plut. *Cic.* 29.1; Tatum (1999), 40-41. Clodius had prosecuted Catiline in 64 on a charge of extortion in the provinces. He was somehow unsuccessful despite Catiline's manifest guilt, and so Cicero was sure that the prosecution had colluded with the defense (Cic. *Ad Att.* 1.16). However, Asconius was hesitant to draw such a conclusion, and we should be too (Asc. 85-6).
[89] The vast array of associations that Cicero posits either indicate that he is lying (unlikely), that Catiline's following was so large that just about everyone was associated with him, or that Clodius did in fact associate with urban residents who had once followed Catiline.

getting injured and of losing wages. Many of these supporters had a great deal to lose in times of chaos, and so they generally favored peace. However, when they saw their neighbors and associates assembling for a *contio*, they might be more inspired and willing to bend to social pressures. Whatever their decision, Clodius' popularity following his legislative program was strong enough to ensure a constant and loyal crowd for his *contiones*.

Clodius used this new resource to target Cicero. Ever since the enmity stirred up over the Bona Dea scandal, Cicero received threats from Clodius.[90] Cicero never elaborates on the exact nature of these, but at one point informs Atticus that he has decided to prepare a *praesidium* for self-defense (Cic. *Ad Att*. 2.21.6). Before his tribunate, Clodius never acted with hostility, promising temperance to Pompey.[91] Besides this, Cicero was certain that he could counter any violence from Clodius simply by calling for *provocatio* (Cic. *Ad Quint*. 1.2.16). But now that Clodius had his own formidable resource, he could depart from his agreement with Pompey and pursue his-own interests.

Clodius' Lex de Provocatio

Clodius' next step was to promulgate a bill that reaffirmed the right of *provocatio* for all Roman citizens.[92] The *lex de capite civis Romani* concerned the treatment of those who put Roman citizens to death without a trial, calling for a basic suspension of their civil rights and their exile from the city. One of the most controversial clauses in this law was the retroactive application of this punishment. Cicero was its primary target.

Clodius held many *contiones* in the early months of 58, in which he produced prominent senators and spoke at length about popular liberty and Roman rights. He produced the consuls Piso and Gabinius, as well as Caesar, to hear their opinions on the *lex de capite civis Romani*.[93] Piso said that no deed of cruelty pleased him, and the others

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[90] Cic. *Ad Att*. 2.1.4; 2.9.1; 2.19; 2.20.2; 2.21.6; 2.22.
[91] For more on this alliance, formed in part from Clodius' military service in the East and from mutual friendship with Caesar, see Tatum (1999), 87-113.
[92] Tatum (1999), 153.
[93] Cic. *Sest*. 33; *Pis*. 14; *Red. Sen*. 13, 17; Dio 38.16-17; Plut. *Cic*. 30.4.

followed in their support for the right of *provocatio*.[94] But none of them directly endorsed the prospect of retroactive punishment—Caesar even spoke against it.[95] While they did not provide the resoundingly supportive answers that Clodius was hoping for, they did enough by each emphasizing the importance of *provocatio*. In front of a large popular crowd, they likely could not have spoken otherwise, unless they were willing to risk popular disapproval and potential riot. By setting the stage with rhetoric of *provocatio* and *populi libertas*, Clodius readied a bill that none could in good conscience vote against, except for the fact that it ostracized an eminent statesman.

Meanwhile, Cicero gathered as much support as he could by donning mourning robes and pleading to the citizens for aid. However, Clodius' supporters made these supplications difficult, by jeering and insulting Cicero wherever he went. Paying them no heed, Cicero managed to gather enough support such that the Senate decreed that all should wear the mourning toga in solidarity with him. But the consuls, Piso and Gabinius, refused to follow this decree, and even reprimanded those who had. Cicero later recounts a scene where Gabinius stormed into a Senate meeting swearing that he would "wreck vengeance" (*repetiturum,* Cic. *Red. Sen.* 12) upon those who had a hand in the executions. The two were also fond of saying that nobody implicated in the executions would be safe if Clodius' bill were passed.[96] The consuls took a clear stance on the side of the people, acknowledging the importance of *provocatio* and the enormity of the Senate's unilateral action.

Sometime in early March 58, *equites* and senators gathered outside of the Senate house to demonstrate on behalf of Cicero. In response, Gabinius formed his own *contio* and announced that *equites* were not permitted to address the Senate on the issue of Cicero, and even temporarily banished one rowdy *eques* from the city.[97] At the same time across the Forum, Clodius held a *contio*, in which he produced certain youths and *equites*

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[94] Dio 38.16: οὐδεν μοι οὔτ᾽ ὠμὸν οὔτε σκυθρωπὸν ἔργον ἀρέσκει.
[95] Caesar was surprisingly sympathetic with Cicero here. In the face of imminent condemnation, Cicero considered an offer from Caesar to join him on his promagistracy in Gaul, thus giving him judicial immunity. Cicero ultimately refused, but Caesar kept his army at Rome until Cicero voluntarily departed for exile, in case he changed his mind. See Tatum (1999), 154 note 20 for sources.
[96] Cic. *Ad Att.* 3.15.5, *Red. Sen.* 12; *Sest.* 25, 27; Dio 38.16.; Plut. *Cic.* 30; and others cited by Tatum (1999), 299.
[97] Cic. *Red. Sen.* 12; *Sest.* 27; Dio 38.16.

who were then harangued and possibly even assaulted by Clodius' crowd.[98] Tan sees this event as the pinnacle of what Clodius aimed to achieve through his special brand of *popularis* politics in *contio*: Clodius used the solidarity which he had built up within his own crowd in order to antagonize his opponents, and inspire mass popular movement.[99] In this case, by violently disrupting a *contio* that protested his bill, Clodius asserted the primacy of his movement and of the sovereignty of the people.[100]

Clodius legitimated this violence through the rhetoric of *populi libertas*, emphasizing the implications of the *lex de capite civis Romani* on daily life in Rome. Without this law that reaffirmed *provocatio,* magistrates could cite the precedent of Cicero to summarily execute Roman citizens. Riots and violence served only as the means to assure a future where popular liberty could exist unimpeded by senatorial authority. With his frequent *contiones*, and large supporting crowds, Clodius was able to influence the general opinion in Rome away from Cicero. With both consuls at his side, and an army of plebs behind him, Clodius managed to isolate the orator and silence his supporters. Without resources in Rome, Cicero voluntarily left the city later in March, on the night before the law was passed.[101]

Immediately Clodius sprung into action, reifying the victory through law and demonstration. He hastily proposed a new bill, the *lex de exsilio Ciceronis*, which cited Cicero by name, listed his misdeeds, permanently banished him from the city, confiscated all of his property, authorized the construction of the Shrine to *Libertas* on the site of his Palatine home, and forbade any future discussion of Cicero.[102] While there were many components of this law that were manifestly illegal—it violated the XII Tables and, ironically, the principle of *provocatio* to punish a citizen through plebiscite without any

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[98] Cic. *Sest*. 27; *Domo*, 54; Dio 38.16.15. Cicero claims that the *Clodiani* had swords and stones, while Dio maintains that they only used rocks.
[99] Tan (2013), 124-5.
[100] Such a bold move required justification to the Senate. Instead of this, Clodius appeased them by proposing a bill to annex Cyprus, and appoint M. Cato as its proconsul. This generous proposal reconciled many senators to Clodius, despite his threateningly *popularis* maneuvers against Cicero. For sources and more, see Tatum (1999), 155-156.
[101] Cic. *Sest*. 53.
[102] Tatum (1999), 156-8.

formal charge brought forward—[103] the law had the overwhelming support of the urban plebs. The *contiones* which Clodius held to pass this law exemplified the air of popular sovereignty that he aimed to cultivate.[104] This law, nailed to the door of the Senate house, was the ultimate popular achievement in the face of an authoritarian Senate that aimed to repress their constitutional rights.[105] The measures passed against Cicero were symbolically equivalent to accusing him of *regnum*, despotism at its most unacceptable levels.[106]

This accusation was inscribed onto the cityscape of Rome. Following the traditional punishments for those aspiring to tyranny, a group of people razed Cicero's house to the ground, "as if he had been an enemy" (Dio 38.16.5).[107] In its place, Clodius built the *Aedes Libertatis*, the shrine to Liberty, that proclaimed to all of Rome the triumph of *libertas* over attempted repressions by senatorial authority. The site of this monument was just as important as its symbolism. On the north slope of the Palatine, Cicero had a prime piece of real estate which overlooked the Forum, and served as the nucleus for his public activities.[108] By destroying this private monument, and coopting it for his own ideological purpose, Clodius was able to publically broadcast his victory to all who looked on from the Forum.

The ideology of *libertas* that supported this shrine was one with a distinctly *popularis* flavor. Valentina Arena has recently demonstrated how *libertas* was a political buzzword that could be used by both supporters and opponents of the *senatus consultum ultimum*, and that the meaning of the word was fundamentally the same for both parties.[109] The concept was one whose importance every politician agreed upon.

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[103] Cicero identifies this law as a *privilegium*, and thus tantamount to proscription. For more see Cic. *Domo* 42-44; *Sest*. 65; also Tatum (1999), 157. For more on the irony of this bill *de libertate*, see Cic. *Domo* 110, and below.
[104] Millar (1998), 140.
[105] Cic. *Att*. 3.12.1; 3.15.6.
[106] Tatum (1999), 158. Accusing Cicero of *regnum* is roughly the equivalent to being called a communist in 'red scare' America.
[107] Cicero provides references to the fates of Spurius Maelius, Spurius Cassius, and Marcus Manlius, all of whose property was dramatically destroyed and repurposed for the Republic after they were killed or driven from the city (Cic. *Domo* 101).
[108] On the importance of the *domus* to Roman men, see Tatum (1999), 159-166. For Cicero's home specifically, see Arena (2012), 212-214.
[109] V. Arena (2012). Libertas *and the Practice of Politics in the Late Roman Republic*. Cambridge.

However, contention arose over the means by which it should be ensured. Conservative senators like Cicero and Cato believed that, in times of crisis, it was the Senate's responsibility to "arrogate to itself" any and all means of preserving the general state of *libertas*, even if that meant temporary repression. *Populares* like Clodius allowed no such violations of *libertas* to pass, and vehemently disagreed with any situation that jeopardized the people's fundamental right to tend to their own livelihood.[110] By using common language, these politicians demonstrated that they were all of the same basic brand, which valued similar ideals of non-domination over the private individual. However, Clodius' innovative tactic of appealing to his own, pre-formed contional audience, and of emphasizing boundaries between his own body politic and that of his opponents, had the effect of limiting discussion and understanding of *libertas* as it was currently being used. Clodius rallied his mob around his concept of *libertas*, which shunned *senatus auctoritas*, while other politicians looked on from the Senate house, unaware of the sweeping ramifications of the rising tide. Without the ability to discuss opposing views of the concept, passions fomented separately, reverberating through both sides until the helmsman who had steered Rome through the difficulty of internal sedition, but at the price of liberty, was pushed overboard.[111]

The intensity and suddenness of the fervor that exiled Cicero surprised the political community in Rome.[112] Cicero admits that he acted confusedly, attempting to solicit support when no actual charge had been laid against him (Cic. *Ad Att*. 3.15). After returning from exile over a year later, Cicero provided many reasons for why he had not offered any concrete opposition to Clodius. He compared his situation to that of Marius, who had been exiled by decree but fought a battle in Rome in order to stay.[113] Cicero did not fight back because he wished to preserve the stability of order, and refused to put anyone who loved the Republic in harms way.[114] However, it should be noted that neither Cicero nor Clodius were currently fighting a gang war. Clodius' methods, while certainly

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[110] Arena (2012), 259-276.
[111] Cicero records one of Clodius' rhetorical quips (with rhetorical embellishment of his own): "[this measure] enacted that I should not return to Rome until those who had so nearly annihilated our world should have returned to life." (Cic. *Red. Sen*. 4).
[112] See Tatum (1999), 156, with references.
[113] Cic. *Red. Quir*. 7, 10, 20.
[114] Cic. *Red. Sen*. 33; *Sest*. 45.

extreme, followed a usual path of action alongside the power of the people. They had constantly behaved within their constitutional and traditional capabilities, gathering in *contio* to express their voice and cast their vote. Their passion and rowdiness lent this movement an air of aggression, but Clodius' rhetoric did not aim directly at violence. If Cicero had decided to fight Clodius openly, he would have waged war on the plebeian body. Backed into a corner by Clodius' dramatic and effective politics, Cicero was forced to leave the city under the cover of darkness.

As soon as the time came to vote on the *lex de exilis Ciceronis*, Clodius was prepared with his squadrons of urban plebs, all of whose support had been canvassed and gathered before hand. Cicero names one of Clodius' henchmen, Fidulius, who gathered around 100 loud supporters to occupy the Forum the night before the vote. At dawn, Cicero says, gangs of poor and slaves (*operae, egentes, servi*) convened to vote.[115] Far from hired *operae*, these were citizens who trusted Clodius' politics and believed in his vision. Few beyond the chief supporters, such as Fidulius, likely received any direct benefit from this vote, yet crowds swarmed to banish Cicero and burn down his house. The passionate mob had succeeded in removing this senatorial threat to *populi libertas*, but their energy and drive soon made them a serious threat to the rest of Rome.

Rivers of Blood

The clause forbidding any future discussion of the Ciceronian question caused a great deal of contention, especially when Clodius continued to disrupt politics as usual, and even began to harass Pompey and Gabinius. Clodius' relationship to the consul and triumvir had began well enough early in the year, but after the chaos of Cicero's exile, both began to grow wary about the tribune's activities. After he was caught trying to secretly return Tigranes, Pompey's political prisoner, to Armenia, a rift opened up between Clodius and the other two. Clodius began to hound them on the street, and his followers broke Gabinius' *fasces*. One of Clodius' personal slaves was even apprehended in the Forum, carrying a dagger allegedly to assassinate Pompey. In the face of such

[115] Cic. *Domo*. 79-80. Vanderbroek interprets *servi* to be a rhetorical exaggeration, actually refereeing to freedmen (Vanderbroek (1987), 243; B-47).

terror, Pompey retreated to his country villa for the rest of the year, where Clodius sent his freedman Damio to attack and harass the general.[116]

This increasing shift towards organized violence demonstrates that Clodius was beginning to feel pressure to depart from his *popularis* methods and pay more respect to the establishment of the Senate. He did so not by revering prominent senators, but by humiliating and intimidating Pompey, whose popularity, wealth, and link to Caesar was not appreciated by many politicians.[117] Clodius was so popular that he did not have to worry about such a betrayal affecting his social standing. Rather, the effect of this "terrorism" was an unprecedented unity among the people.[118] However, this unity was not *concordia*, the harmony of classes working for the greater good, but a stagnant one of silence and patience.[119] There were members in the Senate disgusted at Clodius' actions, waiting for the right moment to rally together and recall Cicero.

That time came when Clodius stepped out of office, at the beginning of 57. Without Clodius' obstructing veto, his opponents thought that they could pass the necessary legislation, relying on support from senators, *equites*, and some plebeians who were frightened by Clodius' extreme activities. However, they underestimated the loyalty of the urban plebs, the ferocity of their support for their benefactor, and the resourcefulness of their enemy. Because of his actions in January 57, Clodius could easily have been brought to trial and sentenced on the charge of using violence and internal sedition to damage the Republic.[120] Some men tried, but Clodius' force was too strong.

The month began with seven tribunes, including Q. Fabricius, Milo, and Sestius, proposing a bill by which Cicero could return. Recognizing this opportunity for salvation, as well as the danger lying ahead, Cicero asked Atticus to prepare a hired mob (*comparta multitudino*) in order to defend his *dignitas* (Cic. *Ad Att*. 3.23.5). Recognizing the attack

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[116] Cic. *Red. Sen*. 7; *Pis*. 28; Dio 38.30; Plut. *Pomp*. 49.2; Ascon. 47. See also Vanderbroek (1987), 243, B-48; Tatum (1999), 168-175.
[117] Tatum (1999), 174-175.
[118] "Terrorism" is Tatum's descriptor. Tatum (1999), 174.
[119] For more about gap between ideal *concordia* and the real contention inherent in Republican politics, see Connolly (2015), 43: "If concord is where the hearts beat together…it is a violent rhythm."
[120] Tatum (1999), 178.

on his tribunate, as well as the danger of inaction, Clodius gathered support and took to the Forum in order to physically block the vote. The result of this, Cicero says, was that his return was blocked by rivers of blood (*flumine sanguinis meum reditum intercludendum*, Cic. *Red. Quir*. 14).

On the day of the vote, both the supporters of the bill and Clodius' gangs gathered in the Forum before dawn.[121] Fighting broke out almost immediately. Clodius' prepared troops came in greater numbers, with the specific purpose of obstructing the vote. The *Clodiani* attacked Fabricius' party, driving them from the Forum, and even killing a few men. Cicero's brother Quintus was wounded in the Forum, and managed to escape a worse fate by hiding under the bodies of slaves and freedmen, eventually fleeing under the cover of night. Clodius' forces patrolled the streets around the Forum, driving away any reinforcements, including lone magistrates. Not long after sunrise, claims Cicero, the Tiber ran red with blood.

Clodius' force was not of its usual composition. While Cicero records the presence of leaders who presumably rallied loyal and passionate plebs as usual, Clodius also had a special force of gladiators, which his brother, a praetor, had recently bought for games.[122] The extreme violence of this occasion was likely a result of this new force, which had no goal other than to obstruct in the most effective way possible. A large group of urban plebs did not appear to support Clodius because it was too risky. On this occasion, violence was the only way that the vote could be stopped. Fabricius had prepared for tribunician veto or declaration of *obnuntatio* by bringing his own crowd of clients and freedmen to the Forum.[123] Even if Clodius had a friend as a magistrate, he could not have obstructed the vote in any legitimate or peaceful way.

A short time after this chaos, Sestius attempted to dissolve a meeting in the Forum by declaring unfavorable auspices. According to the terms of the recently passed *lex de agendo cum populo*, Sestius was required to declare his *obnuntatio* in person at the event. Doing exactly this, Sestius appeared without a body guard.[124] The response of the

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[121] The following narrative is mostly from Cicero, delivered in his defense of Sestius in 56 (Cic. *Sest*. 75-79).
[122] Dio 39.6; See also Lintott, *Violence*, 85.
[123] Tatum (1999), 178. Also Vanderbroek (1987), 245: B-51.
[124] Thus, *contra* Vanderbroek (1987), 246, Sestius' act was not illegal.

Clodiani was to drive him away him with swords, sticks, and stones. Despite his tribunician *sacrosanctitas*, the *Clodiani* almost killed Sestius. Bruised and battered, he escaped with his life, because he was thought to have lost it (Cic. *Sest*. 79). Soon the *aedile* L. Calpurnius Bestia came down to the Forum and took Sestius off to safety.[125]

In response to this rampant violence, Milo attempted to bring a charge against Clodius of violating the *lex Plautia de vi*. But Clodius had powerful allies at the time. A consul, praetor, and tribune all published "new edicts of a new kind" that made it impossible to bring Clodius to trial (*nova novi generis edicta proponunt*, Cic. *Sest*. 89).[126] Blocked off from legal channels, and unable to pursue their constitutional duties safely, both Milo and Sestius took responsibility for their own safety and the sanctity of their office. They followed the example of their enemy, and arranged for an organized force that could be mobilized quickly and effectively. However, they did not, as Clodius had, arrange for this force by means of generous legislative programs or magnanimous benefactions, but by hiring the strongest, roughest, and deadliest force they could. It was time to fight violence with violence.

[125] Cic. *Ad Quint*. 2.3.6.
[126] The magistrates were Metellus Nepos, Appius Claudius, and Sex. Atilius Serranus, respectively. The contents of these decrees is unrecorded by Cicero, possibly because it was all "unquestionably legal" (Tatum (1999), 179).

Lost in the Crowd

In this chapter, I investigate how and why the Roman crowd acted as they did. With a renewed sense of popular sovereignty, the people developed a voice in politics that communicated their struggles in the city. Leaders could influence and amplify their passion, but no one could control their movement. On a combined model of leadership and community, Clodius politicked for the people, and increasingly for himself. Disturbed by this rising power, senators used the force of their gangs to suppress Clodius' rowdy mob. As contesting politics reached a critical moment, the tension between popular liberty and senatorial authority limited the function of law and tradition in Rome. Martial law was necessary to restore order to the Republic, at the cost of both popular and senatorial capabilities.

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> Because a clamor, with roaring, has been heard in the Latin Plains; because expiations are due to Jove, Saturn, Neptune, Tellus, and the heavenly gods; because games have been incorrectly performed and polluted; because sacred and hallowed places have been profaned; because orators have been slain against law and order; because good faith and oaths have been neglected; because ancient and secret sacrifices have been performed and polluted; BEWARE lest through discord and dissention among the *optimates*, danger and slaughter be created for the Senate, and they be without the aid of the gods, as a result of which sovereignty (*imperium res*) may pass to one man; BEWARE lest the Republic be harmed by secrets; BEWARE lest honor increase for more wicked and rejected men; BEWARE lest the condition of the Republic be changed.[1]

So spoke the *haruspices*, the body of religious officials whose duty it was to keep the Republic in tune with the gods and maintain the *pax deorum*.[2] Preserved among the threads of Cicero's speech *De Haruspicum Responsis*, these warnings were issued in response to the general chaos of the the last few decades of the Republic. No single event is clearly referenced, but the foreboding tone of each category finds definition in recent political happenings. The Bona Dea scandal, the revival of the *Compitalia*, the forced

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[1] Cic. *Har. Resp.*: *Quod in Agro Latiniensi auditus est strepitus cum fremitu, postiliones esse Iovi Saturno Neptno Telluri dis caelestibus* (20); *ludos minus diligenter factos pollutosque* (21), *loca sacra et religiosa profana haberi* (9), *oratores contra ius fasque interfectos* (34), *fidem iusque iurandum neglectus* (36), *sacrificia vetusta occulta minus diligenter facta pollutaque* (37); *videndum esse ne per optimatium discordiam dissensionemque patribus principibusque caedes periculaque creentur auxilioque divinitus deficiantur, qua re ad unius imperium res redeat* (40), *ne occultis consiliis res publica laedatur* (55), *ne deterioribus repulsisque honos augeatur* (56), *ne rei publicae status commutetur* (60). For more on the response of the augurs, see Tatum (1999), 216, and references. My own translation.

[2] Tatum (1999), 216-7.

exile of Cicero, the burning of his house, the violence and the killing in public spaces all risked breaking the framework of the Republic, and bestowing sovereignty on a single man.

By 52, gang violence and political chaos had reached such an apex that the Senate had no other option but to give Pompey the sole consulship. In order to suppress the chaos and violence of gangs, he brought active troops into the city and quieted the Forum. At the same time, he also passed new laws that allowed the smoother functioning of judicial *contiones* with less interference from popular disruption or senatorial conniving. In order to restore regular annual elections, he pushed bills that increased time limits between magistracies, and allowed Caesar to stand for office *in absentia*. These reforms were necessary in light of the growing instability of the Republic, but they came at the cost of *populi libertas* and *senatus auctoritas*. Political freedom of all citizens experienced a set back with the introduction of military troops in the city.[3] As one man in charge of the Republic, Pompey became dangerously close to a dictator.[4]

Over the course of the 50's, the people found a new reason and a new method by which to participate in politics. This also increased their potential for volatility. Two theories can help explain the logic of crowd behavior, either in a vertical command structure, or in a horizontal egalitarian collective. Analyzing the ancient sources, P.J.J Vanderbroek interprets crowd behavior vertically, where magistrates and other legitimate leaders offer direction to the crowd, who readily follow. This model is especially apparent in the organization of small bands of men in gangs like those arranged by Clodius and Milo. Clodius expanded this process outwards, organizing most of the working plebeian population into *collegia* and reviving neighborhood networks in order to facilitate easier channels of communication. While this command structure certainly appears in the sources, it overlooks the communal force of individual people. Our sources were written by aristocrats out of touch with plebeian society, and as a result the voice of the crowd has been lost to time. If it were possible to view them as an independent entity,

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[3] Cic. *Phil*. 5.21; Nippel (1995), 4.

[4] Although Pompey was virtually in control of the city, he still behaved according to Republican values of the Senate and the people. For this reason, Cicero supported him in the future civil war against Caesar. For more see J. Zarecki (2014). *Cicero's Ideal Statesman in Theory and Practice*. Bloomsbury, London: 69-76.

a crowd's behavior could reveal the limits to which Clodius and others were able to push their leadership and influence movement.

Elias Canetti, in *Crowds and Power,* provides such a self-contained viewpoint from which to view the behavior of crowds. He emphasizes the sense of equality and self-driven direction in a dense and tightly packed mob of angry citizens. While Canetti argues from a broad historical perspective, drawing especially from his personal experiences in Vienna in the early 20th century, Geoffery Sumi has introduced Canetti's ideas into classical scholarship in his analysis of the popular crowd at Clodius' funeral.[5] Canetti's popular crowd is massive, dense, hungry, growing, and ready to "erupt" in a fit of destructive rebellion, "an attack on all [social] boundaries."[6] Before this moment of eruption, the crowd wants to grow and become more and more dense, so that all markers of individual identity can be ignored as everyone is pressed closer and closer together. Anonymous and strong, they feel able to reject the burdensome "stings" of command—those psychological remnants of every direction and order they had ever been given in life—at which point they "reverse" the balance of power and direct their rage against their oppressors.[7] Canetti's dark and poetic description of crowd behavior should be considered an aspect of his own experiences in the modern world, but the patient, interested, passionate, and singular qualities that he ascribes to large crowds are certainly visible in Republican Rome.

Canetti's horizontal model of crowd behavior, in which ideas and information move equally from one person to the next, is not necessarily at odds with Vanderbroek's vertical command model, especially in regards to Clodius' organization of the urban plebs. In the typical *contio*, the magistrate stands above the audience, visually distinct in his *toga praetexta*, clearly of a different class than his listeners. However, Clodius, in his new form of meeting, dissolved the boundaries between magistracy and citizenry to the extent that the speakers conversed *with* the audience, rather than spoke *at* them.[8] This fostered a sense of plebeian solidarity, and permitted the crowd the stable conditions

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[5] Sumi, G. (1997) "Power and Ritual: The Crowd at Clodius' Funeral" *Historia: Zeitschrift für Alte Geschichte*, 46/1: 80-102.
[6] E. Canetti (1960). *Crowds and Power*. C. Strewart (trans.). Noonday, New York:15-23.
[7] Canetti (1960), 327-329. This target can be, and often is, symbolic.
[8] See Tan (2013).

needed to grow in size. By holding regular and frequent meetings for the plebs, Clodius could influence their behavior, but he could not control it. He was able to maintain a direction for this crowd with a close network of sub-commanders, who blended with the mob, visually distinct from typical senatorial leaders. They did not wear the robes of office, nor have any lictors, nor even any close retinue of friends and clients. They were part of the plebeian crowd, and they led the charge against *senatus auctoritas*. Rallied by their peers, the plebeian crowds behaved with a similar equality as Canetti's Viennese rioters, with a mind of their own, directed against the symbols of their oppression.

The concentration and direction of these passions in Rome caused enough chaos as it was. Clodius' popular mobs thrived, but only insofar as they could avoid clashes with the battle-trained counter gangs of Milo and Sestius. Whenever the two groups met, the fighting between them would reach such a pitch that the city was unable to function normally or safely. Meanwhile, the reaffirmation of the triumvirate in 55 offered a political plan for the Republic that was not agreeable to everyone, and only worsened the contentions in Rome. As elements of popular politics, senatorial authority, and individual glory combined and clashed, the fabric of the Republic began to lose its definition. It was now more difficult than ever to find satisfying answers to questions of legitimacy, sovereignty, and security for every Roman citizen.

The Return of the Orator

Eighteen months after Cicero left Rome in March 58, the city welcomed his return in July 57. Cicero usually attributes his recall to the work of the aristocrats, who canvassed and gathered men from all over Italy to come to Rome and vote. But he reveals another key factor in his defense speech of Sestius, who was on trial in 56 for violent activity during his tribunate. In the face of Clodius' violent repression of any vote for Cicero's recall, Sestius and Milo, both tribunes in 57, had gathered their own force for counter repression. It was because of their determination in the face of terror that the Republic was able to unify and return the orator to Rome. With the rise of counter-gangs to suppress Clodius' unmeasured popular action, the political atmosphere in Rome became contentious to the point of dysfunction.

According to Cicero, Milo and Sestius knew the gravity of their plan for counteraction. Violence is a regrettable course, but when all other channels have been blocked off, when law and justice are trodden upon, then fighting violence with violence is wise and courageous (*prudentiae*, *fortitudinis* Cic. *Sest*. 86). In the face of Clodius' popular mobs and his recent use of gladiators, public spaces lost the security needed for free political action. In forming a counter-force, Milo aimed to suppress Clodius' gangs and recover the stability that was necessary for the Republic to function. Cicero says that "Milo's purpose was simple, his method was consistent, fully supported by general agreement and complete unanimity."[9]

Clodius was not one of these supporters. Cicero says that, soon after the January skirmish in the Forum, Clodius rallied his followers to attack Milo's house, and assault him on the streets (Cic. *Sest*. 88). The extent to which Cicero exaggerates these attacks is unclear, but the emphasis he places on them indicates that they were familiar events to his audience. Since Clodius usually relied upon the people of Rome as his ready and willing force, he must have offered some sort of justification that would have been generally agreeable, and reason enough for a crowd to attack a tribune on the streets. Such a reason appears in Cicero's cross-examination of Vatinius, tribune in 59, and witness for the prosecution during Sestius' trial. Cicero questioned Vatinius about one *contio* held in 57 by Clodius, in which Vatinius had chided Milo for using gladiators and beast-masters to besiege the State.[10] Against such a force, Clodius could easily have mobilized his supporters to counter-suppress the blatant suppression of their popular rights.

While the urban plebs remained loyal, Clodius' general popularity decreased because of these visible and violent maneuvers around the city. In the theater, Clodius faced hecklers and criticism from the actors, in which the audience of *equites* quickly joined.[11] Tax collectors, and even certain *collegia* (if we believe Cicero), spoke out for Cicero's return.[12] The slogan "*Tullius, qui libertatem civibus stabiliverat*" ("Tullius [Cicero], who had established liberty for citizens," Cic. *Sest*. 123) began to appear all

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[9] Cic. *Sest*. 87: *simplex cause, constans ratio, plena consensionis omnium, plena concordiae*.
[10] Cic. *Vat*. 40: *id quod in contione dixisti, gladiatoribus et bestiaries obsedisse rem publicam*.
[11] Cic. *Sest*. 118. The audience, or at least those who sat nearest to Clodius, were likely *equites* who had always supported Cicero (Tatum (1999), 180).
[12] Tatum (1999), 182.

around the city. While Clodius had developed a sense of *libertas* in his close-knit *contiones* that emphasized the freedom of individuals, others propagated a separately formed, but not fully incompatible, definition emphasizing the work that Cicero had done for the Republic.[13] They hailed Cicero as the liberator of the Republic, while Clodius appealed to proto-libertarian values that scorned such invasive senatorial action. In the end, all those who favored stability, and did not have any investment in Clodius' appeals to abstract ideas like *provocatio* and *libertas*, began to turn away from the former tribune.

Gang activity stalled politics in the city through much of the spring of 57, but Pompey and other senators undertook a campaign around Italy in order to gather votes to recall Cicero from exile. Their plan was to assemble a group of rural Italian citizens so numerous that Clodius' urban mob would have their votes outnumbered, and be unable to offer resistance in the face of Milo and Sestius' gangs. The vote was scheduled to coincide with the Apollinarian Games, in mid-July, which in itself provided reason enough for many wealthy and conservative Italians to make the journey to Rome. Motivated by the additional appeal for the safety of the Republic, sufficient numbers appeared to easily pass the recall.

The political effectiveness of Clodius' mob depended solely on their ability to quickly mobilize in large numbers. This contrasts with the support previously sought by demagogues like Saturninus or the Gracchi, who had on occasion appealed to the rural multitude in order to affect drastic political change.[14] Constitutionally, the downside of an urban political mob was that they could easily be outvoted by a large gathering of the Italian electorate. Especially in the *comitia centuriata*, the voting body through which the recall vote was planned, voting procedures favored the votes of the wealthy over those of the poor.[15] Additionally, the violent opposition that Milo and Sestius planned to offer kept home many of the numbers that Clodius needed to outmatch his opposition. By stacking Rome with rich supporters and suppressing the voice of the urban demographic, the

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[13] Arena (2012), 212.
[14] Lintott, *Violence,* 193.
[15] Taylor, *Voting Assemblies,* 34-58. In the *comitia centuriata*, voting proceeded down from the wealthiest classes until a majority was achieved. Many rural Italians, especially those who could travel to Rome, had enough money to vote first. Even in a vote of the *comitia tributa*, in which all tribes vote equally, they could easily outvote a strong showing of urban plebs, because of the division between 4 urban and 31 rural tribes.

leading men of the Senate were able to cultivate "a brief hegemony" and bring their statesman home.[16]

This did not usher in an era of stability and *concordia*, ideas which which had been pushed in the rhetoric for Cicero's return. In the autumn of 57, matters of the grain came to fore in the public imagination.[17] The urban population was nervous about their grain supply, and wanted those in power to hear their concerns. With Clodius channeling their voice, the urban plebs were able to make a powerful statement about the public policy and the food supply. The Senate had to respond to their demands for a constant and reasonably priced supply of grain. Organized by Clodius, the power of the *plebs urbana* was able to resurface formidably against the forces of senatorial authority.[18]

In Republican Rome, grain riots rose out of a "moral economy" roughly analogous to what E.P. Thompson found in Early Modern England.[19] In this economy, the Senate had control over grain acquisition, distribution, and (to some extent) pricing, all of which was subject to the people's public demonstration if they felt that their access to the grain was being manipulated beyond fair and traditional practice. In 57, famine was not a real threat, but there was concern over high prices and short supplies, which threatened to make food too expensive and inaccessible to the urban residents.[20] Clodius' free grain law assured that every Roman citizen was entitled to a small ration of bread; not enough to stay full, but enough to stay energized and displeased about high price for more. Clodius was able to focus this energy, and force the Senate to address the issue of prices. According to Cicero, grain riots resulting from fear of shortage or high prices were considered legitimate, but unfortunate, acts.[21] On its own, collective action against the symbols of power was understandable insofar as it was the spontaneous result of dissatisfaction. However, when a popular leader became involved, its legitimacy became muddled with the appearance of manipulation. In the leader's attempt to capture the

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[16] Millar (1998), 151-155.
[17] If we believe Ascon. 58, these riots may have begun as early at July, immediately following Cicero's return. However, Cicero's own account of these events places them around late August and September.
[18] Millar (1998), 155-6.
[19] Thompson, E.P. (1971) "The Moral Economy of the English Crowd in the Eighteenth Century" in *Past and Present*, 50: 76-136. Aldrete (2012) applies this concept to Republican Rome.
[20] Cic. *Domo,* 12.
[21] Cic. *Domo*, 12; Also Vanderbroek (1987), 153.

crowd's capacity for massive demonstration, ensuing violence could unnecessarily damage the Republic. This was especially true when Clodius tried to capture this sentiment and direct it against his enemies with little success.

Between the vote for Cicero's recall in mid July and his return in early September, grain prices wildly fluctuated.[22] During his exile, grain prices had been exorbitantly high, except for the day of the recall vote, when the prices fell dramatically. After, prices continued to rise.[23] Capitalizing on this coincidence, Clodius rallied his supporters and marched through the city at night, leading *flagitationes* in which he blamed Cicero for the whole ordeal.[24] Two days after his triumphant return to Rome, Cicero described a riot descending on the Forum, where games were being held for the *Ludi Romani*.[25] First they stormed a temporary theater driving out the spectators, and then climbed the Capitoline hill to intrude on a Senate meeting, which was already discussing the issue of grain. They demanded that somebody take control of the grain supply and rid the city of price-gouging speculators.

From Cicero's description, an armed squad of slaves and thugs (*manus, servi, gladiators*; Cic. *Domo* 6) spurred the people to take such intense collective action against the Senate. This is rhetorical exaggeration. In organizing and mobilizing for this riot, Clodius followed the same procedures that he used during his tribunate. Cicero reveals that one of Clodius' close subordinates, L. Sergius, was the "rally-point of shopkeepers" (*concitator tabernariorum*, Cic. *Domo*. 13). This is unsurprising, given Clodius' close relationship with the urban plebeian organizations around the city. Furthermore, the violence in the theater is unspecified. Likely, Clodius' mob did not run through slashing up the place, but they may have thrown shouts, as well as defaced prominent symbols such as statues or building projects, in order to gather an even greater crowd to join in the

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[22] Garnsey (1988), 201.
[23] Cic. *Domo*, 14-18.
[24] Cic. *Domo* 14: *Quid operarum illa concursatio nocturna? Non a te ipso instituta me frumentum flagitabat?*
[25] Cicero provides two accounts of this riot. One in the heavily propagandistic *De Domo Sua*, and the second in a confidential letter to Atticus (*Ad Att*. 4.1). Both have their strengths: the speech encapsulates Cicero's rhetorical aims, while the letter provides a (somewhat) coherent narrative.

mob.[26] From the theater, Clodius could direct the crowd up the Capitoline hill, to a Senate meeting that he knew was addressing the issue of grain.[27] Despite Cicero's biased account, we should not disregard his emphasis on weapons in the crowd. Their presence demonstrates the current state of affairs in massive public action: come prepared, in case the other side wants to start a fight.

Luckily, in this instance there was no large scale movement for repression. Rather than fleeing or fighting back, the Senate did what they were supposed to do and listened to the people. They suggested a new, extraordinary office, the *curator annonae* (Curator of Grain), which would provide one man the necessary resources to stabilize and control market grain prices. For this position, they recommended Pompey, a suggestion which was welcome to the multitude. That the crowd was not just satisfied with this choice, but even pleased by it, indicates that Clodius was not their puppet master. It was certainly not the choice Clodius would have made, since he had previously accused Pompey of price speculation in a Senate meeting.[28] But there was little he could do against the will of his crowd. The people liked Pompey almost as much as they liked Clodius, because they saw him as an efficient public leader.[29] With this recommendation, tensions relaxed and the people put down their arms. Satisfied, many left.[30]

Cicero was disgusted with Clodius' involvement in this riot.[31] The fact that grain prices had risen to uncomfortable levels was undeniable, but the connection to Cicero was nothing more than an attempt to manifest private enmity in public action. Cicero saw two elements at play in these riots: the fear of famine and displeasure at high prices. Popular fears caused enough trouble, to which the Senate would attune itself and provide for the city's needs. Displeasure, however, was a passive phenomenon and required

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[26] Throwing stones and rotten vegetables at statues was a suitable placeholder for attacking the real person. So Cato's supporters assaulted the state of Pompey in the controversy over his consular provinces in 55 (Plut. *Cat. Min.* 43).
[27] Vanderbroek (1987), 151.
[28] Plut. *Pomp.* 49.5.
[29] Vanderbroek (1987), 135-138. Pompey was popular because of his brilliant military successes in the Social War, Spartacus Revolt, and clearing the Mediterranean of pirates in one season. While Clodius did not have any military renown, he did take pragmatic action for his constituents.
[30] Canetti would see the Senate's action as the ultimate form of crowd repression. By giving into their demands the crowd has no reason to remain cohesive, and everyone will return to their daily lives. (Canetti (1960), 23.)
[31] Cic. *Domo.* 11-12.

instigation for troublesome action. Thanks to grain doles, the people were never short of grain, just the resources to acquire more of it. Furthermore, the presence of weapons and the throwing of stones at the riot seemed to indicate that someone had prepared the people. To Cicero, Clodius' involvement in spurring discontented mobs to riot was an act of recklessness, and demonstrated that he was unfit for power. This was Cicero's opinion, but it is important to note that Clodius' role in organizing this successful riot was a noticeable one. It may not have ended up as a personal victory for Clodius, but his organization had given the plebs the voice and resources to demand more oversight of their grain. It was a victory for the *plebs urbana*.

After his return to Rome, Cicero found the opportunity to insult Clodius symbolically. He snuck onto the Capitoline hill numerous times and attempted to steal the copies of Clodius' laws that were posted for public viewing.[32] This act was in effect declaring that Clodius was an illegitimate politician, whose laws had no place among those of great Romans. Incensed by this insult, Clodius retaliated and "no quarter was shown on either side" (οὐδεν ἀπώμοτον, Dio 39.21.3). They exchanged insults and abuses, each criticizing the legitimacy of the other's position in Rome. Cicero argued that all of Clodius' work as tribune of the plebs was invalid because he had been too hastily transferred to the plebeian order by Caesar, and Clodius responded that Cicero's return to Rome was due to an unlawful vote.[33] Dio only records the use of slander and verbal abuses, but, by the end of 57, matters had violently escalated.

November Skirmishes

On November 3, a gang of armed men (*armatis hominibus*) drove off workers rebuilding Cicero's Palatine home, and threw stones and fire at his brother's house.[34] Since Cicero's return, the site of his home on the Palatine had been a place of political drama. Cicero believed that the site of his house, where the Shrine to Liberty now stood,

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[32] Dio 39.21. The dating of this event in unknown. It occurred as early as Cicero's return in 57, or as late as the riots of Spring/Summer 56.
[33] Any discussion of the Ciceronian issue had been banned by the *lex de exilis Ciceronis*. For more see Tatum (1999), 87-113.
[34] The events of November are primarily drawn from Cicero's letter to Atticus (*Ad Att*. 4.3). Additional sources will be noted.

was rightfully his own private property, and had been improperly sanctified for religious use. The religious augurs agreed with him, and granted the property back to Cicero, with all expenses for reconstruction drawn from public funds.[35] The consuls of 57 had also decreed that any further act of violence against Cicero's property was an act of violence against the Republic.[36] Essentially, Cicero's house was sacrosanct. With the removal of the Shrine to Liberty, Clodius could spin this as a symbolic assault on *libertas*, to which the people must respond.[37] Clodius' followers responded, but not in overwhelming numbers. Since Cicero had been recalled in a constitutional manner, and in such a way that left the bulk of Clodius' *lex de provocatio* intact, many urban plebs were not interested in this feud. This attack appeared cold and calculated, lacking the passion and fervor of previous riots against Cicero.

Eight days later, Clodius attacked Cicero and his retinue on the via Sacra, as they entered the Forum. Cicero was able to find safety in the house of a friend nearby. The next day, Clodius laid siege to Milo's house on the north slope of the Palatine. Milo and his friends responded with greater violence. An armed squadron left Milo's other house, on the south slope of the Capitoline, and killed many of Clodius' followers.[38] Meanwhile, Sestius was beside himself with anger (*Sestius furere;* Cic. *Ad Att*. 4.3.2).

Many Romans were outraged about this violence. Even on his own side, Clodius managed to estrange two of his followers, Gellius and Decius the Undertaker. When Cicero took refuge in his friend's home, he remembered shouts from the people to haul Clodius off to trial (and perhaps execution; Cic. *Ad Att*. 4.3.2). However, Clodius was still able to maintain a solid support group, including loyal urban plebs and certain sympathetic aristocrats.[39] While his violent actions could still be supported by an appeal to *populi libertas*, Clodius directed movement against his personal enemy rather than a public problem. His rhetoric appeared empty when it attempted to mobilize people for his own personal feud.

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[35] For more on this issue see Cic. *De Domo Sua*. Also, Tatum (1999), 187-192.
[36] Cic. *Har. Resp*. 15.
[37] Tatum (1999), 193.
[38] For more on Milo's houses, see Millar (1998), 157.
[39] Tatum (1999), 194-196 records how Clodius was able to maintain the favor of certain senators by carefully negotiating a controversial political situation in Egypt.

After the attack on his home, Milo decided to act through the law courts. If he could gather evidence about Clodius' mistreatment of Cicero, he could easily charge Clodius with disturbing the peace through violence. However, Milo needed to bring this charge to completion before the end of the election cycle for next year. Clodius was standing for the aedileship, in which office he would be totally immune to legal charges.[40] Milo decided to obstruct these elections, announcing in *contio* that he would watch the skies for any bad omens (*obnuntatio*). On the day of elections, he caught the consul Metellus Nepos sneaking through the back streets of Rome in an attempt to reach the Campus Martius and convene the electorate before Milo could register his *obnuntatio*. Milo assembled a massive band of men (*magna manu*) on the Campus Martius, so large that Clodius offered no resistance, "his violence outmatched and fury treated with contempt" (*fracta vis, contemptus furor*, Cic. *Ad Att*. 4.3.3).

While Milo succeeded in blocking *aedile* elections until mid-January 56, he failed to submit a legal charge. Metellus Nepos managed to use Milo's strategies against him, until Milo was forced to abandon opposition by leaving office. In order for Milo to bring Clodius to trial, he needed a panel of investigators (*quaesitores*) to select the jury. However, the *quaesitores* for 56 had yet to be elected, because their elections traditionally took place after those of the *aedile*.[41] On this formality, Metellus Nepos forbade any praetor from forming a judicial *contio*. Milo, incidentally obstructing both *aedile* and *quaesitor* elections, was forced to abandon his pursuit in early December, when he stepped down from the tribunate.

In the Senate, a debate raged about the order of elections and trials. Milo and friends continued to urge for trials first, while Clodius and friends fought for elections. During one meeting in mid December, Clodius arranged a demonstration on the Graecostasis, outside of the Senate house. Throughout the meeting many senators berated Clodius and his activities, but, when Clodius rose to speak, his supporters raised such a cry outside, that the Senate immediately broke up in fear and everyone retreated to

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[40] For more on judicial immunity of magistrates during their office, and during any promagistracy, see Karakocali. (2013), 74-76.

[41] Dio 39.7. Dio uses the term ταμίαι (quartermaster) to refer to these investigators. However, it is not entirely certain if this term is translated into Latin as *quaesitores*, the judicial magistrates, or to the *quaestores*, treasury administrators. The judicial context of suggests that Dio is referring to the *quaesitores*. For more see Lintott, *Constitution,* 133.

safety.[42] Their shout was likely to intimidate Milo's supporters, also gathered in the Forum, and might have led to a violent clash if the Senate had not dispersed. However authoritarian a pleb might have perceived the Senate, this matter fell under their legitimate powers, both traditionally and legally. In order to avoid violent clashes, it was necessary for the Senate to make this decision. After the crowd's shout scared away the Senate, the people could do little to bring about any action for elections or trials on their own without risking extreme violence. In this collective, the plebeians demonstrated patience and restraint. The plebeians had attended the meeting in order to support Clodius, and even in the immediate presence of dissenting opinions kept calm until Clodius had a chance to speak. The direction of this crowd, and the ease with which it dissolved along with the Senate, suggests that they assembled for the sole purpose of supporting Clodius' bid for election.[43] When the Senate left, so too did any means of attaining their goal peacefully. Unless they were willing to risk violence and death, elections would have to wait until the Senate made a decision.

Unfortunately, the historical record becomes clouded after this meeting. Sometime in the following month, the Senate passed a resolution that did not permit Milo to carry any charges against Clodius,[44] and by mid January 56, Cicero began to fear the prospect of an *aedile*'s fury (*furiosae aedilitatis*, Cic. *Ad Quint*. 2.2.2). Soon after his election to office, Clodius brought charges against Milo and Sestius for violence against the state.

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[42] Cic. *Ad Quint*. 2.1.3: *eo metu iniecto repente magna querimonia omnium discessimus*.

[43] This is similar to Canetti's "persecution from within," where an authority passively represses crowd behavior by satisfying their demands. Such a thing happened earlier, during a grain riot, when the Senate appeased the plebs by listening to their concerns. Here, however, they ignore popular opinions and halt their own political procedure, removing the means by which the people could make any legitimate movement. The fact the the crowd was so willing to dissolve along with the Senate, instead of rise up in anger, suggests that, while they had been motivated to attend and participate, fighting for Clodius was not their top priority. For more see Canetti (1960), 22-24

[44] Cic. *Sest*. 95. Cicero does not say anything more about this resolution. However, it is not unreasonable to conclude that the Senate eventually sided with Clodius. Tatum contextualizes this decision in the sphere of senatorial competition: whereas the Senate had been opposed to Clodius' overweening power at the beginning of 57, by the end Cicero had returned, Pompey received the *curator anonnae*, and Clodius had his ego checked. He appeared to be willing to assist members of the Senate against the growing power of Pompey. As an *aedile* with *imperium*, he could be valuable for countering any extreme moves from Pompey. For more, see Tatum (1999), 198 and references.

Idle Justice

The idea of using the courts to repress violence was not new or innovative. After all, the courts existed so that people could solve their disputes legally without the risks of violent retribution. Established on these principles of self-help and *provocatio*, in order that these principles might survive, law courts depended on private action against anyone whom the accuser perceived to violate the law or their rights as Romans.[45] Since Roman judicial trials were held in open air *contiones*, these private initiatives were closely linked to public support and popular activity. In the case of the *vis* trials of early 56, the crowds in support of Clodius, Milo, and Sestius all appeared in the audience to voice their opinions. The result was, as Gruen labels, "rowdyism," a tumultuous clash between opposing viewpoints in a public space.[46] This clash severely hindered the regular judicial process, the results of which had little effect on ending this cycle of violence.

The Trials of Milo and Sestius

The main question in these trials concerned the legitimacy of violence, when it was appropriate, and how severe it should be. Since Cicero's defense speech for Sestius still survives, we know much more about the legal details of his trial than about Milo's. The popularity of these cases was unprecedented in Rome. Cicero says at Sestius' trial that he never saw so many people around the court, listening to the speakers (Cic. *Sest*. 36). As Cicero reveals, the two cases were similar. Both tribunes were charged with rampant use of violence during their tenure, a disregard for traditional procedures, and the promotion of the interests of an aristocratic faction (*natio optimatium*; *Sest*. 96, 132) that was trying to take control of the state.[47] In defense of Sestius, Cicero claims that Sestius' (and Milo's) use of violence was a measured and reasonable response to the crimes of Clodius.[48] While he does not deny that Sestius "bought, collected, and prepared

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[45] Lintott, *Violence*, 22-34.
[46] Gruen, *LGRR*, 442.
[47] Cic. *Sest*. 86-92; also M. Alexander (2002), *The Case for the Prosecution in the Ciceronian Era*. University of Michigan, Ann Arbor: 213-4.
[48] For more on this rhetorical strategy, called *translatio criminis*, see Alexander (2002), 214, and references.

men" (*homines emisti, coegisti, parasti*, Cic. *Sest*. 84),[49] Cicero disagrees with the prosecution's claim that Sestius preemptively initiated violence in response to popular movements, without seeking traditional means of suppression.[50] The fact of violence is not disputed here, but rather the steps through which it came down upon the people. By arranging their prosecution like this, Clodius' team could legitimize their own violence in the context of self help and *provocatio*, while presenting Milo and Sestius as irrevocable aggressors.

The importance of *provocatio* underpins the final accusation against Sestius: that he was no more than one of the "breed of *optimates*" (*natio optimatium*), who wanted hegemonic control in Rome. Sestius, whom Cicero says had worked ceaselessly for his-own return, had used his gangs to suppress the voices of much of the urban population during the recall drama. In this regard, his violent actions suppressed popular liberty, and blocked any attempt for *provocatio* with undue force. Cicero masterfully handles this accusation by turning the liability of a faction into the asset of beneficence. He argued that the *optimates* were the type of politicians who work tirelessly to unite all loyal Romans under universal consensus (*consensus omnium bonorum*; Cic. *Sest*. 96-143). By exploiting the root *optimus* ("greatest") in *optimates*, Cicero was able to transform the concept from a partisan insult into "an instrument of inclusion."[51] Not expecting this rhetorical genius, Clodius' prosecution team was caught off guard, and Sestius was unanimously acquitted.

Milo's trial was much more tumultuous, and was never able to reach a conclusive verdict. Beginning in early February 56, Clodius engineered this trial to be decided through a *iudicium populi*, a decision by the people. Cicero describes this sort of procedure as one similar to voting *contiones*, in which three to five meetings are held concerning the matters of the case, followed by a three week waiting period (*trinundium*),

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[49] Cicero mixes his vocabulary in this speech, referring to Sestius' force as *praesidium* ("defense," 78), *manus* ("squad," 84), and *copiae* ("troops," 84). However, he reserves *operae* only for Clodius.
[50] Cic. *Sest* 84: "But it was not yet the proper time; the current situation was not forcing good men to take protective measures of this sort" (*at nondum erat maturum; nondum res ipsa ad eius mdi praesidia viros bonos compellebat*).
[51] Alexander (2002), 217.

after which all citizens would cast their vote.[52] In *iudicia populi*, "the audience was the arbiter which the prosecution and defense sought to win over in *contio*."[53] *Contiones* were the domain of Clodius, and by hosting the trial in such a familiar space, Clodius "denied its neutrality" to Milo.[54] This was the space in which he had cultivated his popular following. Here, *libertas* could find confirmation in the punishment of its violator. Clodius expected passion from his own supporters, but did not expect the vehemence of his opposition.

Cicero and Pompey both spoke for Milo's defense. Cicero recorded the events of the first few *contiones* in a letter to his brother (Cic. *Ad Quint*. 2.3). The first *contio*, on Feb. 2, went smoothly. When the second *contio* convened, on the morning of Feb. 7, Pompey found great difficult speaking, because Clodius' gangs (*operae*) constantly shouted insults and abuses at him. After he finished around noontime (demonstrating a constancy though the chaos that Cicero greatly admired), Clodius rose to speak. "Wishing to repay the compliment,"[55] Milo's supporters hooted and hollered insults in return, including the infamous rumors of his affair with his sister Clodia. This went on for over an hour, until Clodius lost his temper, abandoned his speech, and began to lead his supporters in a call-and-response game, in which which they accused Pompey of starving the people to death, and other politically scandalous activities.[56] Recording these events with a remarkable precision, Cicero says that at 2:15, the *Clodiani* collectively spit on the supporters of Milo. "Anger exploded," Cicero said with uncharacteristic brevity, "gangs fled. Clodius was thrown from the rostra."[57] Each side tried to gain physical control of the meeting space, pushing each other out. Eventually the trial was disbanded amid violence.

Perhaps the most salient point of Milo's trial is the dilation of time and the patience of the crowd. This was a rowdy and tumultuous riot, but it was the result of

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[52] Cic. *Domo* 45. Capital charges could only be heard in the *comitia centuriata*, which required either a consul or praetor to convene (Cic. *Leg*. 3. 11). M. Aemilius Scarurs was a praetor this year and had an amicable relationship with Clodius, who would later defend him alongside Cicero in 54. See Tatum (1999), 232. He also presided at Sestius' trial this year (Cic. *Sest* 101, 116).
[53] Tan (2013), 127.
[54] Tan (2013), 127.
[55] Cic. *Ad Quint*. 2.3.2: *placuerat referre gratiam*.
[56] Plutarch records insults about Pompey's sexuality (Plut. *Pomp*. 48.7). However, these may be elements of Plutarch's moralizing history. See C. Pelling (2002) *Plutarch and History*. Classical Press of Wales, Duckworth: 237-251.
[57] Cic. *Ad Quint*. 2.3.2: *exersit dolor…fuga operarum, eiectus de rostris Clodius*.

tensions slowly building up throughout the day. From morning to noon, claqueurs in one crowd shouted at Pompey; from noon to half past one, the other crowd reacted similarly towards Clodius; and even after Clodius abandoned his speech to engage with his audience, there was still forty-five minutes of chanting and shouting before any hostility broke out. Nobody came to the trial with the express purpose of fighting. Rather, they came to support those who supported them: Clodius, always the defender of the plebs, and Milo, the last holdout against popular violence for *equites* and senators. The legitimacy of the legal system was not in question, but the people questioned the legitimacy of others to make legal decisions. Indeed, Clodius had clearly chosen a space for this trial that favored his supporters, circumventing the traditional authority of senators and *equites* on jury panels. The audience rallied under either side and the resulting bipartisanship, combined with the natural passions of Romans in situations of *provocatio*, proved disastrous for the usual performance of justice.

The next day, the Senate held a meeting for everyone to explain their actions. They recognized that Milo's supporters were responsible for the chaos, because of their intense reaction to Clodius' rabble-rousers, and they passed a decree that the events of Feb. 7 were contrary to public interests.[58] The next *contio* for Milo's trial was scheduled for Feb. 17, during which nothing of note occurred,[59] and the final vote was scheduled for May 7. By that time, however, the triumvirate had reformed political alliances, and no one bothered to hold the vote. Milo stayed a free man.

Spring Riots

While there was incidental violence in the law courts, Clodius and Pompey both engineered violence outside of the Forum. During the trials, Cicero wrote to his brother that both men were bolstering their street forces. Pompey was bringing in men from the country, while Clodius was reinforcing his mob in the city (Cic. *Ad Quint*. 2.3.4). By the end of March, Milo was also gathering more gladiators, for an unspecified purpose (Cic.

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[58] Tatum (1999), 203 sees this as a clear censure of Pompey's growing power. Contrawise, Gruen, *LGRR*, 299 believes that the Senate resolution was directed against Clodius; however, Cicero discusses a speech delivered at this meeting by C. Cato against Pompey, to which the Senate made no protests.

[59] Or at least nothing worth writing down…

Ad Quint. 2.5.3).[60] Throughout this process of fortification, Clodius continued to exploit popular concerns about the food supply. Pompey, although he was in a special position to manage the grain supply, was not performing his duties satisfactorily, and was incurring the dissatisfaction of many citizens in Rome, senatorial and plebeian.[61] Under the leadership of Sex. Cloelius, one of Clodius' chief underlings, a mob of plebs attacked Pompey's grain distribution point at the Temple of Nymphs. A riot broke out, and the Temple was burned to the ground.[62]

A legal inquiry was immediately launched, and Cloelius was brought into court under charges *de vi*. Contemporaneous with Milo's and Sestius' trials, Cloelius' trial was equally sensational, and equally controversial. Cicero says that Milo headed the prosecution, but that his team was weak (*imbecillis*; Cic. *Ad Quint*. 2.5.4). Comprising an even weaker jury (*deterrimo consilio*), Cicero says that the senators voted unanimously for acquittal (because of their dissatisfaction with Pompey), the *equites* were tied, and the *tribuni aerarii* voted guilty.[63] Cloelius was acquitted by three votes.

Surprisingly, the people were infuriated by this decision. Cicero says that they demanded another trial, and even viewed him as guilty already since "he was almost found guilty by a jury of his own men."[64] Cicero does not say anything specific about demographics of "the people," but he represents them as having a surprising passion against Cloelius. The extent which popular passions are directed against one of Clodius' "gang leaders" demonstrates the fragility of Clodius' organization, if viewed in terms of "gangs" rather than groups of plebs acting in concert. Clodius' actual involvement in this riot against Pompey and the burning of the temple is unclear. Cloelius may have received

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[60] Milo will be elected to the praetorship in 55, so it is likely that these gladiators are in preparation for games he will hold in that office. However, that does not mean that they could not also be used for street violence, similar to Clodius' use of gladiators when obstructing Cicero's return.

[61] Cic. *Ad Quint*. 2.5; Also Tatum (1999), 211. Aside from his poor management of the grain supply, he was also implicated in political drama in Egypt. For more on how this displeased the senators, see Tatum (1999), 176-213.

[62] For more about this event and the subsequent trial, see Tatum (1999), 211-12, who is drawing on the work of C. Nicolet ("Le Temple des Nymphes et les distributions frumentaires à Rome." *CRAI* (1976): 29-51).

[63] *Tribuni aerarii* were a hold-over from the archaic period, during which these *tribuni* would have distributed pay to soldiers. By the late Republic, they had the same property qualifications as the *equites*, and represented a similar social class. Lintott, *Constitution*, 53, 176.

[64] Cic. *Ad Quint*. 2.5.4: *populus/homines…quia cum apud suos diceret paene damnatus est, vident damnatum*.

direction from him, and possibly even an endorsement afterwards. However, Cloelius was not Clodius, and did not have the same levels of *dignitas* and *celebritas* that the tribune had cultivated during his political tenure. As a *dux operarum* ("leader of the gangs"), or more likely a *magister vici* ("master of the neighborhood"),[65] Cloelius' legitimacy as a leader depended on his actions and associations. In this case, he acted too severely in the public eye, but his association with Clodius (and against Pompey) was enough for his acquittal. Outraged at this circumvention of justice, the people demonstrated that they were not bound to Clodius and his organization. They followed him because of his past *beneficia* towards them, but could easily take away their support if they thought that he no longer worked in their best interest. Luckily (or perhaps intentionally?), Cloelius was the transgressor in this case, and he received the opprobrium for the riot and public destruction.

Another riot occurred in the early months of 56, again organized by Clodius. During a show at the Megalensian Games (which Clodius had arranged as part of his duties as *aedile*), a throng of plebeians, who had been gathered from around the city, stormed the theater and booted out the audience, including senators and *equites*, in order for the show to be performed exclusively for themselves.[66] Modern scholars offer two interpretations of this event. Tatum connects this event to the contemporaneous food riots in the city. Around the same time, the Senate decided to give more money to Pompey, so that he might better perform his duties as *curator annonae*.[67] If this was the case, then this riot could easily be situated with the others of this period in which the plebs demonstrated their concern over their food supply by bringing the matter to the front of the public eye, literally into the spectacle. However, Vanderbroek sees the event in terms of class conflict, in which Clodius rashly provided access to the show for the urban populace who never had the opportunity to obtain tickets.[68] If this was the case, then Clodius had taken

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[65] Ascon. 7.
[66] Cic. *Har. Resp*. 22-26: *vis…ex omnibus vicis collecta servorum*. Cicero calls Clodius' mob exclusively *servi* (slaves). This is an exaggeration, in order to intensify his invective. See Vanderbroek (1987), 253 and Tatum (1999), 212.
[67] Tatum (1999), 212; also Cic. *Ad Quint*. 2.6.1. There is one problem with this interpretation. Vanderbroek (1987), 253 dates the riot on April 8, while Cicero dates the Senate resolution to April 5 (Nonnes of April). However, that does not disqualify any lingering popular concerns about grain.
[68] Vanderbroek (1987), 253, with references. Also Tatum (1999), 212, with references.

recourse to terror in order to provide entertainment for his constituents. Such a bold move does not match up with previous, more traditional uses of his popular mob, such as legislating or protesting. It does, however, fit well with the traditional duties of the *aedile*, and with Clodius' proclivity for providing favors to the *plebs urbana* through the duties of his magistracy. It is possible that both Tatum and Vanderbroek are correct: Clodius engineered a way in which he could provide *beneficia* to his urban constituents, while allowing them to make a display against the aristocratic and senatorial establishment. At the end of the day, the *plebs urbana* were able to see a great show, with music and dancing, and Clodius had arranged it for them.

Renewal of the Triumvirate

By the spring of 56, political tensions had stalled the city, to such a point that intervention was necessary. Recognizing the instability at Rome from his provincial vantage point, and wishing to reinstate his influence in the city, Caesar invited Pompey, Crassus, and a few hundred other senators to Lucca, in Tuscany, in order to renew political alliances and sketch a plan for the Roman government over the next few years.[69] As a result of this conference, many senators, including Clodius, were reconciled with Pompey, while Pompey and Crassus had decided that they would be consuls for the next year.

Many in Rome had a difficult time digesting the new alliances, and the current consuls refused to allow Pompey or Crassus to stand for the consulship.[70] In order to ensure their installation, tribune C. Cato pledged to veto all consular elections during that year, until an *interrex* would be chosen, who could then appoint Pompey and Crassus to the consulship.[71] The Senate protested these vetoes by decreeing that everybody wear the mourning toga, but C. Cato refused and gathered a crowd in the Forum to counter-protest. Marcellinus, a prominent senator, managed to coopt this *contio,* and moved the crowd to

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[69] Gruen, *LGRR*, 100-101, 230. Also Tatum (1999), 204. Cicero was none too pleased about the renewal of the Triumvirate, and so mostly retired from politics until 51, except to deliver a few defense speeches (Millar (1998), 168).
[70] Dio 39.27-29.
[71] This is Gaius Cato, *populares* tribune, not Marcus Cato, eminent senator.

tears over the excessive powers of Pompey and the decaying state of the constitution.[72] Coming to C. Cato's aid, Clodius used his popularity to regain control of the crowd, inveighing against Marcellinus and the Senate. Meanwhile, the senators expressed their indignation from the Senate house, making such a scene that Clodius broke off his speech and ran across the Forum to meet them. In the midst of a crowd of hostile senators and their *equites* supporters, Clodius almost found himself torn limb from limb. He managed to call out for assistance first, and the plebs immediately came to his aid, "bringing fire and threatening to burn his oppressors along with the Senate house should they do him any violence" (Dio 39.29.3). This instance of *fidem implorare* demonstrates how extreme the political situation in Rome had become. Whereas persuasive rhetoric from the senatorial oligarchs was once vital for negotiating popular opinion, here Clodius' sheer popularity with the plebs managed to override any persuasive effect from Marcellinus and the opposing side. Alongside the Senate, the people felt uneasy about authority of the triumvirate, but as long as Clodius fought for them, they would fight for him.

Over the next few years, the triumvirate virtually controlled the Republic. They managed this through an intense use of violence and intimidation in elections and legislatures.[73] In the time between late 56 and 52, there is no record of instigated gang violence, because the political alliances negotiated during the conference in Lucca lessened tensions between the most volatile and resourceful leaders. While the sources do not mention Clodius' or Milo's gangs, the tactics which those leaders had developed over the past few years continued to find use. Politicians made a greater use of prepared bodyguards, with some employing hundreds of armed men.[74] Spatial control of the Forum continued to be vital for political activity, and violence became a commonplace means by which to secure it.[75] As a result of this, open public debate about public issues decreased.[76] Aside from one instance where M. Cato managed to calm a rowdy crowd

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[72] Val. Max. 6.2.6.
[73] See Vanderbroek (1987), 255-262 for a schematic account of popular riots from late 56 to 52.
[74] M. Aemilius Scaurus appeared at the consular elections of 54 with a body guard of 300 armed men (*armati*) (Ascon. 20).
[75] For example, the violence during the vote for the consular provinces for Pompey and Crassus, in which tribune Trebonius rallied the people, while M. Cato, paragon of old senatorial values, attempted to occupy the Forum with his supporters. Both sides forced each other out of the Forum numerous times, with many casualties on both sides. (Dio 39.32-36). Also, Vanderbroek (1987), 257.
[76] Millar (1998), 179.

during discussion about rampant electoral bribery,[77] there is little evidence about the free exchange of ideas in *contio*. Clodius' *contio,* in which the speaker and audience communicated on familiar terms, became the norm. Combined with the increase in defensive force and offensive action, *contiones* no longer served as the discussion forums they once had been. The specter of Clodius loomed over political organization and mobilization, offering an alternative path towards *dignitas* and success that did not eschew force.

With the advent of the triumvirate, new alliances began to fracture the Senate, while the people grew ever dissatisfied with the perpetual chaos. The political fabric of the Republic was wearing thin. Without effective repression, rampant violence would quickly tear it apart.

The Appian Way

During the election cycle of 53, Milo stood for consul, while Clodius stood for praetor. It is entirely possible, and indeed probable, that both candidates would have received enough votes to win their separate magistracies, but neither candidate wanted the other in office.[78] Up to this year, Clodius and Milo had gotten along well enough that our sources do not record any major scuffles between the two. The reason for this was the reconciliation between Clodius and Pompey, who supported Milo, following the conference at Lucca. However, Clodius was not willing to cooperate with Milo as consul. Clodius had big plans for his tenure as praetor, including legislation that would have distributed urban freedmen's votes throughout the rural voting tribes.[79] This was a controversial proposal, and would have altered the balance between urban and rural votes in the *comitia tributa*. Similar legislation had been introduced in 64 and ended in violence and the ban on *collegia*. Clodius was not willing to risk Milo's consular obstruction. In Milo's stead, Clodius supported Plautius Hypsaeus and Metellus Scipio for the

[77] Plut. *Cat. Min.* 44.2-4.
[78] Tatum (1999), 234-239.
[79] Ascon. 52; Cic. *Milo* 87.

consulship, whom he trusted to cooperate with his program. In the clash between the consular candidates, bribery ran rampant, and tensions erupted in violence.

Cicero passionately supported Milo's campaign in a letter to his friend Curio. Cicero outlines the support Milo has so far, including many of the *equites*, the youth vote, and the common multitude (*vulgi multitudinis*) who had enjoyed Milo's gladiatorial games and his generosity during his praetorship (Cic. *Ad Fam*. 2.3). Clodius, however, commanded much of the same support, especially among the urban population. Each of the three consular candidates—Milo, with the support of Cicero, and Hypsaeus and Scipio, with the support of Clodius—had enough resources to lead powerful and effective campaigns. When the two forces met, the results were deadly. Looking back from his Augustan vantage point, Livy represented the campaign as a contest fought with arms and violence.[80]

One afternoon, Milo and Hypsaeus, both accompanied by a full retinue of their supporters, including Cicero and Clodius, met by chance on the edge of the Forum, next to the Regia on the via Sacra. In the clash, a number of Milo's men were unexpectedly killed, and Cicero barely escaped with his life.[81] Given the position of this brawl on the outer edge of the Forum, it is likely that one or both of the groups was holding a *contio* that day to increase their group solidarity and possibly even gain supporters. When one group met the other, passions were already so high that only a few words between the two led to violent brawl. It is not necessary for any one leader to have initiated the skirmish. Rather, the crowds that followed each man were inflamed by rhetoric that affirmed the other as the enemy. Tensions erupted easily because these orators had been pushing campaign rhetoric to the extreme.

The elections were no less rowdy. Clodius tried to storm the polls with an armed gang, but Milo's presence, with his own gang, prevented Clodius from approaching.[82] Cicero does not report any deaths or fighting at the elections, but does offhandedly mention that Milo insisted the voting assembly proceed despite his bloodied hands.[83]

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[80] Liv. *Per*. 107: *armis ac vi contendebant*.
[81] Ascon. 48; Cic. *Milo* 37.
[82] Cic. *Milo* 41, 43.
[83] Cic. *Milo* 43: *Milo cruentis manibus scelus et facinus prae se ferens et confitens ad illa augusta centuriarum auspicia veniebat*. See also Vanderbroek (1987), 262.

Nevertheless, the elections were broken up and postponed until the early months of 52. Milo desired the elections to be held as soon as possible, since he felt he had enough support to win, while the other candidates wanted to hold out until an *interrex* was chosen.[84]

Before this could happen, a chance encounter on the Appian Way in late January halted the process. Clodius, returning to Rome, met Milo, who was leaving the city.[85] Both men travelled slowly with huge retinues, including armed slaves and gladiators. While the two parties passed each other, they exchanged insults and gradually grew more rowdy. As Clodius turned to look at this brawl, one of Milo's gladiators threw a spear that impaled Clodius through the shoulder. Fearing the consequences should Clodius survive, Milo attacked Clodius' force and made sure that their leader was dead, despite whatever penalties he would have to pay for killing. He left the corpse in the middle of the road.

A passing senator collected Clodius' body and brought it back to Rome that evening. News quickly spread, and by sundown a great crowd of plebs gathered around Clodius' house on the Palatine to lament his death. Fulvia, Clodius' widow, incited the crowd by displaying Clodius' naked, wounded body. By morning, an even larger crowd had gathered. Two tribunes, T. Munatius Plancus and Q. Pompeius Rufus, convinced the crowd to carry Clodius down to the Forum, where they held a *contio*, railing against Milo. Sex. Cloelius persuaded the mob to cremate Clodius in the Senate house. They brought him into the Curia Hostilia, and set up a funeral pyre inside. The fire quickly spread from the pyre, and engulfed the whole building. In a magnificent and terrible spectacle, Clodius, a champion of *populi libertas*, and the Curia Hostilia, an ancient monument to *senatus auctoritas*, went up in flames. The urban population of Rome watched as two symbols of opposing ideologies were purged from the city, memorialized in that moment of conflagration.

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[84] Ascon. 30.

[85] The following narrative is mostly drawn from Asconius' commentary on Cicero's *Pro Milone* (Ascon. 30-43). For a short background on the (minor) chorological problems of Asconius, who wrote a commentary not a history, see Reubel (1979) "The Trial of Milo: A Chronological Study."

Geoffery Sumi interprets this event as a perversion of traditional aristocratic funeral rituals.[86] Engendered by Fulvia's initial display of Clodius' unwashed and unadorned body, Sumi argues that the crowd coopted the body and held their own "anti-aristocratic, popular celebration," in which they executed their own rendition of an aristocratic funeral, inverting elements to criticize senatorial authority and assert their own sovereignty.[87] Sumi astutely points out the absence of Clodius' family from these events, noting that the only aristocratic participants were Fulvia, who never prepared Clodius' body for the funeral, and the two tribunes, whose eulogies for Clodius took the form of invective against Milo. On this point, he concludes that the crowd dynamics of this event were self-cultivated by the people, and resisted efforts of leadership.[88] Whether or not it was Cloelius' idea to move the body to the Curia does not matter; rather, the crowd as a whole realized the opportunity to both convey the honor of *intra urbem* burial for Clodius, as well as the message of dissatisfaction to the senatorial aristocracy.[89]

Incensed, the crowd set out into the city for action. They went off to besiege Milo's house, but he was not at home. A crowd of Milo's slaves, as well as senatorial and equestrian supporters defended the house.[90] They moved to attack the house of the recently appointed *interrex,* M. Lepidus, but were kept off at a distance with arrows.[91] Some stole the *fasces* from the grove of Libitina, and brought them first to Hypsaeus, then Scipio, and finally to Pompey's villa outside of Rome.

These activities are pure manifestations of popular justice, and also demonstrate the fractured movements of the plebs, who were likely directed both by leaders and certain vociferous small groups, as well as their own anti-establishment collective mindset.[92] First, from the Forum, a virtual lynch mob set out against Milo, but, when he was nowhere to be found, some of these men splintered off to find the *interrex*, and demand that he hold elections so that Hypsaeus and Scipio could become consuls.

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[86] Sumi (1997).
[87] Sumi (1997), 101.
[88] Sumi (1997), 92-94. Sumi is drawing from the theories of Canetti.
[89] Sumi (1997), 99.
[90] Dio 40.49.4.
[91] It is likely that Lepidus was chosen as *interrex* on the very same day as the riots, in order to move towards a stable government as quickly as possible. See Reubel (1979), 234-6.
[92] Vanderbroek (1987), 263-5.

Because it was against precedent for the first *interrex* to hold elections, a group, likely a small and loyal squad of *Clodiani*, besieged his house for his entire five-day term.[93] On the last day, they broke in and began destroying his family heirlooms, until a newly arrived force from Milo, who also were demanding elections, appeared to fight them.[94] Meanwhile, after the initial attempt on Milo's house, another group of plebs collected the traditional symbols of consular *imperium*, and attempted to bequeath them upon their desired leaders without the authority of the Senate or *interrex*.[95] After the two candidates refused them, they went to Pompey, whose past successes in leadership made him an appealing choice. The crowd, acting as an egalitarian collective, fully utilized their collective sovereignty to select a leader who could impose stability and order on the state of chaos.

Milo returned to the city the next day in order to regain popularity and continue his campaign for the consulship. Rome was abuzz with different rumors and stories about what happened on the Appian Way. Cicero and Caelius held *contiones* in which they accused Clodius of ambushing Milo, while Scipio and Sallust alleged the opposite. Appian details one *contio*, in which Caelius and Milo spoke to a crowed that they had bribed, and Caelius went so far as to propose a public trial on the spot, which could acquit Milo.[96] Tribunes who opposed this measure (Appian does not state whom) prevented this by leading an armed and unbribed mob into the Forum to forcefully break up the hired crowd. They then proceeded to plunder and burn many houses around the Forum.[97] Milo and Caelius were only able to escape alive by rending their clothes and pretending to be slaves.

Through all of this, "the disorderliness of the candidates and the activities of gangs" prevented any elections, and the State cycled through many *interreges*.[98] In order

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[93] Ascon. 43.
[94] Reubel (1979), 236.
[95] Sumi (1997), 101 entertains the (probable) possibility that the crowd did not take the actual *fasces*, but merely gathered a bundle of sticks. The symbol, not the object, was what mattered.
[96] App. 2.22.
[97] Appian describes the people running around mugging every person with jewelry they see. Appian may have inflated these instances of theft and personal violence (such extremity is unattested elsewhere), but the sentiment fueling such action does correlate to the anti-senatorial feelings that Asconius and Cicero hint at.
[98] Ascon. 34: *propter eosdem candidatorum tumultus et easdem manus armatas*.

to stop the riots and regain stability, the Senate issued a *senatus consultum ultimum* to Pompey, commanding him to levy troops from around Italy and bring them to Rome. For Lintott, this military police force was the inevitable result of Rome's lack of a regular police force.[99] Unbridled gang violence was devastating the city. In order to restore justice, the city first needed to be quieted.

The Senate needed leadership also. Because of the special powers granted to Pompey, it was rumored that he would soon receive the dictatorship.[100] In order to avoid another Sulla, Bibulus and Cato made the unprecedented proposal that Pompey assume the consulship alone.[101] Once a consul held the *fasces* and the troops patrolled the streets, the air was calm enough to take judicial action. Pompey first proposed new laws that would streamline the courts for both violence and bribery, as well as make their punishments more severe.[102] In these new courts, he appointed a reserve of jurors, who would be chosen for each case by lot. He introduced time limits for legal speeches, with the prosecution allowed two hours, the defense three, and a verdict to be given on the same day. Finally, his new laws eliminated character witnesses, whose influence had often allowed guilty men to walk free. All other witnesses would give their deposition to the jury in the fours days before the trial. These new laws, combined with the presence of military force in the city, allowed for the smooth conduct of judicial trials without interference from hired thugs or rowdy disruption from the people.

After these laws passed, Pompey immediately brought Milo to trial. Faced with the hostility of the people during the witness hearings, Milo requested a bodyguard, which Pompey provided by stationing troops around the Forum. Appius Claudius (Clodius' brother), Marc Antony, and one other prosecuted, while Cicero alone defended. The prosecution speeches had little meaning, each repeating the rumors floating around

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[99] Lintott, *Violence*, 200. While the idea of the police force is anachronistic (Lintott himself has since acknowledged this), Pompey's calling in of the troops was the inevitable result of unregulated violence between contesting parties.
[100] Ascon. 35-36.
[101] Plut. *Pomp*. 54.
[102] Dio 40.52.

Rome that one had ambushed the other.[103] Cicero's speech, the *Pro Milone*, survives to this day, and is essentially an exercise in justification, designed to vilify Clodius and present Milo as a paragon of Roman values.[104] However, this may not be the speech that Cicero gave on that day. While Cicero spoke, the audience (likely *tabernarii*, plebeian merchants) unleashed an uproar, with no regard to the troops stationed around the Forum.[105] Cicero was able to deliver a speech, but the disruption, along with the menacing display of force from the guards, disturbed his voice, and he did not speak with his usual strength.[106] Milo was convicted, "because he was unable to use any force."[107]

There were many other trials, involving the activities of the most renowned gang leaders and members. Through all of these, a crowd of people witnessed the trials but were unable to make as dramatic protests as they had in the past. M. Saufeius, a friend of Milo who had allegedly led the attack on Clodius after he was injured, was narrowly acquitted, as was C. Considius, another of Milo's gang leaders. Asconius believes that their acquittal was due to a lingering hostility towards Clodius, which had just reemerged following Milo's condemnation.[108] On Clodius' side, Cloelius was overwhelmingly convicted, and many others allegedly failed to answer their summons.[109] M. Aemilius Scaurus was tried on charges of bribery, much to the displeasure of the people. When they attempted to intercede on his behalf, Pompey ordered his soldiers to repress the tumult, and several people were killed.[110] The people remained quiet for the rest of the trial, and Scaurus was convicted.

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[103] Ascon. 41. See also D.A. Alexander (2011). "Marc Antony's assault of Publius Clodius: Fact or Ciceronian Fiction?" in *ASCS* 32: 1-8 about false allegations in Cicero's speech (Cic. *Milo* 40), of a feud between Clodius and Antony, intended to destabilize the prosecution's legitimacy. Also, this case may be a strong reason for the later, and fatal, feud between Cicero and Antony.

[104] Cicero's speech contains such great one liners as: "Force was vanquished with force; or rather, audacity with virtue" (Cic. *Milo* 30: *vis victa vis vel potius oppressa virtute audacia est*).

[105] Ascon. 41-42. Also Vanderbroek (1987), 263.

[106] Dio 40.54.4 claims that Cicero was entire unable to speak, and after stuttering a few words retired. He later wrote the speech now extant at his leisure.

[107] Dio 40.53: μηδὲ δυνηθεὶς βίαιον δρᾶσαι.

[108] Ascon. 55.

[109] Ascon. 55-6.

[110] Dio 40.53.3; App. 2.24.

Rome after the Gangs

With the presence of troops to calm the turmoil in the city, and new laws to deal with any disturber of the peace, Pompey effectively put an end to the era of gang violence in Rome. This meant that he also put a damper on popular sovereignty. While Clodius' mob had been rowdy, it was through this rowdiness that they found a voice in political action. They had utilized traditional elements of Roman government, such as *contiones*, and the abilities afforded to them by *libertas*, such as *provocatio*, in order to express their thoughts and opinions to the senatorial oligarchy. Their activity, inherently built off of loud and forceful action, had provoked the hostility of Clodius' political opponents, who used his ideas against him by arranging a fighting force of their own. The clash between individuals, and the clash between classes, had resulted in a severe epidemic of violence that only unilateral repression could remedy.

This repression came at a cost. It is not necessary to say that people disagreed with Pompey's measures at the time, but those same people would soon pick up weapons to fight in a bloody civil war. Lucan poetically records the thoughts of Caesar's troops on the eve of war:

> Who does not know how the barracks invaded the frightened Forum, when glittering swords stood round the trembling jurors, in an unfamiliar *corona*? And how, when the soldiers dared to intrude on justice, Pompey's standards besieged Milo on the bench?[111]

[111] Luc. 1.319-23: *Quis castra timenti/Nescit mixta foro? Gladii cum triste minantes/Iudicium insolit trapidum cinxere corona/Atque auso medias perrumpere milite leges/Pompeiana reum cluserunt signa Milonem*. Similar sentiments appear in Caes. *B.C*. 3.1.4 and Sall. *Ep*. 2.3.2.

Conclusion: Communication Breakdown

As we have seen in the preceding chapters, the violence that the popular mobs used in order to reassert themselves in the political landscape of Rome had the ironic effect of making that landscape infinitely more difficult to access. While *provocatio* was a legitimate form of violence insofar as it could be justified with community appeals, the community was far too fractured along ideological lines for one appeal to have universal acceptance. The primary mode for justifying acts of violence was through rhetoric and oratory, but during this period the channels for these, the *contiones*, became partisan breeding grounds, where ideology was constantly affirmed and rarely debated. With the increase in violent behavior, the mentality of 'us' versus 'them' became far too strong for *contiones* to regain their previous status as a space for communication between magistrates, senators, and citizens. Unable and unwilling to engage in constant dialogue, both sides made claims of what was right and what was expedient to the detriment of each other and the whole institution.

Communication between senators and citizens had been an important part of Republican politics because of the harsh division of wealth and privilege between them. When this space for communication breaks down, then so do the signs of order and meaning that legitimize action. James Boyd White, in his discussion about language and war in Thucydides' *History*, says

> When the language in which the world is constituted falls apart, it becomes impossible not only to act rationally within it, but to make satisfactory sense of it. The end is a loss of language, a loss of the world, that threatens to become a loss of identity as well.[1]

The Romans fell into just such a predicament during the 50s. If it becomes easiest and most poignant to express beliefs and opinions through violence, then there is little need for words. What does the orator do, when his crowd refuses to listen? When there is no crowd at all? Whose tradition does he invoke, and why should that matter anymore, now that personal opinions have the weight of stones?

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[1] J. B. White (1984) *When Words Lose their Meaning*. University of Chicago.

Clodius' had begun his tribunate with the well-meaning intention of helping a marginalized order, while gaining political honors for himself. However, as the means by which he encouraged the plebs to take action became more extreme, the world in which his political honor would have value began to loose its shape. In the Republican system, voices were never meant to be silenced with violence, but that was the unforeseen consequence of using violence to increase one's own volume. Perhaps it is for the best, then, that Pompey was on hand to suppress gang activity in the city when the chaos reached a critical mass. While his efforts paid little regard to any one group's ideology, popular or senatorial, he aimed to preserve the safety of the Republic. If not for Pompey in 52, the Republic may have continued to tear itself apart, without any means to stop the rampant violence. As it was, civil wars, triumviral proscriptions, and popular riots shook the foundation of the Republic, but the institution was preserved, at least in a symbolic sense, because of Pompey's leadership. Without Pompey's model of unilateral assertion, maintaining the rights but limiting the capabilities of both plebeian and senatorial actors, it is possible that Augustus could never have taken the reins and 'restored' the Republic to its former glory, to live on through time and space long after his empire had fallen.[2]

[2] For more on the myth and reality of the Republic's restoration during Augustus' principate, see N. Mackie (1986). "*Res Publica Restituta*: A Roman Myth" in *Studies in Latin Literature and Roman History IV*. C. Deroux (ed.): 302-337.

Epilogue: Gangsta's Paradise

> Why are we so blind to see that ones we hurt are you and me?
> —L.V. in "Gangsta's Paradise" by Coolio.

In the 1995 rap song "Gangsta's Paradise," from which this thesis takes its title, Coolio narrates his life as a black man in an urban gang community. Socially and economically, Coolio comes from a class that has been marginalized by a cultural hegemony. Referred to through the song only as "they," this oppressive force is the racism of white America. Unable to participate in the usual mode of social advancement and prosperity, he begs the listener to "look at the situation they got [him] facing." Raised in an ambitious world, power, money, and reputation are always on his mind, but he does not have the legitimate means to attain these. He "can't live a normal life." In his community, the best way for him to obtain and protect these social rights is through violence.

Of course, Coolio is not satisfied with this "paradise" in which he is forced to live. Not only will this violence turn around and damage himself and his community, but there is no way out.

> "They say I gotta learn, but nobody's here to teach me.
> If they can't understand it, how can they reach me?
> I guess they can't.
> I guess they won't.
> I guess they front.
> That's why I know my life is out of luck."

Coolio and the plebeians have much in common. Unfairly marginalized by forces beyond their control, both are a part of a community that must resort to violence in order to grasp the benefits that liberty offers. In the Roman Republic, aristocrats were blinded by their avarice, and they often ignored the concerns and the importance of lower class plebeians. Yet both classes were Roman citizens who should have had equal share in public matters. In the Conflict of Orders, plebeians used violence to disrupt patrician hegemony, but, as we have seen, by the Late Republic that violence turned much more sinister. Whereas antagonism had highlighted areas for political improvement and

development, gang violence created an air of hostility that overpowered any notion of legitimate political activity.

Joy Connelly offers one solution by which republican citizens can avoid this slip into hostility. "Antagonism," she says "is a fundamental condition of republican politics, and [we must] choose our political priorities accordingly—giving first place to the preservation of speech from all quarters of society, including those that we forget to count in the census and in our imaginations."[1] In a political system with massive economic and social gaps, there is no way to avoid disagreement. But this disagreement does not inevitably lead to violence. If the political apparatus stays in tune with the status and condition of the entire polity, a republican government can always hear the voices and preserve the rights of every citizen without inducing hostility or violence. In a republican paradise, gang violence should be entirely unnecessary.

[1] Connelly (2015), 22.

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