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HOW HIGH A PRIORITY DID PUBLIC ORDER AND PUBLIC SECURITY HAVE UNDER THE REPUBLIC?

One fundamental issue that has been explicit or implicit in our discussions so far is the level of private violence that a community considers acceptable: to eliminate it entirely would be impossible and may not even be thought desirable. However, even if it appears that such a level of tolerable violence has been established, there is always the danger of escalation, the more dangerous because its occurrence is often hard to predict at the time. Certainly, the leading actors in the late Republic regularly behaved as if they could not see the consequences their actions might bring.

Much of my book *Violence in Republican Rome*[1] was devoted to demonstrating the ubiquity of violence and the importance of the use of private force throughout the history of the Republic. I pointed to the survival of the practices of *Volksjustiz*, *justice populaire*, even in the late Republic, the toleration, indeed encouragement, of private force (*Selbsthilfe*) in certain aspects of the law, the belief in revenge, and the measurement of cruelty according to the status and merit of the victim and the rational purpose of the actor. In the political field a further factor was the persistence of attitudes deriving from the Struggle of the Orders, whereby certain forms of violence were morally justified as the assertion of fundamental rights. Against this the

[1] Oxford 1968, [2]1999.

executive lacked the resources to enforce control and security which were available later to the emperors, not to mention modern societies.

It may be argued, however, that before the late Republic this incorporation of violence into society was not so much a cause of disorder and anarchy but necessary for the security of individuals and groups within it. Cicero saw *vindicatio* as part of natural law, the force by which a man repelled violence and insult from himself and his dear ones by self-defence and revenge and by which he punished crimes (*De inventione* 2. 66). Much later Machiavelli argued that the resistance of the plebs to the nobility was necessary for the preservation of liberty and to restrain the ambition of the great men,[2] crystallising what ancient orators said in *popularis* mode.[3] The Romans under the Republic therefore may have seen security as the product of conflict rather than repression. Nevertheless, if the pursuit of security by violence caused disorder, this in turn might endanger the security of society more generally in the longer term. Cicero in his calmer moments was well aware of this.[4] Many other Romans must have been conscious of this also. Accordingly, my paper today is an exploration of the way over a long period the Romans sought to mitigate the potential for disorder in conflicts and even to suppress unproductive violence.

One thing they did not do was to create a large superstructure of public officials. Here there is an obvious contrast with the Principate, when new magistracies were created and boards of officials multiplied. Under the Republic it was almost a century and a half before the consuls obtained a junior colleague, the praetor, and then over a century before the number of praetors increased. For all their duties in civil jurisdiction, it is clear that one of the main functions of the early praetors was to be

[2] *Discorsi sopra la prima deca di Tito Livio*, 1.5 & 37.

[3] Cic. *Pro Cornelio* fr. 49 Puccioni; *De orat.* 2.124 & 199.

[4] *Leg.* 3.42; *Mil.* 13. In *Sest.* 91-92, however, the message is more ambiguous. One must choose between *vis* and *ius*.

alternative military commanders.[5] The magistrates whose prime duties lay in the city were the tribunes and aediles. The former are said to have numbered ten before the *Twelve Tables*; the number of aediles doubled in the early fourth century and then remained constant at four until the time of Julius Caesar. At a lower level the *triumviri capitales*, said to have been created in the early third century, are remarkable for the multiplicity of their functions: they were in charge not only of the prison and executions but also of the night watch and, after a *lex Papiria* of perhaps the late third century,[6] they were entrusted with certain judicial functions involving *sacramenta*. In maintaining security they had, by the early second century BC, the support of the mysterious *quinque viri cis Tiberim* (Liv. 39.14.10). Nonetheless, as a small board of minor magistrates, they were hardly a powerful deterrent against serious disorder.

We must look, therefore, in the law, and in political procedures. Let us begin with private law. The *Twelve Tables* both recognized the necessity of private force in certain situations and ritualized certain forcible actions as part of legal procedure. It was understood that one might need force to bring some one to law (*igitur <i>{e}m capito*)(*tab.*1. 1); the law permitted the killing of the thief by night and the armed thief also by day. But in each case it expected the man using private force to call bystanders or neighbours to bear witness to what was being done (*ni it, antestamino*; *endoplorato*).[7] Here it exploited traditions of *justice populaire* in the interests of justice. Calling people to witness made it less likely that the arrest or killing was improper. Private force, furthermore, was used to seize debtors (*manus iniectio pura*) and they were confined privately for a

[5] See T.C. BRENNAN, *The Praetorship in the Roman Republic* (New York 2000), I 61ff., 85ff., though at the same time he understates their function in jurisdiction.

[6] *Roman Statutes*, ed. by M. CRAWFORD, BICS Suppl.64 (London 1996), II no.45; A.W. LINTOTT (n.1), 102-6; C. CASCIONE, *Tresviri Capitales. Storia di una magistratura minore* (Napoli 1999).

[7] *Tab.* 8. 12-13 = *Roman Statutes* (n.6), II no.40, *tab.*1. 17-18.

time until either payment was made on their behalf or they suffered what amounted to a capital penalty, whether by 'cutting parts' (*tertiis nundinis partis secanto*) or being sold as slaves across the Tiber (*tab.* 3. 1-6). The safeguard was that the creditor had to produce the debtor he had seized on three market-days, where some one might stand surety for them and obtain their release. Cases of physical injury involving the loss of a limb might still be penalized by *talio* ('an eye for an eye and a tooth for a tooth'), if no settlement could be reached agreeable to the injured party.[8] As for ritualized force, the laying on of hand or rod was to be found in the *vindicatio* processes used for the claiming of property (Gaius, *Inst.* 4. 16), and in the *actio per manus iniectionem* (4. 21-25).

How far were these procedures modified over time? Probably by the end of the Republic the physical element of summons in the *in ius vocatio* procedure had become formal. *Vadimonia*, the granting of security by the defendant for appearance, was an established practice at least by the late third century BC (Liv. 25. 4. 8-11). This meant that the parties agreed to meet in a place near the relevant praetor's tribunal, whence the formal summons took place.[9] However, private force might still be required to bring a criminal before a magistrate in the late Republic (Cic. *Cluent.* 38-39): where there was a major threat to public security, it was enough to make a denunciation to a magistrate. The provisions about thieves that I have cited remained unchanged. L. Quinctius, the tribune of 74, used these clauses of the *Twelve Tables* as examples of justified violence when responding to the lawsuit brought by Cicero's client M. Tullius, and Cicero himself appealed to them in his published defence of Milo (Cic. *Tull.* 47-50; *Mil.* 9).

The procedure against judgement debtors (*aeris iudicati*) was mitigated. Dissection as prescribed by Shylock was a matter for

[8] *Tab.* 8. 2-3 = *Roman Statutes*, II no.40, *tab.* 1. 1-13.

[9] HOR. *Sat.*1. 9. 74-8; CIC. *Quinct.* 25 with *Tabulae Pompeianae Sulpicio-rum*. Edizione critica ... di G. CAMODECA (Roma 1999), 49-51.

antiquarian research by the late Republic; the penalty was now *addictio* (assignment to the creditor as a debt-slave) and the time before the final execution of this penalty seems to have been lengthened. This is an inference from the fact that the third market-day is critical in the *Twelve Tables* (*tab.* 3. 6), whereas Gellius talks of preliminary detention for 60 days (20.1.46). *Manus iniectio* was in fact prescribed as a form of process by a number of statutes subsequent to the *Twelve Tables*, whether this strictly followed the *iudicati* procedure (called *pro iudicato*) or the man seized was allowed to defend himself and did not need a *vindex* to represent him (called *manus iniectio pura*). Gaius cited the *lex Furia* and the *lex Publilia de sponsu* as examples of statutes prescribing *pro iudicato* procedure and stated that there were other similar laws (Gaius, *Inst.* 4. 22, cf. 121. 127); he also cited the *lex Furia testamentaria* and the *lex Marcia* regarding usurers for their prescription of *manus iniectio pura* (4. 23, cf. 2. 225), while again making it clear there were parallels. One fascinating question which I cannot pursue here is the chronology of these statutes. The praetorian *actio iudicati* — that is, an action created by the praetor through a *formula*, not by the procedure prescribed by a statute — probably replaced *de facto*, if not *de iure*, *manus iniectio iudicati*. Moreover, less humiliating procedures were devised for those who did possess some money for their creditors — *venditio bonorum*, datable to before 111 BC and credited to a P. Rutilius,[10] and *cessio bonorum*, devised probably by Julius Caesar.[11] Nevertheless, the possibility of *addictio* and imprisonment by the creditor remained real in the last century BC and later.[12] The most that the *lex Poetelia* (placed by Livy

[10] Either Rufus, praetor by 118, or Calvus, praetor ca.166. See GAIUS *Inst.* 3. 78-80; 4. 35; cf. *lex agraria* (*Roman Statutes*, I no.2), line 56.

[11] GAIUS 3. 78; *Codex Iust.* 7. 71, cf. M.W. FREDERIKSEN, "Caesar, Cicero and the Problem of Debt", in *JRS* 56 (1966), 128-41.

[12] NOVIUS fr. ex incertis fabulis 11 (= l. 115), *ap.* CIC. *De orat.* 2. 255; *lex Rubria de Gallia Cisalpina* (*Roman Statutes*, I no.28), ch.21, lines 19-20; *lex Coloniae Genetivae Ursonensis* (*ibid.*, no.25), ch.61.

and Varro in the late fourth century) can have achieved was to put an end to debt-slavery that was voluntarily contracted.[13] *Addictio* to the wronged party for private detention was also, even in the last two centuries of the Republic, the penalty for manifest theft and other private offences treated as capital.[14]

Talio does seem to have been replaced by Chapter 3 of the *lex Aquilia*, whose date (let us accept at least after 287 BC) remains highly debatable.[15] As for the formal incorporation of private force in legal procedure, the *actio per manus iniectionem* may have been largely superseded by praetorian actions based on a formula, the *ius honorarium*, but not entirely, in so far as we find *manus iniectio iudicati* prescribed in the charter of Caesar's colony at Urso (*Roman Statutes*, I no.25, ch. 61). *Manus iniectio pro iudicato* is also to be found in the (admittedly some what archaic looking) constitution that Bantia adopted about 100 BC (*Lex Osca tabulae Bantinae*, *Roman Statutes*, I no. 13, line 24), and in a sacred law from Luceria (*ILLRP* II 504, lines 5-6). Praetorian actions would have also largely replaced the old *legis actio sacramento* with its *vindicatio*, but in the *De oratore* of 55 BC (1. 41) Cicero could still talk of the *sacramento* process as a possible alternative to actions on the basis of an interdict, while, if the procedure was completely obsolete, his burlesque of it in the *Pro Murena* (26) would have lost much of its point. On this basis the answer to our question then must be that the profile of the use of private force within the law was diminished, but only slowly over four hundred years. The greatest change was yet to come with Augustan legislation.

The relation of violence to the law in the late Republic can be best seen in the history of a comparative innovation, the

[13] See A. LINTOTT, "La servitude pour dettes à Rome", in *Carcer I*, éd. par C. BERTRAND-DAGENBACH *et alii* (Paris 1999), 19-25.

[14] GELL. 11. 18. 8; PLAUT. *Rud.* 888-891; CATO, *ap.* GELL. 11. 18. 18 = *ORF*, fr. 224 p.91; LIV. 23. 14. 3; GAIUS 3. 189; PLUT. *Cato mi.* 2. 6 (the children's game).

[15] J.A. CROOK, " *Lex Aquilia*", in *Athenaeum* 62 (1984), 67-77.

interdicts about possession and violence.[16] These were injunctions which a plaintiff could seek from the praetor to order to confirm or restore his or her tenure of property — not ownership, though matters of ownership might be relevant to the case. In the basic interdict about possession, to which allusion is made in Terence's *Eunuchus* (319-320) of 161 BC, the praetor forbids the use of violence to disturb possession, but it follows also from the exception clause that the use of violence was also one of the circumstances which invalidated the right to possess of a possessor vis-à-vis the man whom he had dispossessed (*Dig.* 43. 17. 1; Fest. p.260-262 Lindsay). Taking back by force what you had lost by force, if it was at the expense of the man who had taken it from you, was therefore legitimate. The *lex agraria* of 111 BC (*Roman Statutes*, I no. 2, line 18) includes a development of this, the interdict *unde vi* — perhaps it earliest formulation. This provided for the restoration into possession for the man who had been expelled by force, provided that he had not acquired it (*inter alia*) by violence from the man who expelled him. The law thus sought to protect possession against violent disturbance and to discourage the use of violence to establish claims to possession, where there was no other legal basis for entitlement to this.

After the Social War and the civil wars of the eighties BC Roman law applied to all of peninsular Italy, an Italy where property was being ruthlessly acquired by the victors legally or illegally. In the following decade we find a new interdict and other remedies devised by praetors for the improper use of force. Cn. Octavius, praetor in 79, introduced the *formula Octaviana*, an action to restore property removed by coercion, *quod per vim et metum abstulisset* (Cic. *Verr.* 2. 3. 152; *ad Q.fr.* 1. 1. 21). Another praetor in 76, M. Lucullus, produced an action specifically directed against the activities of the use of

[16] A.W. LINTOTT, *op.cit.* (n.1), 126-9; F. SERRAO, *La 'iurisdictio' del pretore peregrino* (Milano 1954), 74ff.; L. LABRUNA, *Vim fieri veto* (Napoli 1970); B.W. FRIER, *The Rise of the Roman Jurists. Studies in Cicero's* pro Caecina (Princeton 1985).

gangs of armed men. The condemned defendant was required to pay the plaintiff four times the cash value of the loss caused by the violence of organized or armed men through the unlawful purpose (*dolo malo*) of his slaves (Cic. *Tull.* 7-11; *Dig.* 47. 8. 2ff.). About the same time a more stringent version of the interdict *unde vi* was introduced applying to armed violence. This seems to have largely ignored the question of rightful possession. The man who employed armed violence to expel another from property was required to restore him, the only known exception being if he himself had been expelled by that man by armed violence (Cic. *Caec.* 23. 89-91; *Fam.* 7. 13. 2). This information is double-edged: it shows a determination by praetors to repress violence, especially armed violence — indeed this is precisely what Cicero says about Marcus Lucullus; on the other hand it implies an increase in the practice of this violence. Moreover, we know about the Lucullus action and the interdict *de vi armata* largely through two speeches of Cicero, the *Pro Tullio* and the *Pro Caecina*, from which it is clear that these were controversial cases. The text of the *Pro Tullio* represents a speech delivered in a second hearing; the *Pro Caecina* one delivered in a third, after judges (*recuperatores*) had been unable to deliver a verdict. The difficulty in deciding these issues chiefly arose because the advocates opposing Cicero built their cases on the argument that their clients' violence was justified because they were defending their own property.[17]

Servius Sulpicius Rufus (*Dig.* 43. 24. 7. 4), was asked to comment on a case where a man had destroyed part of a neighbour's house without the owner's permission in order to prevent a fire spreading to his own: should an exception from the restitutory interdict *quod vi aut clam* or from the *lex Aquilia* be granted? His reply was that an exception should be granted, if a magistrate had committed this act, but a private

[17] CIC. *Tull.* 38-56; *Caec.* 24-27. See *Rhet. ad Herennium* 4. 40 for a converse argument that possession, when there was no basis for a claim of ownership, must have been based on violence.

citizen should not be given this concession (cf. Ulp. in *Dig.* 50. 17. 176). We see here a late-Republican jurist seeking to limit the use of private force in what must have seemed to the perpetrator a just cause. Nevertheless, the implication is that others thought differently. The boundaries of *Selbsthilfe* were evidently a live issue in the late Republic.

To discuss adequately the limitations placed on violence in the political field would require a survey of Republican history, for which I have not the time. Legislation directed specifically against political violence did not occur until the period of turbulence after the Gracchi. The consular law of Lutatius Catulus — normally placed in 78 BC, though recently attributed to the consul of 102[18] — seems to have been a measure against armed insurrection and sedition. It was followed by a *lex Plautia* (of before 63, perhaps 70 BC), which included a number of specific offences but, where violent actions were not in themselves obviously seditious, included the qualification *contra rem publicam.*[19] This legislation resembles an attempt to put out a fire which has already started: indeed in the contest beween political violence and the law in the late Republic the law was certainly the loser. What I would like to consider instead in the second part of this paper is something that was critical in the history of political violence but much more ambiguous, the function of the tribunes of the plebs.[20]

According to Roman tradition, the tribunes were created after a secession of the plebs in 494 and their powers were reestablished in 449 after the decemvirate through what Cicero in his speech *Pro Cornelio* described as an armed seizure of the

[18] For the traditional identification see A.W. LINTOTT, *op.cit.* (n.1),112-22; *contra* B. KELLY, "The Law that Catulus passed", in *Roman Crossings. Theory and Practice in the Roman Republic*, ed. by K. WELCH and T.W. HILLARD (Swansea 2005), 95-118.

[19] A.W. LINTOTT, *op.cit.* (n.1), 116-24.

[20] Summarised in A.W. LINTOTT, *The Constitution of the Roman Republic* (Oxford 1999), 121-8, 206-7. Major treatments are by J. BLEICKEN, *Das Volkstribunat der klassischen Republik* (München 1955); L. THOMMEN, *Das Volkstribunat der späten römischen Republik* (Stuttgart 1989).

Capitol (a *coup d'état*) (*Pro Corn.* frr. 49-50 Puccioni). It is unnecessary to discuss at length here how their status in the community as a whole depended on the oath sworn by the plebs that the persons of the tribunes should be sacrosanct: this enabled them to lend aid to citizens and to intervene (*intercessio*) to obstruct actions regarded as detrimental to the interests of the plebs they represented. Nor do I wish here to engage in an argument about the origins of *provocatio*, the citizen's protection against arbitrary flogging and execution, except to notice that the appeal to the people as whole (*provocatio*) tended to be combined with appeal to the tribunes. Their powers remained of immense importance even in the late Republic. A tribune might be seen physically obstructing or coercing another magistrate. The definitive example was when the tribunes M. Cato and Q. Minucius Thermus tried to veto a bill being proposed by their colleague Metellus Nepos in 62, which sought to recall Pompey to take control of Italy. Cato seized the text of the bill and, when Metellus notwithstanding continued to recite it by heart, Thermus stopped his mouth with a hand and cut off his voice (Plut. *Cato mi.* 28. 1). Two years later the tribune L. Flavius imprisoned the consul Metellus Celer because of the latter's obstruction to his agrarian bill.[21] However, what concerns me here is the way that the tribunes' defensive and obstructive powers might be used in a constructive way to bring reconciliation and avoid disorder.

About the year 150 BC the curule aedile A. Hostilius Mancinus attempted to prosecute the prostitute Manilia in the *comitia* on the ground that when he tried to visit her one night — he presumably claimed that this was in pursuit of his official duties as supervisor of the welfare of the city — he had been driven from the house and struck by a stone. Manilia '*ad tribunos provocavit*' and they heard her case, that is, that the aedile was garlanded on his way from a party and, although she had

[21] CIC. *Att.* 2. 1. 8; DIO CASS. 37. 50. See also A.W. LINTOTT, *op.cit.* (n.1), 71.

said that this was not a convenient time to receive him, he had tried to break into her house. The decision of the tribunes was that he had been driven off from a place where he had no business to go after a party, and they therefore vetoed Mancinus' attempt to prosecute Manilia. The incident is not only interesting in itself — an intervention of the tribunes in a matter of public order and official abuse of authority, but because of its source, the Augustan lawyer C. Ateius Capito in his work *De iudiciis publicis*.[22] He related the story and gave what seems to be the actual text of the tribunes' decree. Even if Capito's actual source was an annalist, it is in my view likely that the decision was preserved in records of the tribunician college. It shows the tribunes coming to a judicial decision on the propriety of a prosecution and highlights the importance of that magistracy in matters of the law. Their protection might be offered to both humble persons and members of the elite. According to Livy, when the Petillii accused Scipio Africanus and the latter retired to his villa at Liternum before the trial could take place, his brother Lucius appealed to the remaining tribunes to respect Africanus' plea of absence through illness. The rest of the college, in spite of representations from the Petillii, accepted this as a temporary excuse, while Tiberius Gracchus (*cos.*177 and 163) went further and said he would obstruct any trial, if Scipio returned to Rome.[23]

In the same period even more divisive matters were referred to the tribunes. From the time of the Third Macedonian War there had been problems over the conscription of soldiers. In 171 BC, at the beginning of that war, a number of time–served centurions, who did not wish to be recruited and

[22] Fr. 5, *ap.* GELL. 4. 14. 1-6 = *Iurisprudentiae Antehadrianae quae supersunt* II 1, ed. F.P. BREMER, p.283-284.

[23] LIV. 38. 52. A different version is in GELL. 6. 19. 5-7, where the appeal and the protection occur before Scipio leaves Rome. See A.W. LINTOTT, "Provocatio. From the Struggle of the Orders to the Principate", in *ANRW* I 2 (Berlin/New York 1972), 226-67 at 254-5 with further references to the controversy over the tradition.

assigned lower ranks than they had last held, appealed to the tribunes. Two tribunes wished to pass this matter on to the consuls, but the rest undertook the investigation of the complaint (*cognitio*). The case was heard before the tribunes' seats with, at the request of the consul P. Licinius Crassus, a crowd of onlookers formally invited into a *contio* (Liv. 42. 32. 7 – 33. 2). After a speech by one of the former centurions expressing his readinesss to serve wherever ordered, the rest abandoned the appeal (Liv. 42. 34 – 35. 2). In 151 BC, however, the tribunes imprisoned the consuls as a measure of opposition to a really stringent levy for the army in Spain, in which the consuls paid no attention to the tribunes' request for exemptions, presumably after appeal had been made to them (Liv. *Per.* 48). Then in 138 the tribunes once again imprisoned the consuls, D. Brutus and P. Scipio Nasica Serapio, for not permitting them to exempt ten men each (100 men in total), but on the other hand condemned after a hearing a certain C. Matienus to be flogged and sold as a slave for having deserted the army in Spain (Liv. *Per.* 55; *epit.Oxyrh.* 8. liber 55). The levy had become a source of popular unrest and the tribunes had in effect become the mediators and brokers between the consuls and the people.[24] Moreover, the college was acting as a kind of court.

We also find the tribunes holding hearings to determine whether they should offer protection to someone in the late Republic. When Sthenius of Thermae fled from Sicily to Rome in 71 and had been corruptly condemned by Verres on a capital charge in his absence, the matter was taken up not only in the senate but by the tribune M. Lollius Palicanus. In consequence Cicero was able to plead his case before the tribunes, and they decreed unanimously that Sthenius'condemnation by Verres did not entail his exile from Rome (Cic. *Verr.* 2. 2. 95-100). In a case of 58 BC the tribunes resolved not to offer protection by obstruction. Clodius' freedman Clodius Damio

[24] See A.W. LINTOTT, *art.cit.* (n.23), 244.

appealed to the college when the urban praetor L. Flavius had accepted a charge against him and was about to bring him to trial. Although Clodius himself was a member of the college, the majority outvoted him and rejected the appeal. Asconius (41, p.46-47 Clark) preserves for us the *sententia* delivered by L. Novius, who had been wounded by one of Clodius' attendants during Clodius' attacks on Pompey, which Asconius had found in the *Acta*.

The most dramatic interventions by tribunes, however, were made in the middle Republic, when the lives of men condemned or about to be condemned were at stake. In 270 BC, when the Roman and Campanian prisoners, survivors of those who had mutinied and seized control of Rhegium while they were officially its garrison during the war with Pyrrhus, were brought to Rome, there was, according to Dionysius of Halicarnassus (20. 16. 1-2) and Orosius (4. 3. 5), a vote by the people before they were executed, apparently in a tribal assembly. This is likely to have been introduced by a tribune, and indeed a variant version in Valerius Maximus (2. 7. 15) states that the prisoners were executed after a protest by a tribune that they should not suffer this without condemnation first. In 210 after the fall of Capua 300 Campanian nobles were sent as prisoners to Rome. A tribune consulted the plebs about their fate and obtained a decree ratifying in advance whatever decision about them the senate should take under oath (Liv. 26. 33). In 204 a judicial commission was sent to investigate the scandalous behaviour of Q. Pleminius and the Roman soldiers at Locri (comprising extortion, rape, and murder) and condemned him and thirty-two others, sending them in chains to imprisonment at Rome, presumably in anticipation of their execution, as we find in most cases of imprisonment after trial. We must assume that they employed *provocatio* and enlisted the help of tribunes. For they were not executed, but in the years following the tribunes brought them frequently before the people in the hope that they might be pardoned. These assemblies, however, refused. Ten years

later Pleminius either died a natural death or was executed after an attempt to escape under cover of a riot.[25]

Tribunes then might facilitate the infliction of a capital penalty on Roman citizens or frustrate it. As far as we know, they did neither when the investigation and execution of the Bacchanals took place in 186, nor did they oppose the actions of the Popillian tribunal that condemned supporters of Tiberius Gracchus in 132. Much would depend on the personalities and political allegiances of those who were members of the college in a particular year. The situation changed, however, when C. Gracchus passed in 123 his *lex Sempronia de capite civium*, forbidding capital condemnations without specific authorisation from the people (Cic. *Rab.Perd.* 12; Plut. *C.Gr.* 4. 1). This did not in fact lead to more references to tribunes and an assembly, when people had been condemned by some temporary tribunal presided over by a magistrate, but to the creation of more *quaestiones perpetuae* for capital cases, whose judgements were not subject to appeal.[26]

The political importance of the *quaestio perpetua* during the Republic is normally held by scholars to lie in the conflicts it engendered between the senate and the equestrian order and in the opportunities it provided for infighting among the elite. Less emphasised has been its importance as a safety-valve for popular resentment and unrest. The popular aspect of C. Gracchus' own *lex de repetundis*, which dealt with non-capital cases, was pointed out by A. N. Sherwin-White.[27] It proposed a jury that not only excluded senators but also equestrians who had been minor magistrates or were closely related to senators, thus in addition eliminating the upper echelons of the equestrian order. It sought to ensure that all

[25] LIV. 29. 20-21; 29. 22. 7-10; 34. 44. 6-8. On these cases see J.MARTIN, "Die Provokation in der klassischen und späten Republik", in *Hermes* 98 (1970), 72-96; A.W. LINTOTT, *art.cit.* (n.23), 240-6.

[26] A.W. LINTOTT, *art.cit.* (n.23), 255-7.

[27] "The Lex Repetundarum and the Political Ideas of Gaius Gracchus", in *JRS* 72 (1982), 18-31.

actions of the court and its presiding magistrate should be publicly visible (*palam*). Written texts were to be posted *ubei de plano recte legi possitur* (where it can be correctly read from ground level).[28] It is reasonable to assume that these provisions were taken over by later statutes establishing *quaestiones perpetuae* in capital cases.

High-profile political cases still might to be prosecuted before assemblies or before special tribunals, such as the *quaestio Mamilia* and the *quaestio Varia* — the former of these is said to have had 'Gracchan jurors' (Cic. *Brut.* 128), the latter equestrian jurors (App. *BCiv.* 1. 37. 165). However, the *quaestio perpetua* was intended to be a regular court, where justice was both done and seen to be done, and this in turn justified its independence from obstruction and appeal. In the end such an object may have seemed to be a pious hope, and the courts could still be thought to be pursuing class or sectional interests. This would have been no doubt Marcus Antonius' justification for introducing the possibility of appeal for those condemned either for *vis* or for *maiestas* under Julius Caesar's legislation (Cic. *Phil.* 1. 21; 1. 23) — a statute first declared invalid by the Senate in 43, but then probably reintroduced under the Triumvirate.[29] Nevertheless, Romans, including Cicero, Pompey, and Caesar, clearly did see the proper functioning of these courts as an alternative to the dominance of violent conflict at Rome.

Tacitus' comment on the late Republic is well known: *corruptissima re publica plurimae leges* (*Ann.* 3. 27. 3). The choice between *vis* and *ius* was not evenly balanced, when men still saw violence as the proper route to secure perceived rights, even if to take this route was a gamble. In such a situation a flood of statutes could not provide security. It remains true that the developments both in criminal and civil law in

[28] *Lex repetundarum*, *Roman Statutes*, I no.1, lines 20, 38, 51-52, 65-66.

[29] CIC. *Phil.* 5. 16; 5. 21; 6. 14; 11. 13; 12. 12. See J.T. RAMSEY, "Mark Antony's Judiciary Reform and its Revival under the Triumvirs", in *JRS* 95 (2005), 20-37.

the late Republic are to be admired. As in many other aspects of Rome's intellectual life, this was a highly creative period. The beneficiaries were not the contemporaries but those who survived to see how Augustus, as the *aureus*, recently acquired by the British Museum, puts it, *leges et iura populo Romano restituit*.[30]

[30] J.W. RICH and J.H.C. WILLIAMS, " *Leges et iura p.R. restituit*: A New Aureus of Octavian and the Settlement of 28-7 B.C.", in *Num.Chron.* 159 (1999), 169-213.

DISCUSSION

P. Ducrey: J'ai été frappé par votre observation préliminaire, que les Anciens cherchaient un niveau acceptable de violence privée plutôt que la sécurité totale. Mais la question que je voudrais poser est la suivante: vous avez parlé seulement de la sécurité à Rome; quelles mesures les Romains ont-ils prises dans l'ensemble de l'Italie?

A. Lintott: The Romans, like the Greeks, experienced piracy on the coast and brigandage in the countryside. Nor did either cease with the coming of the Principate, as R. MacMullen has well demonstrated in his works. During their conquest of Italy the Romans provided a basis for security by founding colonies on the coast and inland and constructing roads. We also know that even before the Social War they provided military assistance to Italian cities and conducted investigations into, and security operations against, brigands.

A. Chaniotis: In your paper you have suggested a very helpful shift from a question of quality (what kind of violence and self-help is justified?) to a question of quantity (how much violence can be tolerated?). What about measures that could prevent violence (e.g. educational measures, measures which create unfavourable conditions for violence)? Greek prohibitions against the carrying of weapons in sanctuaries and during festivals, against excessive lament in funerals, against the wearing of see-through clothes during processions, etc., may have very different origins (religious, social, etc.), but one of their collateral advantages is that they reduced the potential for violence, crime, and emotional tensions.

Y. Rivière: Un convoi funèbre provoqua une émeute à Pollentia sous Tibère, lorsque la foule chercha à extorquer des héritiers la somme nécessaire à un combat de gladiateurs. Inutile, d'ailleurs, de faire mention du panégyrique funèbre de Jules César par Marc Antoine.

A. Lintott: The Romans were deeply suspicious of any association that might be subversive, to judge from the bans on gatherings found in municipal laws (*lex Urson.* 106; *lex Irn.* 74). There may have even been a prohibition of nocturnal meetings at Rome in the *XII tables*. Hence the ruthless repression in 186 BC of the Bacchanals, who met at night and often underground. Funerals were of course occasions for dangerous emotions. Indeed, as I showed in my *Violence in Republican Rome* (ch.1), the Romans recognised an aggressive use of mourning (i.e. dishevelled clothes and long hair). There were also restrictions on funerary expenditure, which might have helped to reduce any display that would have attracted a crowd. However, nothing was enacted legally to curb funeral oratory. There were also sumptuary laws against expenditure and display in general but these were more connected with the repression of electoral bribery than with violence. As for the carrying of weapons, the elder Pliny attributes to Pompey in 52 an edict banning the presence of *tela* in the city, but this seems to have been a temporary measure of uncertain effectiveness. The most educational influence which comes to my mind was the development of the law and the increase in potential access to it provided, for example, by the creation of the *quaestiones de sicariis et veneficis* which were served by a large number of practising orators who would undertake the cases of others for the sake of their own prestige.

C. Brélaz: Par rapport aux *tela*, la *lex Iulia de vi publica* interdit pour la première fois à un Romain de détenir des armes (*arma tela*) chez lui ou de les porter en public.

A. Lintott: There was some precedent for this in a provision of the Republican *lex Plautia de vi*, which banned the carrying of a weapon (*telum*) in public, but in my view this was limited by the qualification *contra rem publicam*.

R. MacMullen: I am interested in the way the whole system worked, and for whom. You described the case of the prostitute Manilia who caused an aedile, a mighty man, to lose face. So he sought to punish her by bringing a suit. However, the tribunes rescued her. Maybe some of them liked her very much and did not like Hostilius Mancinus. This contrasts with the way an orator might dismiss similar charges of assault against humble people.

I invite your impressions, whether it was typical that in your chosen area of discussion (the city of Rome) a member of the mass of the population, not the well-connected, ever did litigate. Further, I wonder how you envision the day-to-day operation of the courts. I gather that for battery, rape, similar acts of violence, only a single court is in question. How many days would it meet a month?

A. Lintott: Traditionally, access to the courts for the poor was through the assistance of a patron. Manilia would have access to one or more of these (not necessarily her clients in our sense), especially as she was probably a freedwoman. By the late Republic the number of patrons was augmented by quasi-professional prosecutors who looked for custom. Under the Republic battery and rape would have been prosecuted through private suits involving jurisdiction by the *praetor urbanus* (a comparatively short time in a day) and a hearing by a judge whose time limits were not restricted by those of public business. For homicide the average trial in the *quaestiones de sicariis et veneficis* would probably have been more brief than those involving the elite, and in the first eight months of the year at least there were plenty of days on which they could be held. As to trials outside Rome, until the Social War Roman, Latin, and

allied towns had their own jurisdiction. In the last years of the Republic this was restricted in various ways, one of which was the requirement that capital trials took place at Rome.

H. van Wees: The problem of containing violence when a large proportion of the population has weapons at home is perhaps not as acute as it may seem. The few known instances of Greek states legally controlling the carrying of weapons have a very limited scope — they apply to sanctuaries, councils and assemblies only — yet weapons were in practice rarely carried in civilian life in classical Greece. The *ownership* of weapons therefore may not be a major factor in assessing the level of threat to public security, which may be much more affected by prevailing informal, cultural norms concerning the *use* of such weapons. As in modern Switzerland, in classical Athens most men owned weapons of war — yet Athenians generally fought one another with sticks, stones and broken pottery rather than spears and swords.

A. Lintott: This seems also have been true at Rome. Saturninus encouraged his followers to use stones and was himself killed by roof-tiles. Tiberius Gracchus was clubbed to death, Caesar stabbed with daggers, while in the early Republic Servilius Ahala allegedly got his *cognomen* from the arm-pit in which he concealed the dagger that killed Spurius Maelius.

H. van Wees: Your account of changes in law in legal procedure shows a gradual but significant reduction in the scope for private use of force. Would you say that this was driven by a conscious move on the part of legislators and decision-makers towards greater centralisation of power? Or was it an incidental by-product of decisions made primarily for other reasons? For example, the introduction of procedures for the sale or surrender of property in order to meet debts, as an alternative to debt-bondage or sale into slavery: was this intended primarily to remove some forms of violence from private hands, or, say,

to serve the economic interests of creditors? (One might imagine that by the second century BC, with the influx of foreign slaves, creditors no longer found debt-bondage or sale into slavery profitable.)

A. Lintott: I do not see any drive towards the centralization of power under the Republic: indeed it was contrary to the ethos of the regime. The Principate and Dominate are another matter. As to the alternatives to debt-bondage, they seem to have been intended to provide a more efficient means for creditors to obtain money, while at the same time preserving to some extent the *existimatio* of the debtor. They were of little use when the debtor was really poor, and consequently there were still plenty of debt-bondsmen in the late Republic.

W. Riess: You mentioned the re-structuring and enhancement of "police" forces in the city of Rome during the early Principate. To what extent, do you think, were these measures successful in making Rome safer? Can we really speak of a tangible improvement of the situation, especially in the light of the continuing and endemic insecurity in the Italian countryside? Was the city any better off?

A. Lintott: Apart from more stringent legislation against violence, there was an apparently systematic attempt to increase the magistrates and the forces concerned with security. The *praefectus urbi* was instituted. The praetorian guard was of course the guard of the imperial family, wherever its members were: its units, consequently, might operate at Rome (it was only under Tiberius that they obtained the barracks at Rome whose walls are still to be seen near Termini), and there were associated with them the urban cohorts, specifically Rome's gendarmerie. The *vigiles*, moreover, were not a fire-brigade in our sense but a paramilitary force with the responsibility to prevent fires or to limit their effect by pulling down buildings. Nor should one forget the effect of the organization of Rome

into regions and the conversion of the *magistri vicorum* into a political institution. The latter could, if nothing else, report intelligence to higher magistrates. In the longer run, however, what may have been important was the rebuilding of Rome after the Neronian fire with *opus latericium* apartment blocks for the poor and greater spaces between buildings, thus making conflagrations less likely and providing space and sight-lines for the security forces.

W. Riess: The similarity between some features of the early Roman judicial system and Greek, respectively Athenian legal practice is striking: the crucial role of witnesses and bystanders, the ritualized exertion of force, the formality of the physical summary arrest, the possibility to appeal to a magistrate to have a malefactor arrested, to name just a few examples. It is hard to believe that all these similarities are purely accidental. Romans and Greeks were in constant interchange, especially in Southern Italy. How far would you go in attributing these common features to cultural contacts?

A. Lintott: One provision of the *XII Tables* was recognised in Antiquity as being identical to that in a law of Solon (*Tab.* 7. 2), but it is of little use for our present purposes since it concerns the boundaries between properties. I am happy to believe in Greek influence but think it is as likely to have come from the lawcodes of Greek cities in Magna Graecia and Sicily. *Talio* of course is said to have been included by Charondas in the law-code of Thurii in the same period as the creation of the *XII Tables* (Diod.Sic. 12. 17. 4).