Communicating Public Opinion in the Roman Republic

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THE PUBLIC AND THE *POPULUS*

One of the reasons that public opinion can be so hard to define or measure is the inherent complexity of the concept of "public" or "the public". Who is part of this group, and who is excluded? In English usage, the boundaries are often fuzzy. One answer would be to say that "the public" includes everyone: young, old, male, female, citizen or non-citizen. But when a modern British or American politician claims that "the public" supports a policy, he or she is arguably excluding any opponents from the group constituting "the public". If challenged, the politician would presumably say that he or she does not mean that every single person supports the policy, but that a large number of people do, and perhaps even a majority. The ambiguity of the English phrase "the public" helps the politician's rhetoric: appeal to a particular group of supporters is framed in a way which suggests consensus or even unanimity.

For the Roman Republic, the situation is in some ways clearer. In English, "the public" is defined with reference to the adjective "public". In Latin, the adjective *publicus* is not self-explanatory. Instead, things that are *publicus* are defined with reference to an institution which is also a group of people, the *populus Romanus*.[2] It is rare that people who are not members of the *populus* are even part of the discussion. The clear and direct link between *populus* and *publicus* extends as far as the *res publica* itself: the famous phrase Cicero attributes to Scipio in his *de Republica* defines *res publica* as *res populi*.[3] In practice, too, the *populus Romanus* is often treated as equivalent to what we might call "the state". Romans wrote *socii populi*

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2   The archaic spelling of *publicus* is *poplicus* (e. g. the *S. C. de Bacchanalibus*, *CIL* 10.104, line 15); see further Russell 2016a: 26–7.
3   Cic. *Rep*. 1.39; as Hodgson 2017: 7 points out, Cicero finds it sufficient for his definition of *res publica* to define *populus*. On Cicero's phrase and its meanings, see further Schofield 1995; Asmis 2004; Grilli 2005; Atkins 2013: 128–38.

Romani where we would translate "Rome's allies"; it was the *populus Romanus*, rather than Rome or the *res publica*, who conquered the world.[4]

The *populus Romanus* was also a vital part of internal political discourse. The modern concept of sovereignty may not map perfectly onto the Roman Republic, but the *populus* was indisputably the closest thing that Rome had to a sovereign body.[5] It was the original holder of the *potestas* and *imperium* which was later passed to the *princeps* (Dig. 1.4.1*pr* = Ulpian 1 fr. 1916).[6] In a formulation Livy attributes to the Twelve Tables, *quodcumque postremum populus iussisset, id ius ratumque esset*: "whatever the *populus* has last ordered, this is to be law and ratified" (Liv. 7.17.12).[7] The *populus Romanus* was the source of law, as well as the ultimate arbiter of elections. It should come as no surprise, then, that we read often in our Republican sources about what the *populus Romanus* thinks or wants, as well as what it orders. For Romans, the group of people constituting "the public" could, in certain situations, be clearly and narrowly defined: they were the members of the *populus Romanus*, the institution from which the concept of publicness itself was derived.[8]

The central role of the *populus Romanus* in Roman politics had consequences for how Romans understood, reacted to, and manipulated public opinion, and those consequences will be the subject of this chapter. I concentrate on the language and concepts used by orators in their speeches to the people, the definitive "public". When they positioned the *populus Romanus* as the sole political public audience, Roman political discourse and the politicians who used it also defined the *populus Romanus* as the sole source of legitimate public opinion.[9]

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4   One of the most rhetorically polished examples comes at Cic. *Div. in Caec.* 69: *iure tum florebat populi Romani nomen, iure auctoritas huius imperi civitatisque maiestas gravis habebatur*. The second half of the phrase is not an addition, but an explanation of the first: *auctoritas huius imperi* and *civitatis maiestas* are facets of *populi Romani nomen*.

5   The Roman Republic was governed as much by *mos maiorum* as *Staatsrecht*, making it difficult to apply legalistic modern conceptions of sovereignty. See further Hammer 2015.

6   The cautions of Ando 2013 must be born in mind: imperial-period rationalizations like these say more about the empire and the need to make sense of monarchy than they do about Republican realities.

7   Crawford 1996: 721 reads this clause merely as a statement that newer legislation outranks old, rather than as a claim to popular sovereignty; but see e. g. Straumann 2016: 37–8.

8   Hodgson 2017: 10–11 asks why at *Rep.* 1.41, in the middle of his definitions of the *res publica*, Cicero makes Scipio take a convoluted route to defining the *civitas* with reference to the *populus*, rather than the obvious etymological shortcut from *cives*. The unavoidable centrality of the *populus Romanus* to conceptions of publicity and public life must be one answer.

9   My use of the word "legitimate" here draws not on Weber but on Habermas's idea of the legitimizing force of public opinion: for him, the formation of bourgeois *Öffentlichkeit* allows private citizens to "compel public authority to legitimate itself before public opinion" (Habermas 1991: 25–6, in the MIT Press edition translated by Thomas Burger). This definition is not so far from another Habermasian concept tackled by Hurlet in this volume: a form of public opinion which can critique or even oppose power. Hurlet concludes, rightly, that this form never existed at Rome. But my weaker formulation allows for common ground between parts of Habermas's concept and Roman political culture. Roman political authority was drawn from the *populus Romanus*, and all political action had to be legitimated before the *populus*, in what Millar 1998: 45 calls an "ideology of publicity". In this chapter, moreover, I am less concerned with

THE ORATOR, THE *POPULUS ROMANUS*,
AND LEGITIMATE PUBLIC OPINION

There was always a gap between the rhetoric of the *populus Romanus* and the reality. Despite the lip service politicians played to the sovereign *populus Romanus*, Roman political life was always to a greater or lesser extent dominated by a tiny minority, the elite. Another gap, more pertinent to this chapter, lay between the august, abstract institution of the *populus Romanus* called upon in political rhetoric and the reality of the hundreds of thousands of citizens who collectively formed it. The *populus Romanus* as a whole never voted or had their opinions consulted. Participation was restricted to those who could be in the right place at the right time to cast a ballot or hear a speech. Indeed, the groups who did so were small and unrepresentative. The physical spaces of politics could not accommodate more than a few thousand participants. Those participants needed to live in or have the funds to travel to Rome, and be able to take a day away from paid employment. More generally, they had to care enough to show up.[10]

The disjunction between the abstract sovereign *populus* and the reality of a few hundred or thousand men standing in front of the Rostra has been well explored by previous scholarship. This was the central fiction of Roman political culture: a Roman Republican orator treated his audience, however small and unrepresentative it might be, as exactly equal to the *populus Romanus*.[11] The fiction goes beyond the *contio*: the Roman ideology of publicity, in which certain acts had to be performed in public view, the electoral process, and much more, depended on everyone agreeing to understand that the group that happened to be present that day was in fact identical with the *populus Romanus*.

One consequence of this fiction was that the *populus Romanus*, as called into being by an elite orator, could think or vote different ways on different occasions, not just because of the fickleness of crowds bewailed by Cicero at *pro Cluentio* 137–8 or *pro Murena* 36, but because it was composed of entirely different people. Henrik Mouritsen and Robert Morstein-Marx have demonstrated that the audience of a *contio* was mostly likely to be composed of the speakers' partisans; his rival's *contio* on the same subject, with a completely different makeup, would naturally adopt a different view.[12] And yet, if we follow the inbuilt assumptions of Roman political culture, both were the *populus Romanus*, with a sovereign power that should be respected.

Politicians were therefore faced with a problem at moments when the *populus Romanus*, in the version called into being by an opponent's speech or voting assem-

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the requirement for legitimation by the *populus* than the reverse: only the *populus* had the power to bestow legitimacy. I use the phrase "legitimate public opinion", therefore, to mean public opinion before which authority can and must legitimate itself.

10   For discussion of the size and composition of Roman political crowds, see Mouritsen 2001: 18–37; Jehne 2006.
11   Hölkeskamp 1995: 13; Hölkeskamp 2013.
12   Mouritsen 2001, esp. 50–2; Morstein-Marx 2004: 128–36. In general on the operation of the *contio*, see Pina Polo 1996.

bly, appeared to have an opinion which ran counter to their own. In our surviving evidence (which is, of course, largely Ciceronian), the tactic chosen to deal with the problem is almost always the same. Rather than impugning the opinion of any part of the *populus Romanus*, Cicero argues that the audience whose view he is aiming to discredit was not the *populus Romanus* at all. The best-known example comes from the *de Domo* 89–90, where Cicero calls Clodius' supporters *multitudinem hominum ex servis, ex conductis, ex facinerosis, ex egentibus congregatam* ("a mob of men gathered together from slaves, hirelings, criminals, destitutes", 89), and contrasts them with the *pulchritudo populi Romani*, the "beauty of the *populus Romanus*" who voted to recall him from exile. Do you really think, he asks Clodius, that your mob is the *populus Romanus*?[13] No, he implies, it is not – and when Clodius must face the true *populus*, the *verus populus* (*Sest*. 108), he gets a rougher hearing.

The post-exile speeches are full of such rhetoric. The crowds of Cicero's opponents, he claims, are composed of men who cannot be considered members of the *populus Romanus*, either because as slaves or foreigners they are literally non-citizens or because they have abdicated their citizen rights through accepting bribes or more general moral turpitude. He sometimes shades into impugning the size of the crowds as well as their composition: at *pro Sestio* 53 he claims that the law exiling him was passed *vastato ac relicto foro et sicariis servisque tradito* – "in an empty and abandoned Forum, handed over to murderers and slaves". But the main point remains that this group is entirely distinct from the *populus*, as a parallel argument earlier in the speech points out:

> *cum isdem operis suffragium ferentibus, eodem gladiatore latore, vacuo non modo a bonis sed etiam a liberis atque inani foro, ignaro populo Romano quid ageretur.* (*Red. Sen.* 18)

> … when the same gangs were casting their votes with the same gladiator proposing the bills, in an unoccupied Forum empty not only of good men but even of free men, and the *populus Romanus* did not know what was going on …

Clodius' supporters are contrasted with the *populus Romanus*, who are innocent of and ignorant of what is being done. There is no overlap. The voters were slaves rather than citizens, and even they were few. But it is their (supposed) status, not their numbers, that means he can define them as outside the *populus Romanus*.

The votes of the *populus Romanus*, and of no other group, had legal force.[14] The legal status of the voters is relevant to Cicero's attack partly because in this and many other such salvos, Cicero is attempting to discredit and delegitimise specific laws Clodius had succeeded in passing. He takes a scattershot approach, pointing to errors in their drafting, procedural errors, and even religious impediments; complaining that the votes were compromised because the voters were not citizens

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13 I have discussed this example at length in Russell 2016b.

14 The difference between the *populus* and the *plebs* will not concern me here; Jehne 2014: 118–9 has a recent overview. I justify skipping over such an important distinction partly because Cicero does so himself, in the passages already quoted and elsewhere. Whenever he attacks Clodius' *contiones* or legislation because the group present were not the true *populus Romanus*, he is technically correct: since Clodius was a tribune of the plebs, they were in fact the *concilium plebis*. But his attacks consistently refer to the *populus*, of which the *plebs* were a subset.

forms one more argument along the same lines.[15] But Cicero's concern to define Clodius' followers as outside the *populus Romanus* goes beyond his desire to vitiate any individual law. He calls into question the legitimacy of their opinions as much as the legitimacy of their votes.

Cicero's interest in who is or is not a member goes well beyond voting assemblies and *contiones*. When it suits him, he can even look for the *populus Romanus* in the theatres and games.[16] The *comitia* and *contiones*, he contends, are sometimes *vitiatae atque corruptae*: "fraudulent and corrupted" (*Sest.* 115): as he has complained repeatedly in the surrounding passages, they can be infiltrated by hired mobs (*operas conductorum*, *Sest.* 106). In the theatre, on the other hand, though hired claques are common, there can be occasions when it is clear what the *populus Romanus* thinks (*Sest.* 117): of course, they support Cicero and the senate, and boo Clodius. The theatrical audience could pass no law, but he nevertheless he invokes them as the *populus Romanus* in order to claim that this demonstration, and not the reactions of Clodius' contional crowds, is the truest expression of public opinion.[17] He caps his discussion with a rhetorical question: *videtisne igitur quantum <intersit> inter populum Romanum et contionem?*[18] "Do you see, therefore, how much difference there is between the *populus Romanus* and a *contio*?" In a political culture which automatically defined the *contio* as the *populus Romanus*, this was a radical piece of rhetoric. But its radical force was derived from existing ideals about the *populus Romanus* and its role. Clodius, Cicero argues, has turned the world upside down, to the point where public opinion must be sought not in the assemblies but at the games; but his claim about the legitimacy of the crowd's opinions, just

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15 In greatest detail at *de Domo* 32–55.

16 The best demonstration of this approach could be *pro Sestio* 106: *nunc, nisi me fallit, in eo statu civitas est ut, si operas conductorum removeris, omnes idem de re publica sensuri esse videantur. etenim tribus locis significari maxime de <re publica> populi Romani iudicium ac voluntas potest, contione, comitiis, ludorum gladiatorumque consessu.* The *operas conductorum* are defined as outside the *populus Romanus*, whose *iudicium* and *voluntas* – legitimate public opinion – can be seen at assemblies, elections, and at the games. Unfortunately, the passage is corrupt. The majority of the manuscripts read *de p. R. iudicium*, which if expanded into *de populi Romani iudicium* needs some editing to make sense. Either *de re publica populi Romani iudicium* (Baiter) or simply *populi Romani iudicium* (deleting the *de*, as some of the manuscripts do) would support my interpretation; Mommsen, however, suggested that the correct reading should be *de r. p. iudicium*, to be expanded *de re publica iudicium*, with no specific reference to the *populus*. On the textual issue see further Kaster 2006: 331–2. In general on expressions of public opinions at spectacles, see Nicolet 1980: 361–73.

17 It is important to remember, of course, that Cicero's aim in this passage is not to elucidate political theory but to advance his own cause. The criteria Cicero is using to make his judgements, never particularly well concealed, are unusually patent in this passage: those who agree with him always count as the true *populus Romanus*, while those who disagree never do. On the surface, he argues that the *populus Romanus* is present at the theatre, and that the opinions of theatre crows are therefore legitimate and should be taken into account. But the concealed logic of his speech goes in exactly the opposite direction: the crowd at the theatre expresses an opinion of which he approves, so he finds their opinion legitimate, so he anoints them as the *populus Romanus*.

18 *Intersit* is missing from the manuscripts, but is required by the context; it was supplied by Wesenberg.

like the legitimacy of their votes, depends on defining them as no more and no less than the *populus Romanus* itself. The *populus Romanus* is not only the sole source of law, but the sole source of legitimate public opinion.

When Cicero denies a crowd the name of *populus Romanus*, he preserves his opponents' claims in negative. Clodius and his allies used the same rhetoric: they identified their audiences as the *populus Romanus*, and their opinions as legitimate.

> *at uero ille praetor, qui de me non patris, aui, proaui, maiorum denique suorum omnium, sed Graeculorum instituto contionem interrogare solebat, uelletne me redire, et, cum erat reclamatum semiuiuis mercennariorum uocibus, populum Romanum negare dicebat.* (*Sest.* 126)

> But that praetor [Appius Claudius], who tends to ask questions of the *contio* about me not in the manner of his father, grandfather, great-grandfather, or indeed his entire family line, but like some little Greek, asked them whether they wanted me to come back; and when the shout of "no!" came in the half-dead voices of hirelings he claimed that the *populus Romanus* said they did not want it.

Again, we see Cicero dismiss Appius Claudius' audience as hired men, and not even particularly enthusiastic ones at that. Appius, however, explicitly claims that this group are the *populus Romanus*, and that their shouts give him a mandate to oppose Cicero's recall. Politicians at both ends of the spectrum made use of the legitimizing force that invocation of the *populus Romanus* could bring to expressions of public opinion.

THE NATURE OF THE *POPULUS ROMANUS*

The virtuoso ways in which Cicero and his contemporaries defined their audiences as the *populus Romanus* have already been discussed by Robert Morstein-Marx, in more detail than is possible here.[19] He explores how the orator disenfranchises those with whom he does not agree and dismisses any crowd response hostile to him as corrupt, while embracing any sign of support (or indeed silence) as a favourable and unanimous expression of the true *populus*' opinion. In the sections that follow, I aim to build on Morstein-Marx's conclusions by asking why this rhetorical strategy was so common and effective. Why did orators risk alienating potential voters by calling them slaves and hirelings? It was not the only option available: they might instead have argued that their opponents had misread the popular mood, or that the objectionable views of the crowds in question did not reflect the majority opinion. Further analysis shows that the choice to define opponents as outside the *populus* was not just a rhetorical tool: it was based on a fundamental structuring principle of Roman political culture that deserves attention.

It was clearly in the Republican orator's interest to claim that public opinion was unanimous in his favour, and that any dissenting voices therefore must belong to people outside the "public" as Roman political culture defined it, i. e. the *populus Romanus*. But the fact that the *populus* and thus public opinion was almost always presented in unified agreement was not only a consequence of rhetorical choices, or

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19   Morstein-Marx 2004: 119–59.

even of the ideological power of consensus in Roman discourse.[20] The indivisible unity of the *populus* itself was a structuring factor prior to any of these. The Latin word implied far more than just a group of people or the citizenry taken as a whole. It probably originally meant the army, reminding us of the origins of citizen's rights in their military contributions; like the army, it was an institution, with its own internal and external structure.[21] References to the *populus Romanus* in less formal settings, including (as we shall see) as passing onlookers to a trial or even just as the general public, were understood with reference to the *populus Romanus* in its full institutional form, summoned by a magistrate and divided into classes, centuries, and tribes.[22] Roman concepts analogous to the English "public" were derived from this institution, rather than vice versa.

One defining characteristic of the *populus Romanus* in late Republican Latin is its stubborn indivisibility.[23] We know and the Romans knew that the people who made up the *populus* were often divided on an issue, or even polarised. But Latin authors hardly ever use the technical term *populus* when discussing internal division: in texts of Cicero's time we do not hear that half the *populus* thinks one thing, while the other half thinks another.[24] The *populus Romanus* is singular; it has one voice and one opinion.

The *populus*' indivisibility is best demonstrated by looking at the rare exceptions, which are usually treated as serious threats to the civic and even cosmic order. Livy's *scortum nobile* (probably best translated "tart-with-a-heart", 39.9.5) Hispala Faecennia, who reveals the Baccanalian conspiracy of 186 BCE, describes the crowd gathered for the rites as *alterum iam prope populum* – "almost a second *populus*" (39.13.14). The obvious meaning of her phrase is that the crowd was large, but Livy's choice of the word *populus* adds further overtones. Hispala is a foreign-born woman and a freed slave, and perhaps Livy is deliberately characterising her as unused to the vocabulary of politics; but even she knows that to talk of a second *populus* makes no sense and has to be marked as metaphor with *prope*,

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20 Important recent contributions on the concept of consensus include Flower 2014; Flaig 2013.

21 See further Jehne 2014: 120–3. For discussion of the word's origin, see *TLL* ad. loc.; Momigliano 1969; Stark 1967: 57–57. The archaic meaning "army" is suggested by the fact that the dictator was originally called the *magister populi*, which by comparison with the *magister equitum* we could translate "the leader of the infantry" (Varr. *Ling.* 5.82; Cic. *Rep.* 1.63, *Leg.* 3.9; Sen. *Ep.* 108.31), and the link with the verb *populor*, "devastate".

22 See, for example, Cic. *Rep.* 3.45: an untrammelled, disordered democratic mob is no *populus* at all. This feature of Roman political discourse naturally served to reproduce elite power. Thus Connolly 2007: 40–1 discusses how only an group organised and led by the elite can be thought of as exercising political power; O'Neill 2003 explores the *circuli*, informal discussion groups, as alternative (and dangerously multiple) loci for political activity, and the ways in which the elite aimed to delegitimize and suppress them.

23 It is possible to speak of plural *populi* in the same way as we in English might say "peoples": the *populi* of various nations (e. g. Cic. *Verr.* 2.3.207, *omnes liberi populi*).

24 I know of one key pre-Ciceronian example (Plut. Aul. 485), which I intend to give its own treatment elsewhere. The practice of voting itself, which seems designed to recognise diversity of opinion, was in Rome a vehicle for producing consensus, if not unanimity; voting stopped after a majority was reached, and the total number of votes on each side was not published. The result was announced as the decision of the *populus Romanus*. See further Jehne 2003.

"almost". The force of the metaphor is devastating: this alternative *populus*, composed irregularly of both men and women, forms an existential threat to the Roman state. In part its foreign and female members make it something akin to a foreign invader, a different people or race (or, indeed, army) here to wage war against the *populus Romanus*. And yet at the same time its most insidious quality is that it is partially composed of respectable Roman men like the young initiate Aebutius: it is an alternative *populus*, based on different relations of power and internal hierarchy, which threatens not to conquer but to replace the true *populus*.

In his *de Republica*, Cicero assembles a cast of venerable statesmen of the generations immediately before his own for a fictional meeting at Scipio's villa, imagined as taking place in the year 129 BCE. He sets the scene by making them talk of other matters before the discussion turns to politics, and an early topic of conversation is a recent astronomical phenomenon: Tubero asks Scipio what he thinks of the recent report that a second sun appeared in the sky (1.15). The conversation continues for several paragraphs, until finally Laelius objects:

> *quid enim mihi ... quaerit quo modo duo soles visi sint, non quaerit cur in una re publica duo senatus et duo paene iam populi sint? nam ut videtis mors Tiberii Gracchi et iam ante tota illius ratio tribunatus divisit populum unum in duas partis ...*

> Why does he ask me how it could be that two suns were seen, and he does not ask me why in one *res publica* there are two senates and almost two *populi*? For as you can see, the death of Tiberius Gracchus and before that the whole operation of his tribunate has divided one *populus* into two parts … (Cic. *Rep.* 1.31)

The idea that the *populus Romanus* could be divided into two parts is treated as a portent of cosmic significance, more unusual and striking than the idea that there could be two suns in the sky. Laelius' question, with its contrast between *una re publica* and *duo populi*, implies that such a development is a contradiction in terms, something that should be impossible. And even within this thought experiment he hedges his claim, like Livy's Hispala, marking it as metaphor with *paene* the first time he introduces it.

The third and final example of late Republican or early imperial Latin referring in any way to a divided *populus* comes, like the first, in words a Roman author places into a foreign mouth. When Caesar demands that Massilia offer him support upon the outbreak of the civil war, they refuse:

> *intellegere se divisum esse populum Romanum in partes duas; neque sui iudicii neque suarum esse virium discernere, utra pars iustiorem habeat causam.*

> They said that they understood that the *populus Romanus* was divided into two parts: it was beyond their judgment and strength to decide which part had the more just cause. (Caes. *BC* 1.35)

As it turns out, their excuse is insincere: they have already agreed to help Domitius. But their argument once again shows how a divided *populus Romanus* is a fundamental contradiction and can only lead to disaster: neither of the two parts can claim legitimacy. It should not be surprising that this most definitive statement of the divided *populus* comes in 49 BCE: a *populus* in two parts means civil war and, indeed, the end of the Republic as Cicero knew it.

Further into the imperial period, talk of a divided *populus* becomes less threatening. Tacitus (*Hist.* 1.4) can contrast the *pars populi integra et magnis domibus adnexa* ("the uncorrupt part of the *populus*, linked to the great houses"), who were filled with hope by Nero's death, with the *plebs sordida et circo ac theatris sueta, simul deterrimi servorum* ("the squalid *plebs* and those who frequented the circus and theatres, and the worst of the slaves too"), who mourned him. As has been noted before, his diction draws on Livy's depiction of the internal strife of 304 BCE, when a certain Gnaeus Flavius had attracted popularity among the lowly.[25] But there are important differences between the two passages that have not previously been explored. Livy writes:

> *ex eo tempore in duas partes discessit civitas; aliud integer populus, fautor et cultor bonorum, aliud forensis factio tenebat.* (Liv. 9.46)

> From that time forward the *civitas* was divided into two parts: the uncorrupted *populus*, which favoured and supported the good men, wanted one thing, while the Forum clique wanted another.

Livy's words are reminiscent of Cicero's rhetorical technique: the morally compromised *forensis factio* are excluded from the *populus*. They were technically citizens, but by distancing themselves from the *integer*, uncorrupted *populus* they gave up any right to the name. For Tacitus, only part of the *populus* is uncorrupted. For Livy, however, although the *civitas*, the citizenry, may be divided, the *populus* cannot be.[26]

The indivisibility of the *populus Romanus* may thus remind us more of Habermasian *Öffentlichkeit* than any English concept of the "the public".[27] Frédéric Hurlet's paper in this volume takes on Habermas' theories of bourgeois and representative *Öffentlichkeit* and the their applicability to the Roman world in detail. For my purposes, one aspect of Habermas's use of terminology, broadly applicable across the variety of forms of *Öffentlichkeit* he describes, is enough. For Habermas, *Öffentlichkeit* (of whatever kind) is singular and indivisible. In part, this is a consequence of the German term, the meaning of which we must struggle to express in English by shuttling between abstractions such as "the public sphere" or "the public realm", but also "the public audience" and even merely "the public".[28] The plural *Öffentlichkeiten* is almost completely unattested outside contemporary (post-Haberma-

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25 Heubner 1963 *ad loc*.

26 On this episode, and the vocabulary and implications of political polarization at Rome more generally, see Hillard 2005: 4–9. For the divided *civitas*, compare Varro *ap*. Non. Marc. 3.128 (reflected by Florus 2.5), that Gaius Graccus created a *bicipitem civitatem*; Sall. *Jug.* 30 also refers to *pars ... pars civitatis*.

27 Habermas' bourgeois *Öffentlichkeit* is historically located in a far later period, and not everything he says is applicable to the ancient world; for Habermas' own treatment of the pre-modern, see Hurlet in this volume. But the singular nature of *Öffentlichkeit*, even when not used in a technical Habermasian sense, makes it easier for scholars writing in German to capture some aspects of how Roman Republican political discourse constitutes a singular and indivisible public – though, for the same reasons, they may not feel it demands so much explanation. See for example Hölkeskamp 2004: 70–1.

28 On translating *Öffentlichkeit*, Mah 2000; and Hurlet in this volume.

sian) works of high theory taking on these very questions. But its indivisibility is also a deliberate foundation of Habermas' approach, coming to fruition only in his discussion of bourgeois *Öffentlichkeit*. For him, *Öffentlichkeit* is the sole source of legitimacy of public opinion, just as the *populus Romanus* was.[29]

The Roman orator's choice to disenfranchise his opponents, defining them as outside the *populus* and thus outside those whose opinion counted as legitimate public opinion, was a rhetorical masterstroke and served his political ends well. But it should also be seen as a consequence of the fundamental unity of the *populus Romanus* in Roman political discourse, a feature that was arguably prior to many of the political norms that developed over the course of the middle and late Republic. This fundamental unity structured some of the unusual features of the operation of what we might call "public opinion' in Roman political rhetoric.

EXPLOITING THE DIFFERENCE

The essential unity of the *populus Romanus* was at the core of Roman Republican political rhetoric. And yet the obvious and undeniable difference between the single ideal *populus Romanus* and the reality of the citizenry made for both problems and opportunities for the politician. As the first sections of this paper demonstrated, a politician could make use of the differences between the abstract *populus Romanus* and any given group of people, particularly by identifying people who disagreed with them as outside the *populus*. The public opinion Cicero wanted to present as legitimate derived not from the *populus Romanus* as a whole, but from the subset within it consisting of people who agreed with him. Meanwhile, every politician addressing a *contio* had to face the fact that the full *populus Romanus* was a larger and more diverse group than the *populus Romanus* who stood in front of him.

The Roman definition of the public with reference to the *populus* makes the Roman public sphere, and Roman public opinion, more concrete than an *Öffentlichkeit* understood as a single legitimate notion of publicness and a single "public audience" embedded in political culture. Unlike Habermas's pure abstraction, in the end it is a large (and known) group of people. For Romans the abstract *populus* can only ever be singular, and as a result there can only be one legitimate public opinion. But the real *populus* and its opinions are at least potentially multiple. Despite the rhetorical and legal fiction that this audience in front of any given orator on any given day was exactly equivalent to the *populus*, and that the opinion they expressed constituted the sole legitimate public opinion, everyone knew that there

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29 Hurlet notes that some aspects of Habermasian bourgeois public opinion, founded on a notion of "reason" specific to the post-Enlightenment context, cannot be reconciled with the world of the Roman Republic. Rome certainly had public opinion with legitimating force (for which see n. 9 above), but its legitimation was not based on reason; indeed, the role of the *populus Romanus* and its performative demonstrations of consent is more reminiscent of Habermas' earlier, representative *Öffentlichkeit*.

were other members of the *populus*, in other times and in other places.[30] The *populus* here today might have a different opinion from the *populus* there tomorrow.[31] The existence of such diverse instantiations of the *populus* is one reason that Cicero and Clodius argue not about what the *populus* thinks in general, or even over what any particular crowd thinks, but instead about whose audience is exactly identical to the true *populus*.

In the *pro Sestio*, Cicero takes his argument to a dangerous extreme, drawing out its fullest implications. When maintaining that public opinion is entirely in his favour, and claiming never to have seen the slightest demonstration to the contrary, he asks: *aliusne est aliquis improbis civibus peculiaris populus, cui nos offensi invisique fuerimus?* "Or do those wicked citizens have some other *populus* of their own, which disapproves of and hates us?" (*Sest.* 125). The answer he expects from his hearers is "No!" By definition there can be no such alternative *populus*, and the implication is that any such crowds must be either imaginary or disqualified. But the truth was that Clodius and his allies did indeed have their own *peculiaris populus*, as did any orator who summoned a *contio*: their audiences were composed of their partisans and might have had little overlap with Cicero's, but they were still legally and rhetorically defined as the one and only *populus Romanus*. Cicero's quip touches at the paradox and its consequences. The very concept of the true *populus* creates the spectre of the false *populus*. There can never be two *populi*, and the *populus* can never be split, but other versions of the *populus* always threaten to exist.[32]

I use the word "threaten" deliberately, because alongside using rhetoric of the *populus Romanus*' indivisibility to disenfranchise alternative points of view, Roman politicians had another trick up their sleeve, and one which has not been so frequently analysed. They could use the slippages between the (various) real instantiation(s) of the *populus* and the ideal *populus*, between the opinion they imputed to a single gathering and the legitimizing force of public opinion, to threaten their

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30 In private letters, as opposed to public speeches, Cicero and his correspondents do indeed break down the electorate into different constituencies: e.g. *Fam.* 8.12.2–3; *QF* 2.4.5; see further Rosillo-López 2017a: 155–70; Hurlet in this volume.

31 Morstein-Marx 2004: 143–50 gathers some examples of moments when two groups of people or even formally-convened *contiones* in close proximity seemed to produce diametrically opposed opinions; see also Mouritsen 2001: 41. Politicians might indeed take advantage of the changing makeup of crowds; according to Plut. *Vit. Ti. Gracch.* 16, when Tiberius Gracchus' elite supporters saw that he was about to lose his second tribunician elections because the wrong crowd had showed up, they dismissed the assembly and demanded a new one the next day.

32 At *pro Cluentio* 137–8, Cicero remarks that *ipse deinde populus Romanus qui L. Quincti fictis querimoniis antea concitatus rem illam et rogationem flagitarat, idem C. Iuni fili, pueri parvoli, lacrimis commotus maximo clamore et concursu totam quaestionem illam et legem repudiavit* – "That very same *populus Romanus* that before, agitated by Lucius Quinctius' false complaints, demanded that this case be prosecuted and a bill be brought, that same one was moved by the tears of Gaius Junius' son, that poor little boy, and with great shouts and crowds denounced this court and law." His use of *ipse* and *idem* is meant to imply that one and the same crowd changed its mind, but his insistence on a singular *populus Romanus* even when different opinions are being displayed is notable. On the other hand, the phrase *ipse* or *idem populus Romanus* also contains within it the threat that there could be another.

opponents. This, more than anything else, comes close in effect to the modern politician's slippery invocation of "public opinion" as a weapon, though the concepts behind it are differently formed.

For an example, I turn to Cicero's speeches against Verres, and specifically the opening of the first speech of the second *actio*. Public opinion was at the heart of Cicero's strategy in the speech: he wanted to convince the jurors that Verres was widely presumed guilty, that his guilt and the nature of the court system more widely was a matter of great public interest, and thus that acquitting him would bring a storm of controversy down on the jurors' own heads.

At the very beginning of the speech, Cicero introduces public opinion by claiming that it was widely thought that Verres would not turn up for trial. In the text we read, this is an ironic literary device: if the modern consensus is correct, Verres indeed did not turn up for trial, and this speech was never delivered. This presents no real difficulty for my approach: the arguments Cicero uses are prepared as if for a real trial, and demonstrate the kind of tactics available to a prosecutor whether or not they were actually used in this case. For my purposes, the important thing to note in these opening phrases is how Cicero describes the general feeling that Verres would not show: *sermonem vulgi atque hanc opinionem populi Romani* – "the talk of the crowd and the opinion of the *populus Romanus*" (*Verr.* 2.1.1). Where we would say "public opinion", his double description tells us exactly whose opinion is meant: the *populus*.

It does not seem a matter of great political import whether the *populus* think Verres will face his trial or not. But soon Cicero also ascribes to the *populus Romanus* opinions which are more politically inflammatory:

> *accessi enim ad invidiam iudiciorum levandam vituperationemque tollendam, ut, cum haec res pro voluntate populi Romani esset iudicata, aliqua ex parte mea diligentia constituta auctoritas iudiciorum videretur.* (*Verr.* 2.1.5)

> I am here to reduce the hatred felt for the courts and to take away the criticisms made of them. My aim is that when this case has been decided in accordance with the wish of the *populus Romanus*, the authority of the courts will seem established, at least in some part by my hard work.

Cicero introduces here an assumption that the case should be decided in accordance with the *populus*'s opinion, even though this was not a *quaestio populi* and the jurors were legally free to vote in accordance with their own consciences. What is more, he is perfectly clear about what the *populus*'s opinion is, even though it has not been determined by a vote of any kind: they want to see Verres condemned.[33]

The argument Cicero lays out in the opening paragraphs of the speech depends on shifting between the ideal *populus Romanus* and the actual people present on any one occasion. As and when it suits his purposes, he identifies both as the *populus Romanus* in its role as the producer of legitimate public opinion. At 2.1.29, he

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33   Grilli 2005: 132 points out that throughout the Verrines, Cicero defines the *populus Romanus* as distinct from the senate or the *nobiles*, a common feature elsewhere in his work (at *Brut.* 186–8, for example, *populus* is made equivalent to *vulgus*, meaning "the ordinary people" as opposed to conoisseurs of oratory). But the force of his argument is based precisely around claiming that the *populus*' opinion, and not that of his senatorial listeners, has legitimacy.

claims that the *populus Romanus* heard what he had to say in his speech in the first *actio*. He cannot be claiming that the *populus* as a whole heard him; nor, indeed, did the *populus* as an institution, properly convened by a magistrate for a *contio* or *comitia*. The group who heard him were the *corona* of onlookers who came to watch court cases on an entirely informal basis.[34] But this incredibly selective and unrepresentative group had opinions, expressed them, and even had an effect on proceedings by doing so: at 2.1.12 Cicero "reminds" the court that in the first *actio* Verres was *clamore populi Romani infesto atque inimico excitatum* – "shaken by the aggressive and hostile shouts of the *populus Romanus*", and confessed that he had failed to behead the pirate chiefs. By naming the assembled crowd as the *populus Romanus*, he elevates them to official status and their shouts to the status of public opinion. Here, therefore, we see him play on the slippage between a given group of people and the *populus*, even in a situation where the crowd are not institutionally constituted as the *populus* at all.

But at the heart of Cicero's argument is another shift: between public opinion and the *iussa populi*, the will of the people. The will of the *populus Romanus*, when expressed through their votes in an assembly legally called by a magistrate, has legal force: it can create laws, elect magistrates, and (most importantly for Verres) condemn criminals. Mere shouts from the crowd cannot do so, but a skilled orator can turn shouts into a threat of legal action. The most blatant threat is at *in Verrem* 2.1.22:

> deinde etiam illud cogitare, quanto periculo venturi simus ad eos iudices quos propter odium nostri populus Romanus de nobis voluerit iudicare. (Verr. 2.1.22)

> Next, think too about this: how much danger we would face if we were to come before those judges whom, because of how much we are hated, the *populus Romanus* might wish should judge us.

Cicero is claiming that if the jury do not condemn Verres, the *populus Romanus* are likely to vote to give the courts back to the equestrians, and the new equestrian juries will be harsher on senators, including Cicero himself and the current jurors. The *populus Romanus*'s wish must be heeded, because it can easily become reality.

It is in a slightly earlier passage, however, that the second shift involved in this kind of threat becomes more apparent. Again, Cicero is talking about what might happen if Verres is acquitted.

> ex hoc quoque evaserit: proficiscar eo quo me iam pridem vocat populus Romanus; de iure enim libertatis et civitatis suum putat esse iudicium, et recte putat. confringat iste sane vi sua consilia senatoria, quaestiones omnium perrumpat, evolet ex vestra severitate: mihi crede, artioribus apud populum Romanum laqueis tenebitur. (Verr. 2.1.12–13)

> Maybe he will escape that charge too. In that case, I will move on to what the *populus Romanus* is already asking me; it thinks that the power to judge cases of freedom and citizenship is its own, and it is right. So what does it matter if he let him us force to overrule senatorial deliberations, let him break free of all the *quaestiones*, let him escape your severity: believe me, he will be held in a tighter noose before the *populus Romanus*.

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34 On the influence of the *corona*, see Rosillo-López 2017b.

Cicero will do what the *populus Romanus* are calling him to do: he will try Verres before the *populus*. When he claims that the *populus Romanus* are calling him, Cicero is appealing to the abstracted force of public opinion against Verres. He would like us to believe not that one or two men, or even the shouts of a single crowd, have asked him to prosecute, but that every single member of the *populus Romanus* shares that opinion. In the second sentence, however, *apud populum Romanum* refers to a different concept: a specific group of voters on a specific day, who, when defined by legal and rhetorical fiction as exactly identical to the *populus Romanus*, have the legal power to vote for Verres' conviction in a trial *apud populum*.

In the opening arguments of the speech taken as whole, Cicero takes advantage of two ambiguities in the way he uses the *populus Romanus*. Firstly, as so often, he shifts constantly between the imaginary all-inclusive *populus Romanus* and a specific group of people present on any given occasion. In addition, he shifts between the opinion he ascribes to the *populus Romanus* and the legally binding decisions of the *populus Romanus*. Taken together, these two shifts can be used to construct a complex threat: the opinions Cicero ascribes to the people present at the trial acquire the status of the legitimate opinion of the ideal *populus Romanus*, which he then threatens to turn into action.

This rhetorical tactic is not confined to Cicero. Sallust ascribes a similar gambit to Memmius when he questions Jugurtha before a *contio* at *Bellum Jugurthinum* 33.3–4:

> *quibus iuuantibus quibusque ministris ea egerit, quamquam intellegat populus Romanus, tamen uelle manufesta magis ex illo habere: si uerum aperiat, in fide et clementia populi Romani magnam spem illi sitam; sin reticeat, non sociis saluti fore, sed se suasque spes corrupturum.*

> He said that the *populus Romanus* knew who had encouraged and helped him to do these things, but that even so they wanted to hear it openly from his own mouth. If he revealed the truth, he could hope for great things from the faith and mercy of the *populus Romanus*; but keeping silent would not help his allies and would destroy himself and his hopes.

Here, where the relationship between the *populus Romanus* and an outsider is in question, the shift turns on ambiguities between the crowd present on the day, the ideal *populus*, and the state itself. The crowd is hostile to the king: we have already heard that they are demanding his imprisonment or execution. Memmius performs a show of quieting them, but their anger drives home the threat in his final words: if Jugurtha can appease these people, however, by answering Memmius' questions, Memmius promises that his diplomatic relations with Rome itself will go more smoothly, and if not, he faces punishment. By morphing these men's voices into the opinion of the *populus Romanus* as a whole, Memmius creates a kind of public opinion the legitimacy of which cannot be questioned and which can therefore easily be transformed into a sentence of punishment or a decree of alliance.

CONCLUSION

Roman political discourse constructed the *populus Romanus* as the single source of legitimate public opinion. The operation of that process, and particularly the indivisibility of the *populus*, is in some ways reminiscent of Habermas' (or, more broadly, German) *Öffentlichkeit*; but at its core lies not an abstract notion of public-ness or even an English concept of a public realm, but a real group of real people. In practical terms, that group could never be gathered together in one place at one time to tender their opinion, whether by voting or shouting, and as a result Roman politicians and their audiences together colluded in a fiction that a smaller group could be – not represent, but actually *be* – the *populus Romanus*. But the fiction itself led to problems: in theory, the *populus Romanus* should only have one opin-ion, but in practice different meetings produced different results. As the duelling *contiones* of the supporters of Cicero and Clodius show, Cicero and his contempo-raries could discount the "public opinion" on show on one occasion and privilege another by arguing about not what the true public opinion was, but which group was in fact the true *populus*. In the Verrines, on the other hand, Cicero plays on the slippage between what he claims is the general feeling of the people and the actual enactment of the sovereign *populus Romanus*'s wishes in a legally-constituted trial before the people.

Roman Republican concepts of public opinion were inescapably linked to the *populus Romanus*, and the specific ways in which the *populus Romanus* was con-stituted and functioned in political discourse affected the roles, phenomena and concepts we would call "public opinion" played in politics. The conceptual indivis-ibility of the *populus Romanus*, when confronted with the ease with which a pol-itician could draw a partisan crowd, generated a range of problems around public opinion which were subtly different from those we find today. For a great orator or political operator, however, all these problems were opportunities. If my examples show anything, it is that Romans – both orators and audience – were fully aware of these problems, even if they might not have had a vocabulary to describe them. They took full advantage.

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