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## Why did Clodius shut the shops?

The rhetoric of mobilizing a crowd in the Late Republic\*

**ABSTRACT:** When Publius Clodius ordered Rome's *tabernae* to be shut for one of his meetings in 58 B C, he was not only trying to gather a crowd by forcing *tabernarii* onto the street. Shutting the shops was a symbolic move alluding to the archaic *iustitium* and to the actions of Tiberius Gracchus. It allowed Clodius to claim both that his meeting was vital to the safety of the *res publica* and that he (and not Cicero) had the support of the entire Roman people, including the lowliest. *Keywords:* Roman political history – Clodius – Cicero – rhetoric – iustitium – tabernae

Publius Clodius is almost universally acknowledged as an innovator who found new and better ways of taking advantage of the tribunate of the plebs as a position of power.<sup>1</sup> One conventional understanding of his achievement is that he was the first man who successfully made direct appeal to Rome's urban plebs as his constituency.<sup>2</sup> The *contio* was not the only form of political activity in Rome, but it was one of the most important, and the one in which Clodius excelled. Contional politics was a numbers game: politicians cowed their opponents by demonstrating the size of the crowd they could gather.<sup>3</sup> A particularly large, fervent, or well-deployed group could even bar opponents physically from the space of politics.<sup>4</sup> Clodius used personal charisma to draw a crowd, and appealed to a broad base by breaking free from what remained of an aristocratic consensus to propose boldly populist measures.<sup>5</sup> It is often claimed that

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1 Spielvogel 1997 provides almost a sole voice in (partial) disagreement, though many more are quick to acknowledge that others who have escaped our sources may also have used his methods. Major modern works specifically on Clodius include Gruen 1966; Lintott 1967; Flambard 1977; Benner 1987; Tatum 1999; Cels Saint-Hilaire 2005; Harrison 2010. A remarkably full account of the modern historiography of Clodius to 1999 can be found in Fezzi 1999: 249–59.

2 So e.g. Harrison 2010: 116; Nippel 1988: 108; Lintott 1967: 159; Brunt 1966: 22.

3 See e.g. Cic., *De imp. Cn. Pomp.* 69, with Mouritsen 2001: 57; Morstein-Marx 2004: 131.

4 Cicero's words on Clodius at *Sest.* 34 capture the implications perfectly: 'armati homines forum et contiones tenebant' ('armed men held the forum and the *contiones*'). To control the physical space of the forum was to control the political mechanism of the *contio*.

5 That is not to say that his measures were uniformly populist: note the caveats of e.g. Tatum 1999: 114–38; Spielvogel 1997; Tatum 1990b on the *lex de censoria notione*; Tatum 1990a: 189–90 on the *lex de obnuntiatione*; Gruen 1974: 255–7.

he developed innovative methods of spreading information and mobilizing support.<sup>6</sup> If any or all of these techniques successfully persuaded new groups to engage with the political process, then it is easy to see why Clodius won (for a time) the ideological and physical battle for control of the Forum.<sup>7</sup>

In this article, I offer an evaluation of one mobilization technique which Cicero asserts Clodius used to gather his audience from among otherwise apolitical groups: he ordered the shops to be shut. Cicero makes the claim in his speech *De domo sua*, in the context of furious invective. It first appears in section 54, where Cicero is in scathingly sarcastic mode: ‘cum edictis tuis tabernas claudi iubebas, non vim imperitae multitudinis, sed hominum honestorum modestiam prudentiamque quaerebas’ (‘When you ordered in your edicts that the shops be shut, you were not looking for the violence of the untutored mob, but the moderation and restraint of respectable men’).<sup>8</sup> The same allegation recurs at section 89: ‘quem tu tamen populum nisi tabernis clausis frequentare non poteris’ (‘that *populus* which you could not even gather unless you shut the shops’). In both passages, the accusation is presented as a weighty charge, calling into question not just Clodius’ motives and methods but also the legitimacy of his audience.

Shutting the shops was perhaps less common than has sometimes been assumed. At *Lucullus* 2.144 (the character) Cicero describes it as a standard tactic of seditious tribunes, but both of his more specific references to the act in the *De domo* actually involve a single event in early 58 BCE. We know of one later occurrence: after Clodius’ death, his follower Munatius Plancus attempted to replicate the tactic during the trial of Milo in 52.<sup>9</sup> Even so, Clodius’ decision to shut the shops on one particular day in 58 must have had a disproportionate impact, given the use Cicero makes of it as a piece of invective in the *De domo*. The logistics of the closure are unclear, though we can be sure that Clodius was within his rights as a tribune: Cicero paints his act as seditious and immoral, but nowhere does he suggest that it was illegal. But what did it achieve?

Both mentions in the *De domo* link shutting the shops to the composition of Clodius’ audience. In section 54, Clodius uses it to rouse an ‘untutored mob’; in section 89, we are asked to believe that it was only by this expedient that Clodius could gather

6 So Tan 2013; Sumi 1997: 87; Łoposzko and Kowalski 1990: 203, 208–9; Vanderbroeck 1987: 141; Lintott 1968b:193.

7 The question of whether he really did appeal to new audiences is beset by intractable problems of evidence. Almost all our evidence for 58 BCE, the year of Clodius’ tribunate, comes from the speeches delivered by Cicero upon his return from exile – an exile for which he blamed Clodius. Each one of these speeches is concerned with demonstrating that Clodius’ tribunate was nothing more and nothing less than a criminal conspiracy directed against Cicero in particular and the *res publica* in general. They are hardly dispassionate records, and at times show overt signs of deliberate manipulation of events, for which see especially Rundell 1979. Spielvogel 1997: 56 has an insightful discussion of how attitudes to Cicero, either discounting or overinterpreting evidence from his pen, have affected the treatment of Clodius in modern scholarship. Leach 2001, esp. 356–7, analyses the patterns of Cicero’s obsession with Clodius as the author of his exile.

8 All texts are cited from the OCT edition unless otherwise stated; all translations are my own.

9 Asc. 41C, 52C. As pointed out by Morstein-Marx 2004: 129, this does not justify the suggestion of Tatum 1999: 143 that the tactic was used often.

a crowd at all. The insinuation is clear: Cicero implies that shutting the shops was a last-ditch measure to gather an audience from workers left idle by the closure of their places of employment. In this article, I argue that we should not trust his interpretation. On a practical level, it seems unlikely that this tactic could have worked as Cicero describes it: forcing workers to lose a day's wages surely antagonised at least as many potential supporters as it mobilised. Yet Clodius' tactic was successful: it certainly succeeded in antagonizing Cicero. So how to explain the apparent paradox? Clodius did not make a political error. Rather, Cicero's text deliberately distorts both what Clodius did and his motivations in doing so. If we lay aside the rhetorical colouring of Cicero's text and look more clearly at the closing of the shops in context, it becomes clear that Clodius used this action not to force shopkeepers onto the streets but as a symbolic performance that signalled his intentions, galvanised his core audience, and allowed him to claim that he, and not Cicero, had the broad support of the Roman People. In the same years in which Cicero named *tota Italia* as his constituency, this was part of Clodius' response. Whether or not the *tabernarii* made idle by the closures actually turned out to Clodius' *contio*, the visual and practical impact of rows of shuttered *tabernae* told observers that this was an important meeting, and at least suggested that it was attended by a cross-section of society, including even members of Rome's lowest classes.

### Cicero on the composition of Clodius' audience

Cicero's evaluations of Clodius' audience cannot be taken at face value.<sup>10</sup> His offhand remarks in his letters and treatises often betray no more than his own prejudices, and there is little trustworthy evidence in his speeches about the makeup of the crowds who heard them. All his writings are affected by traditional tropes of defining one's own audience as the respectable *populus Romanus* and one's opponent's audience as a hired rabble of slaves.<sup>11</sup> What is more, a strong strand of wishful thinking pervades his words: if he tells us that a meeting was empty of all but hirelings (or, alternatively, stuffed full of respectable men), is that because it was, or because he thought it should be?<sup>12</sup>

When Cicero mentions shutting the shops at *De domo sua* 89, the allegation comes in the context of one of his most obviously tendentious descriptions of the nature of rival audiences. The passage is worth quoting in full (Cic. *Dom.* 89–90):

10 On Ciceronian evidence for Clodius' audience in particular, see Cels Saint-Hilaire 2005; Favory 1979. Brunt 1966: 23–5 remains important.

11 The trope and its implications are explored by Hölkeskamp 2013; Morstein-Marx 2004: 120–8; Hölkeskamp 1995.

12 O'Neill 2003:136 makes a similar point with even wider application: 'the representation of the *plebs* as sub-political served as a powerful strategy in the maintenance of the political hegemony of the Roman upper classes.'

[89] an tu populum Romanum esse illum putas qui constat ex iis qui mercede conducuntur, qui impelluntur ut vim adferant magistratibus, ut obsideant senatum, optent cotidie caedem, incendia, rapinas? quem tu tamen populum nisi tabernis clausis frequentare non poteris, cui populo duces Lentidios, Lollios, Plaguleios, Sergios praefeceris. O speciem dignitatemque populi Romani, quam reges, quam nationes exterae, quam gentes ultimae pertimescant, multitudinem hominum ex servis, ex conductis, ex facinerosis, ex egentibus congregatam!

[90] illa fuit pulchritudo populi Romani, illa forma quam in campo vidisti tum cum etiam tibi contra senatus totiusque Italiae auctoritatem et studium dicendi potestas fuit. ille populus est dominus regum, victor atque imperator omnium gentium, quem illo clarissimo die, scelerate, vidisti tum cum omnes principes civitatis, omnes homines ordinum atque aetatum omnium suffragium se non de civis sed de civitatis salute ferre censebant, cum denique homines in campum non tabernis sed municipiis clausis venerant.

Or do you think that the *populus Romanus* is composed of those who are hired for money, who are roused to do violence against magistrates, to besiege the Senate, to choose daily slaughter, fire, plunder? That *populus* which you could not even gather unless you shut the shops, which you put under the command of leaders like Lentidius, Lollius, Plaguleius, Sergius? What a picture of the dignity of the *populus Romanus*, which kings, foreign nations, the furthest peoples fear: a mob of men gathered together from slaves, hirelings, criminals, destitutes!

That was the beauty of the *populus Romanus*, that image which you saw in the campus on that occasion when even you were allowed to speak, against the authority and desire of the Senate and of all Italy. That *populus* is the master of kings, the victor and conqueror of all peoples, the one you saw on that most famous day, you criminal, when all the leading men of the citizenry, all men of all *ordines* and all ages decided that they were voting not on the safety of one citizen but of the city; when, to sum up, not the shops but entire towns were shut as men came to the vote.

Here Cicero explicitly contrasts two groups, one of which prompted his exile and one of which rescinded it. The second is characterized with precision: the *comitia* of the fourth of August 57 BCE which passed the law recalling the orator. Time ('tum') and place ('in campo') are mentioned. The universality of the crowd is emphasized, but even more interesting is the way in which Cicero gives prominence to its internal ordering. Cicero does not simply repeat that everyone was present, but lists particular categories represented: *ordines*, age groups, *municipia*. This, then, was the true *populus Romanus*, a concept which Cicero suggests implies not just the full body of eligible citizens, but those citizens assembled according to an internal hierarchy and led by the *principes civitatis*.<sup>13</sup> The first crowd, by contrast, is not specifically designated as the voting body which passed the *lex Clodia de capite civis Romani* or the *lex Clodia de exilio Ciceronis* – laws Cicero is arguing were invalid. Rather, it is the mob which reg-

13 Cicero's ideal *concordia* or *consensus*, which preserves distinctions of status while uniting people across them, rises to the level of a slogan as 'cum dignitate otium' (*Sest.* 98). For the idea that a crowd can be judged on how representative it is of the various hierarchies and divisions within the *populus*, see also e.g. *Cat.* 4.16, 4.19; *Fam.* 10.12.4.

ularly gathered around Clodius in early 58. Cicero wishes his listeners to concentrate on its violence and denies that it could ever have formed the legally convened *populus Romanus*. Its leaders are Clodius' worthless creatures, not the *principes civitatis*. It is not representative of all levels of society, and the only principle of order or hierarchy represented within it is the distinctions between slaves and criminals, or the poor and the merely mercenary.

Cicero's description of Clodius' crowd is pure invective, intended to disparage Clodius and bring the legality of his measures into question. It is hardly good evidence for the actual composition of the crowd of 58. Even so, there is at least one interesting detail amid the bombast: Clodius, Cicero claims, could only gather even such a disreputable mob by the expedient of shutting the *tabernae* – the shops, workshops, taverns and other small-scale commercial concerns which lined the streets in and around the Forum.<sup>14</sup>

This passage has been variously interpreted. By telling us that Clodius gathered his crowd by shutting *tabernae*, many scholars argue, Cicero has betrayed the true nature of Clodius' audience. According to their interpretation, we should deduce that his followers were not hired slaves, but *tabernarii* and *opifices* – shopkeepers and workmen.<sup>15</sup> This would then be valuable evidence that the lower strata of Roman society did engage in political activity (though this passage alone cannot tell us whether they did so only for Clodius). More pointedly, other readers use *De domo* 89 to demonstrate something closer to what Cicero intends: Clodius was unable to gather an audience at all, and had to force workers out into the Forum by closing down the *tabernae*, compelling them to leave their business and listen to him. In other words, this second line of interpretation argues that Roman craftsmen and other workers were not politically active unless compelled to be so.<sup>16</sup>

Both interpretations share the assumption that shutting the shops worked because the workmen released from their labour in the *tabernae* were freed up to attend the meeting, whether this represented an intensification of the norm or a departure from their usual practice. This assumption is problematic. Forcing shops, workshops, and taverns to close was not, in practical terms, a tactic likely to attract a willing crowd of like-minded voters. For one thing, those affected by a forced closing of the *tabernae* were not a uniform group. The *taberna* was a ubiquitous part of the Roman commercial landscape. Although it is standard to translate the word 'taberna' as 'shop', we should bear in mind that it often also meant 'workshop': a space of production instead of or as well as retail. Indeed, if 'tabernarius' just meant 'someone who works in a *taberna*' then it probably covered the vast majority of Rome's adult male population.<sup>17</sup> But more people than just the workers were affected if the *tabernae* were closed by

14 On the Forum *tabernae* see Papi 2002; Holleran 2012.

15 Harrison 2010: 113–14; Tan 2008: 174; Tatum 1999: 143; Sumi 1997: 90–1; Benner 1987: 77; Vanderbroeck 1987: 126–7; Flambard 1977: 124; Lintott 1967: 163.

16 Mouritsen 2013: 72–3; Mouritsen 2001: 59; more agnostic but inclining towards the same interpretation are Morstein-Marx 2004: 129; Pina Polo 1996: 132–3.

17 Noted by Tatum 1999: 17–18; Purcell 1994: 659–73.

decree. We must consider shopkeepers or workshop managers, owners as well as tenants; their employees; and of course their clients, the shoppers, as well. None of these would have been a homogeneous group, and we cannot assume that they all belonged to the lowest socio-economic strata; the shops closest to Clodius' venue at the tribunal of Aurelius were the luxury-goods outlets of the *Sacra Via*.

When the shops were shut, business owners and employees both lost money. Most could scarcely afford to do so: Cicero himself made this argument in 63 BCE, pointing out that the Catilinarians' supposed attempts to rouse the *tabernarii* were doomed to failure, since workmen would not be willing to forfeit the day's wage.<sup>18</sup> Another useful piece of evidence comes from Sallust (*Iug.* 73), who imagines only a truly extraordinary event (the election of Marius) prompting the poor to put their political aspirations over their immediate financial needs. Shutting the shops would not be likely to win friends amongst those whose livelihoods depended on them, and shoppers too would have been inconvenienced. Finally, there was nothing to make those made idle by the closure actually turn out for the *contio*. Some might have relished the opportunity to become involved, or played along for the entertainment value, but others might have chosen to enjoy their unexpected day off elsewhere.<sup>19</sup> On the face of it, shutting the shops would have had negative results for a politician like Clodius.

Why, then, did Clodius in 58 include this technique in his political arsenal? Its practical effects would have been to alienate some of his natural supporters who depended on their day's wage, and it could not automatically have furnished him with a captive audience. And why, given its apparent uselessness as a political tactic, would Cicero object to it and claim that it vitiated Clodius' claim to have gathered the *populus Romanus*? We need another explanation for the importance of shutting the shops. This new explanation must go beyond its immediate, practical effects to the rhetorical claims Clodius was making. In the following sections, I explore a range of ideological overtones and historical parallels which may have coloured the act of shutting the shops. The final section returns to Cicero's rhetoric at *De domo* 89–90, in which he explicitly contrasts his *tota Italia* with Clodius' mob roused from the closed *tabernae*. Cicero has preserved for us in negative his opponent's claim: the closed shops, which Cicero is so keen to trump with his closed towns, were Clodius' pledges both that this was an occasion of great importance and that the entire *populus Romanus* supported his actions.

18 *Cat.* 4.17; see further Mouritsen 2001, esp. 42–3.

19 Tatum 1999: 147–8 examines the various factors which might affect their decision.



## The ideological weight of shutting the shops in Cicero

*De domo sua* 54 also uses the charge of shutting the shops as part of an attack on Clodius. Again, the context is revealing:

cum in tribunali Aurelio conscribebas palam non modo liberos sed etiam servos, ex omnibus vicis concitatos, vim tum videlicet non parabas; cum edictis tuis tabernas claudi iubebas, non vim imperitae multitudinis, sed hominum honestorum modestiam prudentiamque quaerebas; cum arma in aedem Castoris comportabas, nihil aliud nisi uti ne quid per vim agi posset machinabare; cum vero gradus Castoris convellisti ac removisti, tum, ut modeste tibi agere liceret, homines audacis ab eius templi aditu atque ascensu reppulisti; cum eos qui in conventu virorum bonorum verba de salute mea fecerant adesse iussisti, eorumque advocacionem manibus ferro lapidibus discussisti, tum profecto ostendisti vim tibi maxime displicere.

When you were inscribing openly at the Aurelian tribunal not only free men but even slaves, roused from every neighbourhood, surely then you were not preparing violence. When you ordered in your edicts that the shops be shut, you were not looking for the violence of the untutored mob, but the moderation and restraint of respectable men. When you were carrying arms into the temple of Castor, you were planning nothing other than to stop the possibility that anything could be done by force. Yes, when you tore up and removed the steps of Castor, then you drove off violent men from that temple's entrance and staircase so that you could go about your business peacefully. When you asked those who spoke up about my safety in a meeting of good men to come forward and drove off their support with fists and steel and stones, then indeed you proved that violence is most displeasing to you.

Here, the exact composition of the crowd is not Cicero's main theme. Nor is he making the point that Clodius had trouble raising an audience and had to resort to extreme tactics. Why, then, does he mention how the crowd was gathered? Coming among such charges as enrolling slaves in his gangs and tearing down the stairs of the temple of Castor, shutting the shops must be a weighty allegation indeed, and even for a snob like Cicero the point is weak if we take it to mean only that Clodius had workmen in his audience. Cicero did not write for the benefit of later historians interested in decoding Clodius' crowd mobilization techniques. He wanted his contemporary audience to understand something more from his reference to shutting the shops, and in particular it must have buttressed his overall argument in this section that Clodius' meetings were so seditious as to be violent. He is trying to argue that the confiscation of his house is invalid, because it was passed by violence. But he cannot point to a specific episode of violence directly connected to the vote for confiscation, so instead he chooses to interpret all of Clodius' activities as showing a general tendency to violence. It is under this heading that he introduces the detail about shutting shops, claiming that it demonstrated Clodius' aim to gather a violent mob rather than a peaceful gathering of respectable citizens.

In the *Lucullus*, Cicero treats the act of shutting the shops in more general terms. Towards the end of the dialogue, the character Cicero responds to a challenge

from Lucullus with a metaphor drawn from the world of conitional politics (Cic., *Luc.* 144):<sup>20</sup>

quid me igitur, Luculle, in invidiam et tamquam in contionem vocas, et quidem, ut seditiosi tribuni solent, occludi tabernas iubes? quo enim spectat illud cum artificia tolli quaereris a nobis, nisi ut opifices concitentur?

Why do you summon me to unpopularity as if to a *contio*, and even, as seditious tribunes tend to, order the shops to be shut? For what does this aim at when you seek to take *artificia* away from us, unless it is to rouse the workmen?

Cicero's metaphor serves to set up an anaemic joke based on the multiple meanings of *artificia* – 'skills' or even 'trades' of craftsmen, but also systems of philosophical knowledge. Lucullus has argued that one consequence of Cicero's sceptical epistemology is to make philosophical *artificia* impossible. Cicero jokes that Lucullus' real aim is to persuade craftsmen that Cicero is taking away their livelihoods. Philosophy and humour aside, his choice of metaphor does bring us further evidence about the composition of Roman political crowds. Seditious tribunes, we learn, were in the habit of ('solent') ordering the shops to be shut.<sup>21</sup> 'Seditious' is almost a stock epithet of tribunes in Cicero, but in this case the context explains clearly what made the act and the tribune who commissioned it seditious. As Cicero characterizes it here, the technique of shutting the shops was aimed at gathering a particular kind of crowd, for a particular end. The result would be a mob of workmen and a *contio* in which an upstanding man like him could expect only *invidia*.

When Cicero imagined this hypothetical crowd of *opifices*, was it their status or their political attitude he objected to? Much of the time, for Cicero, the two seem to be one and the same: rousing the *tabernarii* is the action of a disreputable man with disreputable ends.<sup>22</sup> In the *Lucullus*, he takes his point further: the nameless tribune in his joke is not seditious simply because he persuades workmen into the forum, but also because he rouses them to *invidia* by reminding them of their class interests. In the joke, the *opifices* are angry that Cicero's epistemological manoeuvring has called into question the existence of their skills. The real-life parallel should be a crowd insisting on their *libertas*. The technique of shutting the shops was inherently seditious to Cicero not just because it had the power to raise a crowd, but also because it drew attention to the crowd's composition and the political aspirations of disadvantaged groups.<sup>23</sup>

20 The *Lucullus* is the second book of the first version of the *Academica*, thus sometimes known as the *Academica Priora*, and sometimes, confusingly, as *Academica 2*.

21 This may well be an exaggeration: Cicero surely only has Clodius in mind.

22 *Dom.* 13: 'Quis est Sergius? armiger Catilinae, stipator tui corporis, signifer seditionis, concitator tabernariorum, damnatus iniuriarum, percussor, lapidator, fori depopulator, obsessor curiae.' (Who is Sergius? He is Catiline's soldier, your bodyguard, a standard-bearer of sedition, a rouser of the *tabernarii*, a man condemned for violence, a user of fists and stones, who empties the forum and lays siege to the Curia').

23 Compare Munatius Plancus' use of the same tactic in 52 BCE, according to Asconius he asked the people



In this context, we should not jump to assume that shutting the shops was merely a last-ditch attempt to gather a crowd for an otherwise badly-attended meeting, nor can we use it as uncomplicated evidence that those politicians who resorted to it regularly drew their support from shopkeepers and other members of the lower strata of society. In the *De domo*, Cicero contrives to insinuate both, but it would be wrong to take his invective seriously. His rhetoric belittles, but eventually betrays, the original symbolic force of Clodius' act. Cicero reads it as sedition, but we should not imagine that Clodius was in fact baying for the overthrow of the republic. Instead, he was taking up an effective (and in many ways entirely traditional) rhetorical position of his own by claiming to be the defender of the people.<sup>24</sup> The actual composition of the crowd on the day is a separate question, and not one our evidence can easily answer: Clodius could make the same claim even if most of the *tabernarii* had in fact gone home. What we can deduce is that a tribune like Clodius ordered the shops to be shut not only to get bodies in the forum but also as a way of signalling both to his followers and to his opponents that he stood for, and had the support of, Rome's lowly as a political class. In the following sections I test this theory against the events of 58.

### The events of 58

At *De domo* 54, quoted in the previous section, Cicero includes the shutting of the shops as part of a series of events which also appear elsewhere in his speeches of the same period, usually in the same tone and with the same basic motifs recurring: when Clodius was tribune, he presided over a gathering at the tribunal of Aurelius in the Forum involving paramilitary enrolment of partisans into groups. In this case and in many others, Cicero goes on to describe the collection of armaments in the Temple of Castor and the destruction of that temple's steps; some of the passages also link these events to the passing of Clodius' laws on *obnuntatio*, the censorial *notio*, and the legalization of *collegia*.

The chronology of the early days of 58 BCE is not easy to untangle, but by putting together the various passages we can fill in a few more details. The *In Pisonem*, in particular, includes a section in which Cicero lists the various disgraces of Piso's consulship in chronological order.<sup>25</sup> The first event he mentions is the illegal celebration of the *ludi Compitalicii*, which he explicitly dates to the first of January (*Pis.* 8). Next, he dilates on events which took place three days later, when Piso as consul watched

to shut their shops and come *en masse* to Milo's trial 'iudiciumque et dolorem suum ostenderet' ('to show their judgment and their anger', 40C) and not to let Milo escape (40C, 52C). This was to be a visible demonstration of the popular will.

24 See Arena 2012: 116–68 for a full discussion of this brand of political ideology and rhetoric, an alternative to the one we see most often in Cicero.

25 While Cicero does not explicitly say that his structure is chronological, the passage is full of chronological markers: 'in Kalendas Ianuarias' ('on the first of January', 8); 'triduo post' ('three days later', 9); 'persequere continentis... dies' ('continue to the following days', 11).

measures pass which abrogated the *Leges Aelia et Fufia*, removed the censorial *notio*, and legalized the *collegia* (*Pis.* 9). Cicero's descriptions are slanted, but easily recognisable as referring to three of the four laws (the fourth being the free grain dole) which Clodius had promulgated as soon as he entered office in December 59.<sup>26</sup> They would have come up for a vote in early 58, probably on the fourth of January.<sup>27</sup> Keeping up his chronological structure, Cicero then asks his imaginary interlocutor Piso to move on to the days immediately following ('persequere ... continentis dies'), during which Clodius held a levy of slaves at the Aurelian tribunal and collected arms in the Temple of Castor. Meanwhile, Cicero stayed in his house and received crowds of well-wishers concerned for his safety (*Pis.* 11). The enrolment at the Aurelian tribunal and the occupation of the temple of Castor are also linked at *Pro Sestio* 34 and *In Pisonem* 23 as well as *De domo* 54; in each case the enrolment is mentioned first, but there is no indication of a passage of time intervening between them. All three passages also mention the destruction of the temple's steps.<sup>28</sup>

A chronology emerges: the four laws were passed on or around the fourth of January, and in the days immediately following Clodius enrolled his supporters at the tribunal of Aurelius, seized the Temple of Castor, and destroyed its steps. All this came in early January, well before the *lex Clodia de capite civis* was officially promulgated, and certainly before Cicero's departure.<sup>29</sup> Where in the process did the shutting of the shops fall? *De domo* 89 gives no details, but at *De domo* 54, the shutting of the shops is mentioned between the gathering at the tribunal and the occupation of the temple. The edict to shut the shops therefore also belongs to the same few days immediately following the fourth of January, and needs to be understood in that context.

One of Cicero's tactics when he presents the events of early January 58 is to insinuate that they constituted an armed uprising. In the *In Pisonem*, where his argument is that Piso allowed Clodius to behave in a way which was flagrantly illegal, the temple of Castor becomes a fortress ('*arx*', *Pis.* 11) and the enrolment a levy ('*dilectus*', *Pis.* 11, 23). In the *Post reditum ad populum*, he claims that the men were enrolled in centuries

26 Asconius' commentary on the passage (8C) confirms the identification. For analysis of the four laws, see Tatum 1999: 117–35.

27 There are a few candidates for the exact date of the four votes, though 4 January is the most likely. Cicero explicitly says 'three days later' (*Pis.* 9), but should this mean after the first day of the games, or after they finished? Much also depends on the definition of the *nundinae*, and the question of whether there was an intercalary month in 58 or 59 BCE (which would affect which days were comital). See further Kaster 2006: 393–408; Lintott 1968a; Lintott 1965.

28 Cerutti 1998 believes that the steps destroyed were not the permanent structure to the front of the temple, but wooden additions connected to the *pontes* placed in front of the podium when it was used for voting; but see Mouritsen 2001: 21 n.10, who points out that *all* access to the temple was blocked. Again Clodius' aim was to control the physical spaces of politics.

29 *Contra* Cerutti 1998: 295. *Sest.* 34, the only passage he cites in support of his claim that the destruction of the steps came after Cicero's departure, does not offer any chronological details at all. *Pis.* 11 makes it clear that the occupation of the temple came when Cicero was still in Rome, though the steps are not mentioned. At *Pis.* 23 and *Dom.* 54–5, the removal of the steps is placed before Piso prohibited the Senate from wearing mourning in support of Cicero, which they did when Clodius proposed the *lex Clodia de capite civis* (*Sest.* 25–7, with Kaster 2009: 395–9).

(‘centurari’, *Red. pop.* 13), again making pointed use of military vocabulary. But while Cicero is keen to imply that Clodius was recruiting a private army, he never goes so far as to say so directly. The explanation Clodius gave – as ever, filtered through Cicero’s invective – is reported in the *Post reditum in senatu*, where Cicero bemoans the fact that ‘servos simulatione conlegiorum nominatim esse conscriptos’ – ‘slaves were enlisted by name in a charade of *collegia*’ (*Red. sen.* 33). The explanation Cicero wishes to dismiss as a pretext actually makes perfect sense: Clodius was enlisting members to form the *collegia* his measure had just legalized.<sup>30</sup>

Cicero usually describes the people being enrolled on this occasion as slaves, though in the longer description at *De domo* 54 he is willing to admit that free men were present too.<sup>31</sup> On the only occasion when he describes these events in a speech to the people, on the other hand, there is a subtle but telling difference: in the *Post reditum ad populum* it is merely *homines* who are being enrolled and enlisted.<sup>32</sup> Cicero’s word choice here helps to confirm that Clodius’ enrolment was indeed a re-registration of the *collegia*; their mixed membership of slaves and free men meant that when talking to an elite audience he can tar them with the odium of servile membership, but when talking to the people he must be more tactful. Perhaps Cicero’s careful wording in his speech to the people even suggests that Cicero was worried that there might be some overlap between those Clodius had registered on that day and those who were attending his victory speech. It is simple common sense that Clodius’ gathering was at least slightly more respectable than Cicero would like us to think, but here is a whiff of actual evidence.

Both before and after Clodius’ measure, the *collegia* were an important part of life for many Romans below the level of the elite. Free, freed, and slaves all participated, and membership in a *collegium* was a valued aspect of an individual’s personal identity.<sup>33</sup> We know more about their operation in the imperial era, when they were legitimized, reorganized and given an important role in the imperial cult and city administration, but during the Republic they must have served many of the same social and religious functions. Before Augustus, though, they operated in a legal grey area.<sup>34</sup> Indeed, they had been banned in 64 BCE (*Asc.* 7C), probably because they served as focal points for political discontent and troublemaking which made the elite uncomfortable. Certainly, Clodius did use his revival of the *collegia* for political ends. Already in late 59 he had advertised his intention to restore them when he ordered that the banned *ludi Compitalicii* should be celebrated on the first of January 58; *Asconius* (7C) informs us

30 The detail at *Dom.* 129 that slaves were being enlisted *vicatim* adds further confirmation: many *collegia* would have been based in specific neighbourhoods.

31 *Pis.* 23: ‘servorum dilectus’ (‘a levy of slaves’); *Red. sen.* 33; *Dom.* 129; cf. *Dom.* 54: ‘non modo liberos sed etiam servos’ (‘not only free men, but even slaves’).

32 *Red. pop.* 13: ‘cum homines in tribunali Aurelio palam conscribi centurarique vidissem’ (‘When I saw men being openly inscribed and enrolled into centuries at the tribunal of Aurelius’).

33 In general on *collegia* in the Republican period, see Diosono 2007: 26–9; Flambard 1981; Treggiari 1969: 168–77. Waltzing 1895–1900 remains fundamental, especially 1.61–113.

34 Full discussion in Waltzing 1895–1900: 178–99. This material is under copyright. Any use outside the narrow boundaries of copyright law is illegal and may be prosecuted. This applies in particular to copies, translations, microfilming as well as storage and processing in electronic systems.

that putting on these games was a task which came under the purview of the leaders of *collegia*. His success won him the allegiance of large numbers of voters who had a personal interest in the legalization, helping to build support for his later measures.

Cicero may also be right that Clodius piggybacked on the *collegia*'s organizational structures to mobilize his supporters.<sup>35</sup> In the days immediately following the legalization, Clodius made efforts to compile a list of all the reestablished groups and their membership. This is the process Cicero is so keen to represent as a paramilitary levy. The paramilitary overtones are perfect for Cicero's arguments that Clodius' actions were violent, but they were not at all out of the ordinary for *collegia*, whose internal organization was frequently based on terminology borrowed from the army.<sup>36</sup> For Clodius, however, the immediate prize was not a private army, but a full and complete knowledge of his audience and its internal structures. Given the amount of effort made in today's elections to compile lists of voters to target, it is obvious that such a list could be a potent political tool.

In the days immediately following the passage of his four laws, Clodius' aim was to consolidate the popularity they had won for him. He may even have had a deliberate plan to codify and institutionalize his new support through the mechanism of the *collegia*. His decree ordering the shops to be shut was connected with a meeting at the Tribunal of Aurelius at which new members were signed up. He was continuing to press home the message he had first disseminated when he encouraged the illegal celebration of the *ludi Compitalicii* and had presumably emphasized during his *con-tiones* in the days between the bill's promulgation and its ratification: the people of Rome had been unjustly deprived of their right to assemble in *collegia*, and he, Clodius, was acting as the people's champion by restoring them. Shutting the shops was an advertisement that the meeting was to be one Cicero would call seditious and Clodius would probably call *popularis*, devoted to important matters vitally connected to the well-being of classes Cicero would prefer remained apolitical.

Clodius' act in shutting the shops was primarily symbolic rather than practical.<sup>37</sup> Such a bold use of symbolism fits perfectly with the other events of early January 58, which culminated in an even more richly symbolic act: the seizure of the temple of Castor as a semi-permanent base for Clodius' supporters.<sup>38</sup> This was not the act of a maniac, but a finely-tuned piece of political bravado. It allowed him to claim the gods' favour (a trope Cicero inverts, accusing Clodius of blaspheming the temple) and also gave him physical control over one of the main locations used for public speech and voting. The occupied temple provided a permanent reminder of Clodi-

35 Clodius was not the first to use the *collegia* as political networks, of course: Cicero himself is advised to do so at *Comment. pet.* 30.

36 Waltzing 1895–1900: 1.357–68 collects the evidence.

37 Sumi 2005: *passim*, but esp. 11 analyses the operation of different levels of symbolism within Republican political activity, with close attention to how politicians' ritual performances and their audiences' knowledge and expectations combined to create meaning.

38 Tatum 1999: 143–4 notes that the temple was selected as a prominent rallying point; Cerutti 1998 has little to say about the implications one way or another. On the religious aspect, see Lennon 2010: 182–4.

us' strength, confronting the Curia diagonally across the Forum. The Curia may have watched over and guarded the Rostra – a metaphor Cicero uses for his desired state of affairs, in which the Senate's authority guided the progression of popular assemblies – but Clodius' headquarters now watched over and guarded the Forum's other speaking platform, which was the podium of the temple of Castor itself.<sup>39</sup>

### The *iustitium*

It remains to be explained how and why the act of shutting the shops had developed such a powerful symbolic impact. P. J. Vanderbroeck has argued that Clodius shut the shops as 'a sign of major distress' and 'an indication that something important was about to happen'; for him, this was because shutting the shops was part of a *iustitium*, an emergency stoppage of business decreed by Clodius.<sup>40</sup> Unfortunately, it is not clear that this was an official *iustitium*: no source calls it by that name, and Clodius probably did not have the power to declare one. Still, the institution of the *iustitium* deserves attention: for Livy, and so perhaps also for Cicero and Clodius a generation earlier, shutting the shops was one of the key features of the *iustitium*. What is more, in all of Roman history shutting the shops only appears in our evidence in these two contexts: the acts of Clodius and his followers, and the *iustitium*. Further analysis of the institution and its fate in the late Republic can help us untangle the context in which Clodius acted.

The *iustitium* is best known to us from Livy, where it appears as an extraordinary measure taken during the early and middle republic when the city itself was under military threat. Livy records a number of *iustitia*, and explicitly points out the shutting of the shops in three cases: in 458 BCE when the Sabines were at the gates, in 426 BCE when an attack from Veii and Fidenae threatened, and in 321 BCE after the disaster at the Caudine Forks.<sup>41</sup> The first of these will serve as an example (Livy 3.27.2–4):

cum magistro equitum in contionem venit, iustitium edicit, claudi tabernas tota urbe iubet, vetat quemquam privatae quicquam rei agere; tum quicumque aetate militari essent armati cum cibariis in dies quinque coctis vallisque duodenis ante solis occasum Martio in campo adessent; quibus aetas ad militandum gravior esset, vicino militi, dum is arma pararet vallumque peteret, cibaria coquere iussit.

He [the dictator Cincinnatus] came to the *contio* with the *magister equitum*, decreed a *iustitium*, ordered the shops in the whole city to be shut, and forbade anyone to carry out any private business; then he ordered anyone of military age to be on the Campus Martius before sunset,

39 *Flacc.* 57: 'speculatur atque obsidet rostra vindex temeritatis et moderatrix officii curia' ('the Curia, punisher of indiscretion and guide of duty, watches over and guards the Rostra').

40 Vanderbroeck 1987: 127; cf. Benner 1987: 115, though Vanderbroeck is more alert to the symbolic significance.

41 Livy 3.27.2 (the Samnites in 458); 4.32.1 (the Veientes and Fidenates in 426); 9.7.8 (the Caudine Forks).

Other *iustitia* in Livy are at 3.3.6, 4.26.11, 12, 6.71, 7.9.6, 10.4.2, 11.13, 14.7, 15.7, 19.1, 21.1, 22.1, 23.1, 24.1, 25.1, 26.1, 27.1, 28.1, 29.1, 30.1, 31.1, 32.1, 33.1, 34.1, 35.1, 36.1, 37.1, 38.1, 39.1, 40.1, 41.1, 42.1, 43.1, 44.1, 45.1, 46.1, 47.1, 48.1, 49.1, 50.1, 51.1, 52.1, 53.1, 54.1, 55.1, 56.1, 57.1, 58.1, 59.1, 60.1, 61.1, 62.1, 63.1, 64.1, 65.1, 66.1, 67.1, 68.1, 69.1, 70.1, 71.1, 72.1, 73.1, 74.1, 75.1, 76.1, 77.1, 78.1, 79.1, 80.1, 81.1, 82.1, 83.1, 84.1, 85.1, 86.1, 87.1, 88.1, 89.1, 90.1, 91.1, 92.1, 93.1, 94.1, 95.1, 96.1, 97.1, 98.1, 99.1, 100.1.



armed and with five days' food and twelve stakes; and those who were too old to fight he ordered to cook food for their neighbours who were soldiers while they were preparing their arms and finding stakes.

Livy's *iustitia* follow a regular pattern, giving a clear picture of the early operation of this institution as his generation understood it. The *iustitium* was declared by edict of a consul or dictator, usually on the orders of the Senate, and later halted by another edict of the same magistrate. While it was in force, all public business halted so that all efforts could be directed to defence. The treasury was sealed, the courts did not operate, and the shops were shut; only the levy continued.

In Livy's reports of these early *iustitia*, the element of direct danger to the city itself is always present.<sup>42</sup> Shutting the shops is a result of a state of emergency in which the city is placed on military alert. The full gravity of the military implications are expressed most clearly at 4.31.9: 'in muris armati dispositi, et iustitium in foro tabernaeque clausae, fiuntque omnia castris quam urbi similia' – 'armed men were placed on the walls, in the forum a *iustitium* was declared and the shops were shut. Everything came to resemble a camp more than a city'.

The Livian episodes are hundreds of years earlier than the period under discussion, but there is evidence that the *iustitium* was a regular part of political discourse in Clodius' time. Cicero does not use the word *iustitium* in any of the passages analysed above. Elsewhere, however, without reference to an identifiable occasion, he does accuse Clodius of calling for the declaration of a *iustitium* (Cic., *Har. resp.* 55):

monent enim eidem ne occultis consiliis res publica laedatur. quae sunt occultiora quam eius qui in contione ausus est dicere iustitium edici oportere, iuris dictionem intermittere, claudi aedium, iudicia tolli?

They warn, 'do not let the *res publica* be harmed by secretive plans'. What are more secretive than the plans of that man who dared to say in a contio that a *iustitium* should be declared, that the giving of verdicts should be halted, that the treasury should be closed, that trials should be ended?

Cicero's use of the word *iustitium* shows that he, Clodius, and his audience were all familiar with the institution. He is grasping at straws here in an attempt to make the haruspices' pronouncements reflect badly on his enemy, but although his words are

42 It might be possible to cite the *iustitium* after the battle of the Caudine Forks as an exception. Here the people spontaneously shut the shops before a *iustitium* is officially declared, because of the depth of public mourning following the disaster: 'tabernae circa forum clausae iustitiumque in foro sua sponte coeptam primus quam indictum' ('The shops around the forum were closed and a *iustitium* began spontaneously in the forum before it could be decreed', Livy 9.7.8). We might see here an early precursor of the imperial use of the *iustitium* as a mourning period, for which see Garofalo 2009; Fraschetti 1988; Weinstock 1966; more likely, though, is that the people's decision to turn to the forms of a *iustitium* had as much to do with fear as grief. They had every reason to suspect that the victorious Samnite army would immediately march on Rome, and there was an immediate need for new levies to defend the city.



tendentious they bear witness to the fact that Cicero at least tried to portray the *iustitium* as itself inherently dangerous to the *res publica* (that is, to Cicero and his supporters). Cicero was not above calling for a *iustitium* himself: many years later at *Philippic* 5.31 he includes it as part of a hyperbolic list of measures which must be taken against Antonius. His entire speech was aimed at convincing his audience that Antonius presented a real military threat, and he was trying to persuade the senators to take whatever measures they could to show the people the seriousness of the situation. The declaration of a *iustitium* would be a strong sign that the city itself was in danger. Even if he knew that there was no hope a *iustitium* would actually be declared in the circumstances, his mention of the institution gave his argument extra rhetorical weight.<sup>43</sup>

The word *iustitium* is not otherwise used in our extant sources in connection with Clodius or any similar figure of the Late Republic. This has not stopped scholars from finding *iustitia* in other known pauses in public business, which became more and more frequent in the Republic's final century. Whether they were technically *iustitia* or not, the other stoppages also contributed to the political discourse of Clodius' time, and shed light on his decision to shut the shops.

In the Late Republic, obstructionary tactics were a standard part of politics. Tribunes could and regularly did veto or threaten to veto any business whatsoever unless their pet project was approved – a tactic used by Curio to paralyse the city in 50 BCE, for example.<sup>44</sup> The Senate could do the same, as they did in the very next year after Clodius' tribunate, when (as Cicero tells it) they refused to transact any business until Cicero's return was settled (*Cic., Red. sen.* 6). Consuls had their own methods, from Sulla's declaration that most of the year 88 BCE was *feriae* (religiously unsuitable for

43 There are two other occasions during the late republican period for which our sources use the exact word *iustitium*. The second of the two, at Gran. Licin. 33 Criniti, can be disposed of fairly quickly. Granius (writing under Hadrian) claims that a *iustitium* followed the death of Sulla, and the *matronae* mourned him for an entire year. Granius may be drawing on a lost passage of Sallust or Livy here, but I think it is more likely that he has over-interpreted a description he found in one of the authors of Sulla's public funeral. The institution he has in mind here is one of the imperial period, when a *iustitium* was declared to mark a period of public mourning following a prominent death in the imperial house. The development of the institution is interesting in itself (see the previous note for references), but for Sulla it is anachronistic. The second is more puzzling. At *Planc.* 33, as part of a list praising the Roman tolerance for free speech, Cicero reports an anecdote in which a *praeco* named Granius gets a laugh at the expense of the consul named as P. Nasica during a *iustitium*; the joke depends on the fact that both public auctions and embassies have been halted. P. Nasica is probably the consul of 111 BCE; those few scholars who have noted this passage have tended to assume that a *iustitium* in his consulship might have been in response to the crisis in Africa. If so, the element of direct threat to the city is missing. As pointed out by Scalia 1999, we might also expect Sallust to mention the *iustitium* if there were a Jugurthine connection. Perhaps more likely is his suggestion that the *iustitium* was proclaimed in response to the defeat of Gnaeus Papirius Carbo by the Cimbri and Teutones at Noreia in 112; there was an ongoing fear that these migrating tribes would turn to Italy, though even this is a stretch. I am inclined to believe that Cicero is using the term loosely here, and that some other form of stoppage of public business was in effect, though the episode as a whole remains an enigma.

44 *Cic., Att.* 6.2.6; *Caelius ap. Cic., Fam.* 8.13.2, 8.11.2–3; for discussion, see de Libero 1992: 26–7. Earlier comparanda (discussed at Bernstein 1978: 171 in connection with Tiberius Gracchus' actions) include the events of 184 BCE, when two camps of tribunes each held the threat of veto over the other (*Livy* 39.38.10), and the threat of a tribune of 148 BCE to veto the elections if Scipio was not a candidate (*App., Pun.* 112).

the passage of laws) to Bibulus' *obnuntatio* in 59 BCE (watching for adverse omens to vitiate any political action), the exact tactic Clodius' *lex de obnuntatione* a year later sought to prevent.<sup>45</sup> All of these blocking tactics had their own legal, practical, and symbolic effects. Though Roman politicians did not always play by the rules, they knew perfectly well what the rules were, and could play on the symbolic differences between one kind of stoppage and another even if they did not have the legal powers to effect either.<sup>46</sup>

One episode in particular has prompted even more scholarly debate than any of the others, and it is the one most relevant to the present investigation: a decree of Tiberius Gracchus. In 133 BCE, as part of the struggles surrounding the passage of his agrarian bill, Tiberius Gracchus declared a stoppage of public business and threatened that he would lift it only if his bill was allowed to come to a vote. The only surviving sources are Greek, so we have no idea what word was used to describe his tactic in Latin. Plutarch (*Vit. Ti. Gracch.* 10.5–6) writes that Gracchus had issued a decree preventing the other magistrates from doing business. He also specifically mentions that Gracchus sealed the treasury and promised penalties for those who contravened his edict. Appian has no mention of the stoppage, though it should be noted that there is a lacuna at *BC* 1.12, at precisely this point in the narrative; the question is whether we wish to speculate that the entire episode has fallen out. In Cassius Dio's version ([24].83.4–6), public business stops, but the pause is attributed not to a tribunician decree but to the violence between Tiberius and Octavius' supporters.

I see no reason not to accept Plutarch's notice that Tiberius Gracchus published a decree.<sup>47</sup> In the end, no matter how it was worded, its legal power must have rested on tribunician sacrosanctity as expressed in the veto. We are not told that he shut the shops.<sup>48</sup> He did stop all public business, and two other details are given: he shut the treasury, and people changed into mourning garb. These are both procedures Cicero connects to the institution of the *iustitium* in the Late Republic.<sup>49</sup> Even more interesting, however, is Dio's interpretation of the same events. In Dio ([24].83.4–6)

45 Sulla: App., *BC* 1.55; Plut., *Vit. Sull.* 8.2–3. Bibulus: Cic., *Har. resp.* 48; Plut., *Vit. Caes.* 14.9; Dio Cass. 38.6.

46 There is a thick vein of scholarship on these strategies of obstruction that takes a legalistic approach, distinguishing between various different legal powers to halt public business. Some are maximalist, claiming all of these examples and more as *iustitia*; others engage in fine-grained distinctions between different legal and religious procedures and confine the use of the word *iustitium* to a few very specific cases. So, for example, I have referred to Sulla's tactic in 88 as the declaration of *feriae*, with Levick 1982: 82; Keaveney 1982: 60; Lintott 1971: 518; Niccolini 1934: 518. Others, such as Mitchell 1975 and Gabba 1958: 163–4 see a *iustitium* here. The problem is, of course, that the relevant texts are Greek. Both Appian and Plutarch cover the events, but they use two different words: ἀργία in Appian (*BC* 1.55) and ἀπραξία in Plutarch (*Vit. Sull.* 8.3). Ἀπραξία is vague and could refer to any kind of stoppage, but Appian is more precise, telling us that he is using the word ἀργία to refer to a religiously-based suspension of business of the kind which accompanies a major festival. Lacey 1961 would see Curio's actions in 50 as a *iustitium*. Benner 1987 is particularly free with the word, finding *iustitia* in the disruptions of Milo's attempts to try Clodius in 57 (94) and Clodius' obstruction surrounding his own prosecution of Milo in 56 (126). For a taxonomy of a range of obstructive tactics, see de Libero 1992.

47 See Bonenfant 1969 for a defence of Plutarch's version.

48 Perhaps he did and Plutarch failed to mention it.

49 Sealing the treasury: *Har. resp.* 55; mourning garb: *Phil.* 5.3.

no decree of Tiberius is reported; instead, the historian indulges in some allusion to Thucydides on the perils of civil strife, but mixed in with a description strongly reminiscent of Livy's early Republican *iustitia*. Dio's closing flourish, καὶ ὄνομα πόλεως ἔφερον, στρατοπέδου δὲ οὐδὲν ἀπέιχον – 'it was called a city, but it was nothing short of a camp' – irresistibly recalls Livy's 'fiuntque omnia castris quam urbi similia' – 'everything began to resemble a camp more than a city', in his description of the *iustitium* of 426 BCE (4.31.9).<sup>50</sup>

Since Mommsen, scholars have argued over whether Tiberius declared a *iustitium* or not. Arguments range from the legal – in Livy, only magistrates with *imperium* are found declaring *iustitia*, and it seems unlikely that tribunes had the power to do so – to the pragmatic, which Carcopino used to argue that the entire episode is a fiction: if tribunes did have such a power, why did the Gracchi and indeed those who came after them not make better use of this powerful weapon?<sup>51</sup> Many more recent scholars take a compromise position: although Tiberius probably did not have the legal right to pronounce a *iustitium*, he used his tribunician powers to achieve one in all but name.<sup>52</sup> The overwhelming power of ([i. e.] the threat of) the veto meant he had no need of a *iustitium* to achieve the same kind of gridlock. All securely identified *iustitia* were indeed declared by magistrates with *imperium*, and those seeking a compromise seem to be on the right track. None of them, however, have yet satisfactorily answered Carcopino's pragmatic objection, that a weapon so powerful could not have been taken up and then abandoned: if this is true of a legally-defined *iustitium*, it should also be true of a technique which was in practice equivalent to a *iustitium*.<sup>53</sup> As the present investigation reveals, however, when we look beyond legalities it becomes clear that Gracchus' actions did indeed set a precedent which at least one other, namely Clodius, followed.

Tiberius Gracchus probably did not have the power to declare a *iustitium*. Never-

50 Compare also App., *BC* 5.18, where the people react spontaneously to the military occupation of the city in 41 BCE by shutting their shops, driving out the magistrates, and refusing to allow the courts to operate. Bonenfant 1969: 119–20, who has one of the best treatments of the episode as a whole, notices the similarity between Dio and Livy. He goes too far, however, when arguing that this must reflect Dio's Latin source which will have used the word *iustitium*. The Latin source could have been engaged in the same play of allusion without implying that this stoppage was technically a *iustitium*.

51 Mommsen 1877:1.261–3 thought that Tiberius Gracchus did declare a *iustitium*, and it had an important effect on his conceptualization of the institution. He is followed by Gabba 1958: 34–5; Boren 1968: 57; Benner 1987: 94. Carcopino 1928: 16–23, though, entirely dismissed the notion of a *iustitium*, claiming that the entire event is a fabrication of late and corrupt sources and that Tiberius never closed the treasury or stopped the courts. As well as his pragmatic objection, Carcopino also doubted that a *iustitium* could be declared in the absence of an external threat, which as we have seen was present in all the Livian examples. Many recent commentators maintain strongly that a tribune had no power to declare a *iustitium*. Thomssen 1944 chooses to solve the problem with the extraordinary explanation that there was a *iustitium*, but it was in fact the consul Calpurnius Piso Frugi who decreed it, thus revealing himself as a secret Gracchan sympathizer.

52 So Lintott 1999: 125; Stockton 1979: 65; Bernstein 1978: 171 n.75; Richardson 1976: 210 n.6; Astin 1967: 204–5, 346–7; Earl 1963: 80–2; Niccolini 1934: 111–12. Fuller discussions can be found in Scalia 1999; Pinna Parpaglio 1988.

53 It is worth mentioning (with Bonenfant 1969: 114 n.4) that those who concede the point to Carcopino in a footnote forget that he did not object merely to the word *iustitium*, but to the entire sequence of events.

theless, our sources see his actions through the lens of a *iustitium*, even assimilating it to early Republican examples. Whatever happened in 133 BCE, it not only duplicated the practical effects of a *iustitium*, but also the symbolic effects. Normal business was suspended because of a single incipient threat; as Dio tells us, the result was tantamount to a city at war. A quick reading might suggest that Gracchus was merely threatening to inconvenience the political class to make sure his law was passed, but that is to misinterpret Plutarch. In Plutarch, he says he will lift the decree once his bill comes to a vote, with no rider about which way the vote should go. Gracchus was aiming to influence Octavius into withdrawing his opposition by using the symbolic power of the *iustitium*. His decree, though not technically a *iustitium*, approximated one. By making an allusion to that venerable institution, Gracchus emphasized the peril in which the *res publica* found itself and assimilated his opponents to an invading army.

### Clodius and the symbolic power of the *iustitium*

I cannot agree with Vanderbroeck that Clodius actually declared a *iustitium* in 58 BCE. Yet when Clodius used the word *iustitium* in a *contio* he drew on both its early Republican and its more recent history.<sup>54</sup> When he ordered the shops to be shut, the one feature which at least in Livy is closely tied to the *iustitium* and to no other form of suspension of business, he was alluding to this institution of the *iustitium* without actually declaring one.<sup>55</sup> More than that, he was alluding to the use of a similar tactic by one of his patron saints, Tiberius Gracchus.

Clodius was no stranger to the symbolic power of traditional forms.<sup>56</sup> His temple of Libertas among the ruins of Cicero's house drew on a rich vein of religious symbolism directly linked with political ideology, and upon Cicero's return he used allusion to the formulae of both *evocatio* and the so-called *Senatus Consultum Ultimum* to call the people to its defence.<sup>57</sup> Even the spelling of his name – the 'popular' form 'Clodius' rather than the 'patrician' Claudius – utilized broadly understood patterns of meaning to pointed effect.<sup>58</sup> It would be easy to multiply these examples further. Wilfried Nippel has used a similar approach to interpret Clodius' acts of violence: rather than painting Clodius as an unreasoning terrorist or calculating psychopath, willing to use all means including violence to achieve his ends, Nippel sees him as deliberately en-

54 His use of the word: Cic., *Har. resp.* 55.

55 *Contra* Benner 1987: 115; Vanderbroeck 1987: 127. Vanderbroeck in particular is alive to the symbolic implications of the *iustitium*, but is wrong about the legal status of Clodius' act, which he thinks was a literal *iustitium*, and about its practical effects, which he connects closely with the mobilization of a *plebs conionalis* consisting of patronless freedmen who worked in the *tabernae*.

56 Vanderbroeck 1987: 116–20 has a general treatment; see also Sumi 1997, on the symbolic aspects of Clodius' funeral. Riggsby 2002: 123 says of Augustus, set up as a comparandum to Clodius, that his 'practical reforms were embedded in a larger symbolic package'.

57 In general on the temple, see Arena 2012: 212–14; for the *formulae* used in its defence, Nippel 1988: 122.

58 Discussion in Riggsby 2002.  
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acting the procedures of archaic folk-justice traditions.<sup>59</sup> The destruction of Cicero's house is a perfect example; Clodius revitalized the (probably invented) tradition that a tyrant's house was forfeit and should be torn down.<sup>60</sup> In the episode of the house we can see the tribune working with a complex symbolic repertoire which presents a fascinating counterpoint to the usual picture we get from Cicero's writings, and those of later sources who follow him. In Cicero and Livy, the houses of the so-called *af-fectatores regni* are torn down because they were proto-*populares*, and their function as *exempla* is to justify the actions of those like Scipio Nasica, Opimius, or Cicero himself who saw themselves as standing against the Gracchi and Catiline just as Servilius Ahala had stood against Spurius Maelius, or M. Furius Camillus against Manlius Capitolinus.<sup>61</sup> Clodius proposed a different reading of the same exemplary episodes. For his audience, the communal effort of house destruction was the perfect statement of the will of the Roman people not to have any individual lord it over them. Clodius was capable of looking to the distant past (especially as filtered through the age of the Gracchi) for inspiration.<sup>62</sup> Most importantly, he expected his audience to understand and participate in the symbolic rituals he choreographed.<sup>63</sup>

Legalistic breakdowns of Roman institutions are only valuable to a certain point. Roman politicians were old hands at manipulating them, and the list of legal obstructive tactics I alluded to earlier furnishes plenty of examples: all on perfectly legal grounds, none adhering to the spirit in which those institutions were originally devised. But the point of the *iustitium* for Clodius (and indeed for Gracchus) was not the legal backing it might be able to give him for his actions, since he had the legal power to achieve all the same ends through the veto. Rather, it was the ideological weight of the *iustitium* that interested him. So here we move from legalistic territory to the realm of 'political culture': not what the institutions are, but how they are understood and the unwritten rules surrounding their use.<sup>64</sup> Both abiding by these rules and deliberately transgressing them were useful tools for a Roman politician.<sup>65</sup> The complex of symbolism and unwritten norms surrounding Roman political activity could be put to Clodius' ends just as easily as it could to upholding senatorial consensus.

The shutting of the shops played an important role in the symbolic structure Clodius was building in early 58 BCE. It reproduced the conditions of the early *iustitia* as they were understood in the late Republic, and thus revived the Gracchan connota-

59 Nippel 1988: 108–28; see also Lintott 1967: 167–8; Lintott 1968b: 7–10.

60 Nippel 1988: 116–17.

61 E. g. Cic., *Cat.* 1.3; *Mil.* 8.; Livy 2.41 (Sp. Cassius), 4.13–16 (Sp. Maelius), 6.14–20 (Manlius Capitolinus). Roller 2010 has a full exploration of the trope.

62 Remember that the *collegia* themselves were believed to go back to Numa: Plut., *Vit. Num.* 17; Plin., *HN* 34.1, 35.159.

63 See Morstein-Marx 2004: 68–118 for a detailed exploration of the (high) level of historical knowledge possessed by the audience of *contiones*.

64 Hölkeskamp 2010 *passim* argues for the primary importance of political culture as a way of understanding the Roman Republic.

65 On the value of both conforming to and transgressing norms, see especially David 1993 on the tribunate, and Hölcher 2004 more generally.



tions the *iustitium* had accrued. Clodius was claiming a role as the defender of Rome, and casting his opponents as an imminent threat to the city's very survival; he raised the problems he faced to the level of a foreign invasion. The *iustitium* even allowed him to suggest that paramilitary enlistment and even violence were an appropriate response to the situation. Finally, he created an ideological link between himself and Tiberius Gracchus, still beloved by the Roman people and his relative by marriage. It was this ideological and symbolic baggage that Cicero meant when he said that shutting the shops was the act of a seditious tribune, and it was this layered ideological appeal, rather than the fact of physically forcing people from their workplaces, that enabled Clodius to draw an audience by shutting the shops. What was at stake was not the legal authority required to shut the shops, or the pragmatics of rousing apathetic *tabernarii* to the meeting, but a symbolic repertoire drawn from early Roman history similar to the one we see Cicero himself turn to again and again.

### Shutting the shops and the rhetoric of audience composition

A detailed treatment of the *iustitium* has allowed me to propose some reasons which may have lain behind the evident symbolic success of Clodius' move. His decree that the shops should be shut would have had drastic effects on the economic well-being of plenty of men who might or might not previously have supported him. He certainly could not guarantee that those who could not go about their usual business that day would instead turn out to his meeting. But he was willing to suffer those negative consequences because the act of shutting the shops was intimately connected with the powerful tradition of the *iustitium* and the still-vibrant memory of Tiberius Gracchus. It sent a powerful signal to his potential audience that the Republic was in danger and needed their aid.

Does this mean that the act of shutting the shops has no bearing on the question of whether Clodius actually managed to involve new constituencies in Roman political activity? If shutting the shops was primarily a symbolic move rather than a practical one, we cannot use Clodius' adoption of the tactic as transparent evidence that his followers were *opifices* and *tabernarii*. Yet to concentrate too single-mindedly on historical allusion risks missing some even more prominent symbolic effects of Clodius' actions. When the shops were shut, everyone would know about it, from the *tabernarii* themselves to the highest elite. They might find themselves personally inconvenienced, unable to pick up their dinner or get their sandals mended; even if they had no shopping to do that day, the visual impact of rows of shutters during what would normally be a busy day could not be ignored. Clodius did not have to enrol large numbers of actual *tabernarii* or *opifices* among his followers to be able to claim their support, or even to make the broader and more revolutionary claim that he (and possibly he alone) could mobilise this new political constituency. The man most obviously discomfited by his tactic was none other than Cicero: perhaps we should see him and those like him as its **primary intended audience**.



In general, Cicero's characterizations of his opponent's following are to be discarded, and I have argued above that his description of the men being enrolled as 'homines' in his only speech to the people on the topic is a telling sign that they were not in fact mainly servile. But Cicero is not only interested in the composition of Clodius' crowd as a simple piece of invective. As comes out most clearly at *De domo* 89–90, the entire struggle between the two men is framed around a debate about the true wishes of the true *populus Romanus*. For Cicero, his own crowd represents his longed-for 'consensus omnium bonorum', his 'tota Italia'.<sup>66</sup> It is a standing point in his post-exile rhetoric that the crowd which called him back was far larger than the mob which exiled him, composed of men of all classes from all over Italy. The last clause of *De domo* 90 proposes an explicit comparison between Clodius' crowd of reprobates, who shut their shops, and Cicero's, who left entire towns closed on the day they came to vote for his recall.

Cicero's comparison has unwittingly preserved for us in negative form Clodius' own rhetorical tactic. The fact that the shops were closed advertised the vital importance of Clodius' meeting and the magnitude of the threat the republic faced. It also advertised the composition of his audience. Whether or not workers from *tabernae* actually showed up to his meeting, the closed shops would have let him make the claim that they did. He could use the visual impact of shuttered storefronts to argue that all levels of Roman society, even the lowliest, were represented in his crowd. This, he could declare, was the true *populus Romanus*. For his own claim to have brought new groups into the political process, Cicero looked to the worthy burghers of Italy; Clodius kept his sights on Rome but argued that he had extended political participation further down the social scale than ever before.<sup>67</sup> Their disagreement was fundamental and ideological: whose opinions should really count?

There are good reasons to suppose that Rome's normal political audience was limited to a leisured elite.<sup>68</sup> Even so, the contemporary textual evidence of Cicero suggests that workmen, shopkeepers, the poor, freedmen, and even foreigners and slaves attended *contiones* at least occasionally.<sup>69</sup> His 'exercitus hominum ... locupletium' –

66 On the rhetorical weight Cicero places on the *universus populus*, see Bell 1997, especially 17–18; on *tota Italia*, Dench 2013: 128.

67 Cf. Dench 2005: 182, 'Cicero's version of an expanded body of political agents is distinctly horizontal rather than vertical.'

68 Major contributions to this ongoing debate include Mouritsen 2013; Jehne 2006; Mouritsen 2001; Laser 1997; Vanderbroeck 1987. The majority of *contiones* were held in the Forum Romanum, where the limited space available meant only a tiny proportion of the population could ever have participated. Potential members of the crowd had to be able to travel to the city, ruling out most rural dwellers; in the normal order of things only the richer members of society would be able to sacrifice a day's work to attend a political meeting. We might also ask whether the poor had any interest in participating, even when they were able. Many of the issues discussed did not affect them directly, and there were no mass media to inform them of when and on what topic a meeting would take place, though see O'Neill 2003; Flower 2013 on the circulation of information, perhaps via routes invisible to our usual sources.

69 E.g. Cic., *Cat.* 4.16: 'omnis ingenuorum adest multitudo, etiam tenuissimorum' ('the whole multitude of respectable men is here, even the poorest'). Foreigners (or at least foreign-born freedmen) are implied by 'turba et barbaria forensis' at *De or.* 1.118 and claimed explicitly at *Flacc.* 17; slaves are most often mentioned in connection with Clodius, as at *Dom.* 89.

‘army of well-off men’ – was only one part of the politically-active citizenry.<sup>70</sup> The rest he felt free to dismiss in a letter as ‘illa contionalis hirudo aerari, misera ac ieiuna plebecula’ – ‘that leech on the treasury, the wretched, starving rabble who turn up to meetings’ (*Att.* 1.19.4). Yet he was aware that their support was at least potentially important, and kept track of their views and enthusiasms alongside those of the *boni*.<sup>71</sup>

In the *De domo*, Cicero argues that every respectable citizen, even the poorest, is on his side; left for Clodius are only the criminals and the totally destitute. Again, we can see Clodius’ rhetoric in negative preserved within Cicero’s attacks. Cicero wants his audience to understand this passage as a stark contrast with the pitiful and disreputable crowd conjured up by his own description of Clodius’ following. In its original context, though, the real contrast must have been with Clodius’ competing claims that his own crowd truly represented the full cross-section of Roman society. Both men start from the same assumption, that the will of the *populus Romanus* must prevail; they only differ in where they find it.

My reconstruction of Clodius’ rhetoric has two important consequences. Firstly, the question about whether Clodius involved new groups in the political process is not merely a modern obsession. Clodius did make such a claim, but even in his own time the truth of his claim was under attack. Cicero sometimes wants to emphasise that Clodius’ crowds included *tabernarii* and *opifices* as part of an attack on their moral standing, but at other times his rhetoric points to a wider conflict about who truly has the support of Rome’s free poor. Secondly, it is possible that Cicero’s persuasive refutation of Clodius’ claims has distorted our understanding of Clodius’ relationship with Rome’s citizenry more broadly. If I am correct that Clodius wanted to portray the entire *populus Romanus* – except, perhaps, for an out-of-touch and intransigent senatorial elite – as standing with him, then we must reconsider how far up the social scale, as well as down, Clodius’ support went.

At *De domo* 89, Cicero tries to reduce Clodius’ tactic to a practical measure to get people on the streets. This is an orator’s sleight of hand. Cicero’s rhetorical move picks up on the ‘popular’ connotations of shutting the shops, but diminishes its impact by reducing it to a desperate attempt to fill out the crowd. We should not follow his interpretation. When late Republican politicians decreed that the shops should be shut, they were not only trying to gather warm bodies for a *contio* by forcing *tabernarii* onto the street, but making a symbolic display claiming that their meeting was both vital to the safety of the *res publica* and had broad public support. A fuller understanding of this political tactic not only helps us make sense of Clodius’ actions and his sources of support but also acts as corrective against the one-sided Ciceronian view of the

70 *Att.* 1.19.4: ‘Is enim est noster exercitus, hominum, ut tute scis, locupletium’ (‘For this is my army, as you know, of well-off men’) – contrasted in the next phrase with ‘populo autem’ (‘the people, on the other hand...’).

71 E.g. *Att.* 1.16.11: ‘apud bonos idem sumus quos reliquisti, apud sordem urbis et faecem multo melius nunc quam reliquisti’ (Among the good men I am doing as well as when you left; among the city’s trash and scum my position is much better than when you left’); 1.14.1, contrasting the effects of Pompey’s speech on the ‘miseri’ (poor), ‘improbi’ (wicked), ‘beati’ (wealthy) and ‘boni’ (good).

conventions of Roman politics, in which tradition and symbolic weight are entirely on his side.

Shutting the shops worked as a rhetorical tactic for Clodius. Using the forms of the *iustitium*, Clodius positioned himself as the leader of the true *populus Romanus*, and his opponents as enemies, even invaders. The Gracchan connection added another powerful ideological twist. What is more, the visual and practical impact of closed shops not only marked out this occasion as special, but gave the impression that people across the spectrum of Roman society had downed tools to support him – even if that was not in fact the case.

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