

*Consular appeals to the army in 88 and 87:  
the locus of legitimacy in late-republican Rome*

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In mid-March of 49, Cicero was in anguish over what to do now that Pompey had crossed to Greece and Caesar was pressing him for support or at least neutrality. His personal obligation to Pompey weighed heavily with him, he writes, but on the other hand he represents joining Pompey as committing himself to fight a civil war with Sullan vindictiveness and ferocity. From Formiae he writes to Atticus on March 18 that he was deterred from joining Pompey above all by “the kind of war intended, savage and vast beyond what men yet see.”<sup>1</sup> It is interesting that for Cicero at this point it is *Pompey*, not Caesar, who is the Sullan counterpart: *Sulla potuit, ego non potero?*<sup>2</sup> Cicero then runs through some historical precedents, which he ultimately rejects – those of Tarquin, Coriolanus and the Athenian Hippias – and one that he embraces: that of Themistocles, according to the tradition that made him commit suicide in order not to join the Great King’s war against his country. He proceeds: “But you may object that Sulla, or Marius, or Cinna acted rightly. Yes, justifiably, perhaps (*immo iure fortasse*); but once victorious, they were unequalled in cruelty and slaughter.”<sup>3</sup> Cicero goes on to reject this kind of war quite forcefully, especially since Pompey and his friends were preparing (he claims) to surpass even those bloody precedents in savagery.

Cicero’s imaginary interlocutor’s objection – that “Sulla, or Marius, or Cinna acted rightly” – and his response – “yes, justifiably, perhaps,” while drawing an implied distinction between their behavior *before* and *in* victory<sup>4</sup> – should pique our interest. Evidently he did not put Sulla, Marius and Cinna in quite the same category as Coriolanus, Tarquin or Hippias. He concedes that they may be seen as having had justice on their side,

<sup>1</sup> Cic. *Att.* 9.10.2; in Shackleton Bailey’s translation. See also 9.7.4; 9.9.2.

<sup>2</sup> Cic. *Att.* 9.10.2. Cf. Cic. *Att.* 9.6.7: *bellum crudele et exitiosum sacripì a Pompeio intelligebam; 9.4.2: εἰ τὸ Δαίμον ἐπικρέσῃ τῆν ἕσπερον καὶ τοὺς ἰσχυροτέρων ἀνθρώπων τυραννοῦμεν.* (Exactly Sulla’s justification!)

<sup>3</sup> Cic. *Att.* 9.10.3; with Shackleton Bailey’s note. <sup>4</sup> See below, n. 16.

although their actions were deeply tainted by the use they made of victory. But this nuanced point of view is a far cry from the nearly unanimous chorus of disapproval raised in modern scholarship against these men's decisions to take up arms against what is frequently, but tendentially, referred to as "the state."<sup>5</sup> In this usage, however, "the state" is not a neutral description of a particular locus of governmental authority, but a normative one that presupposes *legitimacy* – and that is precisely what was contested by Sulla in 88 (and 83–82), by Marius and Cinna in 87 (as well as Caesar in 49).

We should avoid adopting language that presupposes a given conclusion. In distant hindsight, of course, Sulla's choice to take up arms may be seen (and usually is seen) as perhaps *the* fateful step toward the ultimate collapse of the republic in a series of civil wars.<sup>6</sup> A very common view (which frequently presupposes that Sulla's action was more or less treasonous or mutinous) is that the event is a landmark moment in the development of a "professional" or "client" army without a thought for the republic or its traditions – the natural and inevitable result, so we are frequently told, of Marius' recruitment of men without property (the so-called *capite censi*) with which to cross into Numidia in 107.<sup>7</sup> Grave doubts have now been registered about that venerable theory, even at its most basic level: we have no idea, in fact, just what proportion of the army besieging Nola in 88 consisted of men without property. But since many of the premises of our understanding of agrarian, demographic and military transformations in the second to first centuries are currently in flux, they can hardly be employed to frame our interpretation of this event anyway.<sup>8</sup> A hint has often been found in Appian's ascription of "mercenary" motives to Sulla's

troops: famously, they "were eager for the campaign against Mithridates since they thought it would be profitable and also believed that Marius would enroll other troops in place of themselves."<sup>9</sup> Yet it has been noted that this hardly suggests that the army was impoverished or any more disaffected from the republic than had been many others in past Roman history: "the Roman soldier, irrespective of his other motives, expected, when he went on campaign, to profit thereby from loot and plunder."<sup>10</sup>

If, then, we set aside some traditional but questionable assumptions about the disaffection, disloyalty or degeneration of the post-Marian army, we might be in a position to appreciate more precisely the issues of political legitimacy that had arisen in 88 and 87. Sulla's march can hardly have been generally viewed as a sort of coup against "the state," if Cicero was prepared to concede that he (along with Marius and Cinna the next year) may have had justice on his side. True, it is at least possible that in March of 49 Cicero was thinking in the first instance of Sulla's return from the east in 83, to which the prospective return of Pompey was obviously analogous, rather than the crisis of 88. Yet the order of names ("Sulla, or Marius, or Cinna") suggests that the march on Rome in 88 was indeed (also?) in mind, and in any case it is hard to see how Cicero would have discriminated sharply between the two acts of civil war, or if he did, how he could leave unspoken such an important caveat. Thomas Mitchell rightly comments that Cicero's numerous other "remarks on the death of Sulpicius and on the events surrounding it fit the pattern of his thinking in all the internal crises of his career and leave little reason to doubt that, whatever his misgivings about Sulla's cruelty in victory, he approved his drastic resort to military force to free the state from the domination of a turbulent tribune."<sup>11</sup> This is a man, after all, who had only the highest praise for L. Opimius and Scipio Nastica, the men most conspicuously responsible for the killings of the Gracchi brothers, and at the end of his life thought civil war was worth inciting in order to destroy the likes of Mark Antony.<sup>12</sup> Yet Cicero was no extremist, as his discussion of the tribunate in the *De Legibus* shows.<sup>13</sup> As it happens, other sources too take a positive view of Sulla's cause in deciding

<sup>5</sup> Cf. Gabba 1976, 27: Sulla "persuade(d) the legions to challenge, for the first time in Roman history, the state's authority" (my emphasis); Dahlheim 1993, 97: "unschwer als Staatsrecht zu identifizieren" (too: "Hochverrat"). Even Keaveney, in his rather sympathetic portrayal of Sulla, takes the majority perspective in describing Sulla's march as "turn[ing] his arms against the state" (Keaveney 2003a, 50 – my emphasis; but note the subtle change of phrasing from that of the original edition, which evidently attributed too much treasonous intention to the army; Keaveney 1982, 62). But Meier 1966 (1980), 222–8 is admirably nuanced, and at 237 acknowledges that "die Soldaten glauben konnten, im Sinne des senates und der rechtlichen Ordnung zu handeln."

<sup>6</sup> E.g., recently, Mackay 2004, 125 and (attributing even more, and more immediate, significance to Sulla's decision) Flower 2010, 92.

<sup>7</sup> Keaveney 2007 now offers a valuable corrective. Yet he may not go far enough: that Sulla "created" the "revolutionary army" is surely overstating the case; nor can "politicizing" the (citizen) army really have been so very revolutionary (see below, n. 79).

<sup>8</sup> Challenging the former consensus established by (esp.) Gabba 1976, 1–69 and Brunt 1988, see (esp.) Morstein-Marx & Rosenstein 2006, 630–2; Keaveney 2007. For the recent debate on the broader issues of agrarian and demographic history, see (esp.) Lo Cascio 1994; Morley 2001; Rosenstein 2004 (the objections of Keaveney 2007, 16–23 seem unconvincing); Scheidel 2004; de Ligt 2007; and the conference papers in de Ligt & Northwood 2008.

<sup>9</sup> App. *B. Civ.* 1.57/250 (cf. 252). I return to this matter below, at n. 71ff.

<sup>10</sup> Keaveney 2007, 37. See Morstein-Marx & Rosenstein 2006, 632. For the legionary's traditional "profit motive," see Harris 1979, 101–4 and (e.g.) Polyb. 1.11.2 (First Punic War); Livy 42.32.6 (war with King Perseus); Sall. *Ing.* 84.4 (Marius' Numidian campaign); cf. App. *Pun.* 75 (Third Punic War, with Harris 1979, 102).

<sup>11</sup> Mitchell 1979, 67; full discussion at 64–76.

<sup>12</sup> For Opimius, see e.g. Cic. *Sen.* 140. For Scipio, see the unqualified praise at Cic. *Dom.* 91; *Plan.* 88; *Off.* 1.76; *Brut.* 222; and see *Rep.* 6.12 Powell (with Macrobius' résumé; ad loc.).

<sup>13</sup> Cic. *Leg.* 3.19–26.

to take up arms against Sulpicius' violence; for example, the disinterested and relatively dispassionate Asconius writes simply that because Sulpicius had seized control of the state by force, "his armed suppression by the consuls was *thought to have been just*"<sup>14</sup> (emphasis added), while in Cicero's *De legibus* Quintus is made to refer to the armed defeat of Sulpicius as an act of self-defense by nothing less than the *res publica* ("the state").<sup>15</sup> Scholars have not always been very attentive to the fact that such criticism of Sulla's actions in 88 as appears in our sources – which is relatively muted anyway in comparison to that of his final victory in 82 – appears to focus not on the decision to strike back against Sulpicius and Marius but on the savagery with which he ultimately conducted his assault on the city and persecuted his enemies without regard for the tribunician office or the past services of Rome's "Third Founder."<sup>16</sup>

Why does this matter? Because in recovering the issues that were raised in such conflicts over legitimacy we can expose central strands of republican political culture that have been lost in the "frozen wastes" of much of twentieth-century republican historiography. In so doing we lay the groundwork for a fresh look at the "transformation of the Roman republic" that gives proper weight to fundamental contests over political legitimacy against the background of a distinctive political culture.<sup>17</sup> I will contend that in the cases both of Sulla in 88 and of Cinna in 87 the character and role of the consulship were a central issue in the civil conflicts of those years, especially for the legions who followed them, and that attention to the claims of legitimacy that these men and their followers staked will

cast some light on contemporary misunderstanding of the meaning of the consulship in republican political culture.

Let us recall the immediate antecedents to Sulla's decision, and his army's, in 88. The tribune Publius Sulpicius<sup>18</sup> had taken up the cause of the so-called "new citizens" who, recently enfranchised under the *lex Iulia*, had been restricted to ten (or eight) new tribes where their votes would be greatly outweighed by the thirty-five tribes of "old citizens."<sup>19</sup> Sulpicius had employed street violence to sweep aside the unified resistance of the consuls to his controversial legislation on behalf of the newly enfranchised Italians; the consul Pompeius' son was killed in the melee, and in practice Sulpicius' violence drove them both from the City.<sup>20</sup> He may even have deprived Pompeius of his consulship as Plutarch (*Sull.* 8.4) claims, though doubts might be entertained on that point.<sup>21</sup> He then compounded the offense by depriving one consul, Sulla, of his province (the major campaign that was being prepared against Mithridates) and putting it in the hands of Gaius Marius, despite the fact that the old general held no public office – a procedure for which there was no precedent at the time and that was arguably illegal, as Diodorus happens to call it.<sup>22</sup> Scholars sometimes cite as a precedent the transfer of the Numidian command to Marius in 107,<sup>23</sup> but this is a false analogy that misses the central point. By the *lex Manlia* of 107 a sitting consul had been *given* command of the most important war then underway at the expense of a proconsul, thus from a traditional perspective receiving exactly his due; in 88, however, a sitting consul was *deprived* of the major command already entrusted to him to the advantage of a *privatus* who held no official position whatsoever. Sulpicius' plebscite can therefore be seen, and surely was in fact seen by Sulla and many in his army, as a direct offense against the traditional prerogative of the consulship and its war-making role, which the *lex Manlia* had actually reaffirmed.

<sup>14</sup> Asc. 65C: *non per vim rem p. possidisset et ab iniuria bonorum actionum ad perniciam progressus est [sc. P. Sulpicius], quod et initium bellorum civilium fuit, et propter quod ipse Sulpicius consulatum armis inire appetitus esse visus est.* Note that Asconius does not claim to be offering his own opinion but a general one. Although Plutarch's anti-Sulpician account might be dismissed as likely to be tainted by its ultimate source (Sulla's memoirs), note how Livy, *Per.* 77 and Vell. Pat. 2.18.5–19.1 both lay emphasis on the illegitimacy of Sulpicius' prior actions, as does even Appian's relatively neutral version, which even refers to alleged plans and threats of the tribune to kill the consuls if they did not yield: *B. Civ.* 1.56/245, 56/247.

<sup>15</sup> Cic. *Leg.* 3.20: *de Saturnino, Sulpitio, reliquis diem, quos ne depleverit quidem a se sine ferro potuit res publica.*

<sup>16</sup> Livick, however, hits the mark (1982, 508): "Sulla's victory was justifiable: the way he used it unforgivably vindictive"; cf. Mitchell 1979, 71. Cf. esp. Plut. *Sull.* 9.6–10.2; Val. Max. 3.8.5; Cic. *Att.* 8.3.6; note Appian's heightened note of criticism from *B. Civ.* 1.58/57 on (though even now not without positive comments, e.g. 1.59/264, 63/281). Yet Velleius appears to remain largely exculpatory (2.18.6–19.4; cf. 20.1: *Non erat Martio Sulpiticoque Cinna temperatio*). On the desertion of nearly all of Sulla's officers – only mentioned by Appian – see below. Sulla's moral downfall in victory seems to have been a fixed element in the tradition (cf. Sallust's interesting verdict on Sulla at *Arg.* 95.4); it evidently reappears in the Cicero text with which this paper began.

<sup>17</sup> See Morstein-Marx & Rosenstein 2006, 629–35, and for the Caesarian parallel, Morstein-Marx 2009.

<sup>18</sup> I remain doubtful that Sulpicius carried the normally patrician cognomen "Rufus," attested only by Val. Max. 6.5.7; Martiny 1975.

<sup>19</sup> The controversy over the number of new tribes is irrelevant for our purposes: see Gabba 1967, 147–8 for what seems to me to be the most probable view, but cf. Lewis 1968; Nicolet 1976a, 233–4; Kenney 1987, 170; and now Bispham 2007: 189–99.

<sup>20</sup> On the gravity of Sulpicius' violations of constitutional tradition, see esp. Meier 1966 (1980), 221, 223, who acknowledges the force of Sulla's claim that Sulpicius' laws were *perniciosa leges* (Cic. *Phil.* 8.7; cf. *Caes. B. Civ.* 1.7.5 for *perniciosa leges* as a justifiable basis for resorting to the *senatus consultum ultimum*); also 227–8. Dahlheim 1993, 108–10 rightly notes that scholars' propensity to sympathize with the grievances of the Italians induces us to overlook Sulpicius' actions and methods.

<sup>21</sup> Kenney 1983, 60–1. But note that Hinard 1985, 64 and Seager 1994, 169 accept Plutarch.

<sup>22</sup> Diod. Sic. 37.29.2 τρωποποιός; cf. Meier 1966 (1980), 140, n. 471; Dahlheim 1993, 101–2.

<sup>23</sup> Badian 1970, 46.

This is an impressive charge sheet, and it helps us to see more clearly the dimensions and nature of the offense that Sulla was to claim Sulpicius and Marius perpetrated. While it is true that in the very sketchy account Appian gives of Sulla's speech to his troops he gives the impression that the consul spoke only of a *personal* offense against himself (τὴν δ' ὕβριν [probably *iniuria* in his source] . . . τὴν ἐς αὐτὸν),<sup>24</sup> I argue that – as would be the case with Caesar in 49 – the “personal” was fully wrapped up in a larger context of Roman political values.<sup>25</sup> I think it virtually certain that Sulla's soldiers understood him to have recounted not a merely personal affront to their commander's honor but a gross violation of republican norms: an assault on the *dignitas* of the consuls – and thus, indirectly, of themselves, the Roman people who had elected them.

This leap from the *dignitas* of the consuls to the *dignitas* or *maiestas* of the Roman people might at first seem quite a stretch, so let me now support my suggestion with a look at the second of my instances, the consul Cinna's appeal to the army in the very next year. This is a less well-known story, and a little more background needs to be sketched in to make it fully comprehensible.

The immediate prelude can be told fairly briefly. In early 87, after Sulla's departure to take up the war against Mithridates, the consul Gaius Cornelius Cinna revived Sulpicius' proposal to distribute the “new” Italian citizens among all the tribes; Sulpicius' law had been annulled the previous year by Sulla after he had fought his way back to the city, but the restriction of the “new citizens” to a small minority of tribes who voted last remained a brewing source of strife after Sulla's departure. Cinna championed the “new citizens,” his colleague Gnaeus Octavius the “old,” and once again partisans of the two sides were at daggers drawn (or rather roving the streets with concealed daggers, according to Appian).<sup>26</sup>

A number of tribunes sought to veto Cinna's proposal,<sup>27</sup> but they were allegedly attacked by armed henchmen of the “new citizens” on the very

<sup>24</sup> App. *B. Civ.* 1.57/25r. For *iniuria*, cf. Flor. 2.9.6 and the parallel case of Cinna below. See Behr 1993, 69–76 for Sulla's “public” or “ivic” apologia. I differ chiefly in regarding the “personal” and “public” justifications as deeply intertwined, indeed fundamentally as indistinguishable (see below, n. 25). This is a society, let us recall, in which the soldier's oath of obedience was to his *commander*, not to the *res publica* – not because military allegiance was in fact merely personal but because the latter was “incorporated” in the person of the consul or other commander. (On the *sacramentum*, see below, n. 41.)

<sup>25</sup> See Morstein-Mark 2009.

<sup>26</sup> App. *B. Civ.* 1.64/289–90. For a recent narrative of the events described here and further bibliography, see Lovano 2002, 32–8.

<sup>27</sup> App. *B. Civ.* 1.64/290 says a majority (τοὺς πλεονεῖς ἐνηύχοντες). This evidence is supposed to conflict with that of Livy, *Per.* 79 (*patius urbe a Cn. Octavio collega cum sex tribunis plebis*, which, however, in such a compressed notice could be taken to mean that six tribunes joined Octavius in the attack on Cinna) and Gran. Lic. 35.2 (*Cinna se <xixus> tribunis patriis plebis*, which is, however,

*rostra*, at which point Octavius swept into the Forum with a dense crowd of armed men, separated the rioters, and drove Cinna from the temple of Castor, where evidently the voting was being conducted.<sup>28</sup> Octavius' followers killed many men among the “new citizens” and drove others to the gates of the city, including his colleague. In his flight from the city, Appian claims, Cinna called upon the slaves to rise up and assert their freedom; when this failed to elicit the desired response (according to Appian) he fled to the towns of the “new citizens,” from Tibur and Praeneste all the way to Campania, calling upon them to rebel and exacting financial contributions. While he was joined by some low-ranking senators such as Q. Sertorius and C. Marius Gracidianus,<sup>29</sup> the senate as a body took a truly remarkable step by abrogating Cinna's consulship along with his citizenship on the grounds that he had “abandoned the city in danger” (!) and offered freedom to the slaves.<sup>30</sup> The senate seems to have discovered dubious justification of the extraordinary measure in the Sybilline Books – although our source (Granius Licinianus) indicates in a vexed passage that traditional religious procedure was violated in some way in the process.<sup>31</sup> The religious machinations seem clearly designed to compensate for the highly questionable legality of the move (cf. Velleius' word *iniuria*: 2.20.3), for the consulship was in the gift of the people, not of the senate.<sup>32</sup> And

Mommsen's attractive, but uncertain, emendation of the text). For the problem, which matters little for our purposes, see Bennett 1923; 8 n. 36 and Katz 1976, 499–501.

<sup>28</sup> On the site, see Morstein-Mark 2004, 58–9.

<sup>29</sup> App. *B. Civ.* 1.65/295; Plur. *Serr.* 4.4–5; with Bennett 1923, 9–10; Katz 1976, 498–518; and, on Sertorius, Konrad 1994, 59–65. Quite possibly all three men mentioned by Appian here (including C. Milonius; on the name, cf. Gran. Lic. 35.11, 19) were among the tribunes expelled with Cinna (see above, n. 27); but cf. *contra* Katz 1976(6).

<sup>30</sup> App. *B. Civ.* 1.65/296; Katz 1976, 501–2 and recently Lovano 2002, 35–6. Regarding the precise import of the decrees, Gáha 1967, 184, inferred from Velleius' wording (*ex auctoritate senatus consultus et abrogatus est*: 2.30.3) that the *comitia centuriata* followed up a *senatus consultum ultimum* with a popular vote of abrogation, which would at least formally have given the *populus Romanus* its due place. Appian, however, mentions only the senatorial decision at 1.65/296 and makes Cinna explicitly declare that the people were not consulted (1.65/298 *Χωρίς ὑπόβου*); note also that later the senate alone is forced to retract the decision (1.69–70/317–19). Velleius' wording anyway hardly necessitates the conclusion that some body other than the senate acted formally to abrogate Cinna's consulship. Most scholars have therefore followed Mommsen 1887–8, 1, 630 n. 4 in concluding that the senate had acted alone, perhaps using the device of folding Cinna's deposition into a *hostis*-declaration (which could be the import of the vote *πῆτε ὑπὸ τῶν πῆτε ποδῶν τῆν ἐπιβου*: see Meier 1966 (1980), 228; Bauman 1973b, 285–8; Sager 1994, 174; Kunkel & Wittmann 1995, 257. Gran. Lic. 35.1–2; cf. Bennett 1923, 8–9; Katz 1976, 503–4. It remains unclear whether the violation consisted in sidestepping the *decemviri sacris faciendis* altogether, or in quoting the books *palam*, i.e. perhaps in a *contio* (cf. the incident of 56: Cass. Dio 39.15.4 with Morstein-Mark 2004, 167). The latter course would suggest a special public relations effort, perhaps (despite Cinna's unpopularity in the city) an attempt to assuage any disquiet over the apparent violation of *mos maiorum* and the constitutional rights of the people.

<sup>32</sup> This point needs no special demonstration, but for its resonance in this controversy note Velleius' comment (2.20.3; *iniuria homine quam exemplo dignior*), which suggests institutional over-teaching

certainly the sequel proved that it was rather unconvincing to claim that a consul, elected by the votes of the Roman people and surrounded by the lictors and *fascēs* that symbolized *imperium*, was in fact their enemy and deprived even of the rights due a Roman citizen without any recourse to the people or a popularly authorized court. The senate may even have gone so far as to “elect” as *suffect* consul Lucius Cornelius Merula, the *famen Diabli*, without a popular vote at all, an act by which it would have lapsed into blatant illegality.<sup>33</sup>

This rather cavalier disregard for the traditional rights of the Roman people sets the stage for Cinna's next move, which is described in very interesting detail by Appian and deserves closer attention than it has thus far received.<sup>34</sup> We are told that Cinna came to Capua in order to try to win over the army of Appius Claudius, which was still pursuing the siege of Nola.<sup>35</sup> Presumably these were not the same legions to whom Sulla had appealed the year before – or else they had been severely disappointed.<sup>36</sup> At first apparently maintaining his claim to consular authority, he came before an assembly of the army<sup>37</sup> in full consular regalia but then had his lictors lay down his *fascēs* as if he were a mere private citizen (τροπεύθων

and a weak formal justification, as do also Cinna's speech to his troops (below), his bullying of the senate at App. *B. Civ.* 1.69–70/317–19, and Cicero's acknowledgement of the strength of Cinna's legal argument at *Att.* 9.10.3.

<sup>33</sup> Scholars usually assume that in some formal sense the people did vote on Merula, but only Katz 1979, 163, n. 3 actually defends the assumption. Yet both App. *B. Civ.* 1.65/296 and Vell. 2.20.3 place the selection of Merula in such close association with the deposition of Cinna as to arouse suspicion that here too the senate acted alone. (Diod. Sic. 38/39.3 is unhelpful.) If Merula had been elected by the people, this would presumably have made the later negotiations between the senate and Cinna much stickier; as a matter of fact, Merula appears to have been deposed again by a senatorial decision alone (App. *B. Civ.* 1.69/316–70/319) – at the request of Cinna, be it noted! – which seems to imply that the senate was in a position to undo alone what had been done. Katz himself had earlier argued that Marius' demand for a new *lex* annulling his outlawry implied that the original senatorial *hostis*-declaration was formally ratified by a law of the people (Katz 1975, 102–4); the absence of such a demand in Merula's case looks significant.

<sup>34</sup> See, however, now Keaveney 2007, 38–9; cf. 73.

<sup>35</sup> Claudius: Livy, *Per.* 79; Nola: Vell. 2.20.4. See Gabba 1967, 183 with 165.

<sup>36</sup> Meier 1966 (1980), 237–8, who thinks that this is why the troops were ready to throw in their lot with Cinna. Badian 1970, 50 sees their decision in a solely mercenary way – but did *these* soldiers have any expectation of rich booty? (Cinna was not proposing to take them to Asia.) Velleius claims that the soldiers hoped for a reward (*corruptis*... *spe largitionis militibus*); but as Keaveney notes (2007, 39), this was a normal motive for Roman soldiers and does not contradict an overlapping “political” motivation.

<sup>37</sup> This should be added to the list of military *contiones* in Pina Polo 1989. How Cinna gained access to the army is an intriguing question, since the proconsul Ap. Claudius is usually thought to have adhered to the senate; he is conspicuously absent through the whole scene, and was soon charged and deprived of his *imperium* by a Cinnaan tribune (Cic. *Dom.* 83, with Bennett 1923, 10, n. 47; Weirich 1968, 41–3). By contrast, both Appian and Velleius make a point of noting how Cinna “cultivated” (ἐθροῦσεν) or “seduced” (*corruptis*) the officers of the legion, who explicitly in Appian's account and implicitly in Velleius' orchestrate Cinna's acceptance by the soldiers (App. *B. Civ.* 1.65/298, 66/301;

ὡς ὕπτατος ἐξ μέρους τός τε πάβδους καθεῖλεν οἷα ιδιώτης) and, bursting into tears,<sup>38</sup> addressed the soldiers with the following speech:

πρὸς μὲν ὑμῶν, ὦ πολῖται, τὴν ἀρχὴν τὴνδε ἔλαβον. ὁ γὰρ δῆμιος ἔχειροτόνησεν ἡ βουλὴ δ' ἀφειλέτο με χωρὶς ὑμῶν. καὶ τότε πτόθω ἐν οἰκίαις κακοῖς ὑπὲρ ὑμῶν θμιας ἀγανακτῶ. τί γὰρ ἐστὶ τὸς φυλάς ἐν ταῖς χειροτονιαῖς ἀπαρτεύουμαι; τί δὲ ὑμῶν δεόμεθα; ποῦ δὲ ἔσσοθε τῶν ἐκκλησιῶν ἢ χειροτοπιῶν ἢ τῶν ὑπαρτειῶν ἐπὶ κύριοι, εἰ μὴ βεβαίως εστε μὲν, ἃ δίδοτε, ἀφειρήσοθε δ', ὄτραυ αὐτοὶ δοκιμάσσητε; (App. *B. Civ.* 1.65/298–9)

From you, citizens, I received this office, for so the people voted; but the senate took it away without any referral to you. And though after suffering these things I am beset by my own woes, still I am outraged on your behalf. For why would we cultivate the tribes in elections any longer? Why would we need you any longer? How after this will you be masters of the assemblies or elections or the consulships,<sup>39</sup> if you do not confirm what you have given, and what you have decided is stripped away from you?<sup>40</sup>

He gave this speech to incite the soldiers (ἐς ἐπέθιας) and aroused great pity for his plight by tearing his clothing (apparently his *toga praetexta*) and, after leaping down from the podium into their midst, lying prostrate on the ground. Appian says that the men were moved to pity, lifted him up, seared him on his *sella curulis* and raised the *fascēs*, calling upon him to revive his spirits since he was consul and to lead them wherever he wished. The officers then seized the opportunity to administer the military oath to obey Cinna,<sup>41</sup> who proceeded to raise money and troops among the allied

Vell. Par. 2.20.4). Given Velleius' *spe largitionis*, we are probably to understand this as bribery, at least in part. (Maurenbrecher referred a fragment of Sallust's *Historiae* to this moment [1.27 M], but McCushin 1994, 218 banishes it to those of uncertain reference and points out the lack of any good reason to prefer this incident to others.) As to the question of the identity of these officers, it would be pressing syntax too far to assume that at 1.65/298 Appian means to mark *archontes* and senators as mutually exclusive rather than slightly overlapping categories: some tribunes will still have been senatorial at this time (see de Blois 2000, 15–16, 29, with bibliography; note the example of Julius Caesar in 81). This instance is often used to try to determine the nature of the *archontes* who famously refused to follow Sulla in his march on Rome (App. *B. Civ.* 1.57/253); see below, at n. 61ff.

<sup>38</sup> On the motif of weeping generals, see MackVullen 1980 and Flaig 2003, 110–15.  
<sup>39</sup> One senses a possible hendiadys here (“consular elections”), but I translate literally because this brings out the important emphasis on the subjection of the conship to popular control.

<sup>40</sup> A complicated sentence: John Carter (Penguin edition) translates “and if your decisions are annulled because the senate withholds approval,” while Horace White (in the Loeb edition) renders it “and whenever you give your decision fail to secure it.”

<sup>41</sup> The oath, described by Appian as τὸν ὄρκου τὸν στρατοῦστων, is evidently the traditional *sacramentum*: cf. Appian's wording here (τρεῖς ἔτερον ἡῶ δὲ τὴν ἡλικίαν) with Dion. Hal. 10.18, 11.43. See now Keaveney 2007, 71–7 against Gabba 1967, 183 and Campbell 1984, 20, who argues, despite Appian's explicit statement, that this was an oath of personal loyalty. Keeping in mind that the soldiers had by their actions accepted Cinna's status as consul, nothing in fact could be more

cities. "Many," even of the aristocracy in Rome, joined him (πρόνοι καὶ τῶν ἐν Ρώμῃ δημοτῶν ἕτεροι), being displeased with political stability according to Appian (*B Civ.* 1.66/302), but possibly because they actually supported his cause.

I would like particularly to note here how, in this section of his text, Appian constructs the army at Capua as Roman citizens whose feelings can be aroused by an appeal to republican, civic values.<sup>42</sup> This is important because until recently there has been a pervasive tendency among historians to treat the armies of the late republic as if they were distinct and separable from the rest of the citizen population: a dispossessed, rural proletariat that had lost all loyalty to the *res publica* and looked only to the material benefits they could obtain through their own strong right arm and the open hand of their commander.<sup>43</sup> More recently this widely held view, which has fitted so attractively into prevailing grand theories of republican "decline and fall," has been contested by myself and others,<sup>44</sup> and in that connection

"traditional" than to swear to follow their consul's orders (Harmand 1967, 301–2); note also Livy 3.20.3; 22.38.3; *historia consilii* (–um); and Sen. *Aen.* 7.164; *nisi praetepo consilii*; with Smith 1938, 29; Harmand 1967, 300. The exact phrasing of the *sacramentum* does not seem to be preserved. On the oath, see conveniently Smith 1938, 29–33; Brand 1968, 91–3; Nicolet 1976a, 102–5; Elder 2001; on its nature, esp. Ripke 1999, 76–94. The oath was often repeated to a new commander, which explains its appearance here: the ritual signified above all that, by whatever means, Ap. Claudius was being replaced (see above, n. 37).

<sup>42</sup> This has not gone entirely unnoticed: see Lovano 2002, 36 and now esp. Keaveney 2007, 38–9. I would build more on this observation.

<sup>43</sup> E.g. Badian 1970, 48: "The new class of the dispossessed in arms, mercenaries in their own country, now injured by the Social War to the devastation of Italy, had nothing to hope for but booty, and no one from whom to expect it but their leader. These men had no stake in the *res publica*." Cf. Syme 1939, 352: "Excited by the ambition of military demagogues, the claims of the armed proletariat of Italy menaced and shattered the Roman republic." Brunt 1988, 257–9 acknowledges a series of notable occasions (including Cinna's appeal) on which commanders in the civil wars used political arguments to win or maintain the loyalty of their soldiers, but ultimately judged that "the soldiers . . . were surely more decisively influenced by personal considerations" (259), especially material ones (cf. 77). See further on this large topic the very selective bibliography given above, n. 8; see also the special study by Erdmann 1972 (very much in the traditional vein). De Blois 2000 reasonably qualifies older views of the "professionalism" of the late-republican military, claiming that the soldiery formed a distinctive sociological group, united by habituation, interaction and material interest, but also that they remained "citizens under arms" and "not completely estranged from Roman republican political culture" (21). He locates a destabilizing element not in any changed constitution of the lower ranks of the soldiery over the first century BC but in that of the mid-rank officer class, decreasingly senatorial and increasingly Italian (esp. 15–16, 29, 30); yet he too, in my view, exaggerates the alienation of first-century Roman armies from the traditional political system, since Sulla, Cinna and Caesar (e.g.) could all be seen as justified with reference to republican political values in their response to "illegitimate" political action (cf. 22). See also below, n. 65.

<sup>44</sup> Morstein-Marx & Rosenstein 2006, esp. 630–3; Morstein-Marx 2009; and now also Keaveney 2007, esp. 23–34 (on the "politicization" of the army that Keaveney diagnoses, see below). Particularly important is the lack of evidence that Marius' precedent in 107 was regularly followed, or remained exceptional, as suggested by Gell. 16.10.11; cf. Lo Cascio 2001, 126, with nn. 53 and 54; also Evans 1994, 74–6.

it is worth noting that in the scene Appian sketches of Cinna's appeal to his army the soldiers are portrayed as motivated not by personal loyalty or material gain but by the symbolic power of Cinna's approach to them and by his words,<sup>45</sup> which are remarkably reminiscent of public political speeches in Rome (*contiones*). I propose therefore to interpret the speech Appian gives to Cinna in the way I have in the past looked at *contiones* in Rome itself, that is, as the sort of appeal considered rhetorically effective before its audience—an audience that is, in this case, an assembly of Roman soldiers.<sup>46</sup> And what is especially notable from this standpoint is that the form and ideological content of the speech are virtually identical to those that characterize the urban *contio*.<sup>47</sup>

Immediately striking is Cinna's form of address to the soldiers: πρόντρι, that is, "citizens" rather than "soldiers."<sup>48</sup> One thinks immediately of the famous anecdote according to which when Julius Caesar addressed the mutineers of 47 as *Quirites*, the traditional form of address for the Roman people in the civic sphere, implying thereby that they were in fact soldiers no longer, this was almost enough to end a dangerous rebellion involving several veteran legions.<sup>49</sup> Obviously, that is not what Cinna is trying to do here. Rather, by addressing the soldiers before him as "citizens,"<sup>50</sup> Cinna appeals to them specifically in their capacity as members of the civic community—in fact, as his subsequent words make clear, as *voters* in the *comitia centuriata* who had elected him (and who are therefore now uniquely entitled to restore their gift). From a rhetorical point of view, the force of Cinna's argument rests upon his soldierly audience actually accepting his characterization of them as voters in consular elections. The *populus* who had voted to make him consul is construed as identical to the audience before him ("From you . . . I received this office"); it was in

<sup>45</sup> Vell. Pat. 2.20.4; it is true, implies that the lower officers were bribed, but does not make this claim about the *gregarii* (see above, n. 37, and below, n. 46).

<sup>46</sup> Tribunes and centurions presumably played the most important role in such assemblies as auditors and conduits of information (see de Blois 2000, 33–4). Here they appear to be the orchestrators of a drama put on for others, i.e. the common soldiers.

<sup>47</sup> Sager 1994, 173: "[he] addressed the men in true *populian* fashion."

<sup>48</sup> For the significance of this choice between *cives/Quirites* and *milites* (a *topos*), cf. Livy 28.27.4 and 43.37.14; Tac. *Ann.* 1.42.2, and the Caesar anecdote. Such a distinction does not seem to be implied in πρόντρι at Dion. Hal. 6.9.1 (A. Postumius at Lake Regillus).

<sup>49</sup> App. *B Civ.* 2.93 (NB: πρόντρι); Cass. Dio 42.53.3; Plut. *Caes.* 35; Suet. *Jul.* 70; Tac. *Ann.* 1.42.2. Chassignan 2001, esp. 73–4 nicely shows how much the famous anecdote leaves unsaid about Caesar's apprehension of the mutineers.

<sup>50</sup> It seems unlikely that in this scenario Cinna could possibly have used the formal title *Quirites*, which was ordinarily reserved for citizens in the urban, civic sphere, and judging from the Caesarian anecdote, would be dangerously close to telling his audience that they were no longer soldiers at all. *Cives* (cf. Livy 28.27.4 and Tac. *Ann.* 1.42.2) seems a more likely alternative here.

their capacity as voters, not as soldiers as such, that *they* (ἡγοῖς ὑμεῶν) had been insulted when the senate had neglected to consult or even to consider them when it removed Cinna from office. The consequences of allowing the senate's action to stand thus will fall upon *them*: senators will no longer have to flatter and supplicate them in their tribes during votes ("why would we cultivate the tribes in elections any longer?"). If they do not defend and maintain what *they as voters* have determined, they will no longer "be masters of the assemblies or elections or the consulsips." Throughout this brief passage references to voting are densely clustered and emphatic, with repetition of the word itself (ἐχειροτονῶσιν/χειροτονίας/χειροτονῶν) and a variety of paraphrases or clear allusions to voting and canvassing.

As I noted, in this speech Cinna is made to employ some central themes of the oratory of urban *contiones*. The reference to the Roman people's prerogative of receiving supplication by its leaders in the electoral season is one familiar from the *rosinae*;<sup>51</sup> indeed the idea that the vote is more than simply a crucial buttress of freedom but actually secures the dedication of the political elite to the popular interest is formulated even more crisply here than in surviving specimens of conional oratory, though it clearly belongs to the same current of public discourse. We should recall L. Crassus' famous (or notorious) plea, "do not permit us to be in servitude to anyone but all of you together,"<sup>52</sup> a particularly notable statement of the obligation that the *beneficium* of popular election placed upon its recipient: to reciprocate by devoting selfless attention to the interests of the Roman people as an undivided whole.<sup>53</sup> And Cinna's emphasis upon the vote makes an unusually clear statement of what otherwise tends to be hinted at in conional oratory: that *suffragia* are the means by which the people enjoy influence (*gratia*) over their leaders and a way of indirectly pursuing their own interests.<sup>54</sup> Cinna here raises the specter of an aristocracy cut from its popular moorings, not so much "cheating on its debt" to the electorate, as some conional orators cried, but pre-emptively abolishing the

<sup>51</sup> See Cic. *Leg. agr.* 2.71 with Morstein-Marx 2004, 222, n. 82.

<sup>52</sup> *ORF* no. 66, fr. 22–6, pp. 243–5; *Nobis sine nos cuiquam servire, nisi vobis universis*.

<sup>53</sup> See Morstein-Marx 2004, 235–6, with 262, and for the broader ideological construction of public office as a "gift" of the people calling for selfless dedication to the popular interest in repayment of the debt, see 258–66.

<sup>54</sup> See Cic. *Leg. agr.* 2.17: *unus quisque studio et suffragio suo vitam sibi ad beneficium impetrandum munire possit*, or the way in which the orator links *suffragia* with *gratia* and *libertas* at *ibid.*, 2.71. Cf. the celebration of the *lex Cassia tabellaria* (which instituted the secret ballot in most trials) on coins of 126 BC and 55 BC, with Cic. *Sen.* 103 characterizing the popular view of the law as a key protection of the people's *libertas* (Morstein-Marx 2004, 84–5). We have been so dismissive of this element of Roman popular ideology that Ritter was prepared to reject the apparent association between *suffragium* and *libertas* made on the coins (1998, 608–14).

debt altogether.<sup>55</sup> Either way, the result would be the same. Cinna points down the road to the situation described by Sallust's demagogic tribune Licinius Macer: when unworthy men forget their debt to the people after their election, everyone falls "under the tyranny of a few men."<sup>56</sup>

Unfortunately, we cannot be absolutely sure that Cinna actually expressed himself with precisely the words Appian gives him. Given the license with which ancient historians worked up speeches to complement their narrative, and the perennial question of Appian's source(s) – Livy, using Sisenna? or perhaps Sisenna directly?<sup>57</sup> – a shadow of doubt must remain over any attempt to identify the actual arguments made by Cinna at Capua in 87. Yet deep *a priori* skepticism seems unwarranted, since it is doubtful that Appian on his own could have fabricated a speech that is so neatly consistent with distinctive themes of late-republican conional oratory. We should be prepared to concede at least that Appian was following a very good source here, and that that source thought this kind of argument was the appropriate one for Cinna to make; and that is enough to make the speech worthy of notice. I would like to suggest that it fits into a pattern of essentially civic persuasion directed toward the soldiery, characterized thereby as citizens rather than as the quasi-mercenary client-soldiers who spook about in many modern accounts. So let us step back a bit. In only the previous year, a consul had come before an army to complain about his treatment at the hands of certain home authorities. Let us return now to Sulla, haranguing the legions at Capua after news came of his dismissal from the Mithridatic command.

After his more or less forced departure from the city, Sulla joined the legions surrounding the rebel stronghold at Nola. While there, Sulla learned of the passage of the Sulpician law depriving him of the command and immediately came before an assembly of the army. Appian tells us that the consul spoke to the soldiers of the "outrage" (τὴν ὀργὴν) inflicted upon him by Sulpicius and Marius and only urged them to be prepared to follow his orders, saying nothing of any further plans; the troops divined his meaning and responded that Sulla should lead them to Rome.<sup>58</sup> But as

<sup>55</sup> See esp. Sallust's Macer, *Hist.* 3.48.5–6, and Marius, *Ing.* 83.8, with Morstein-Marx 2004, 232, 266.

<sup>56</sup> *Omnis concessere iam in patrum dominationem*, Sall. *Hist.* 3.48.6.

<sup>57</sup> See Gabba 1956, 13–88, who argues that with the Social War Appian changes sources (to Livy) and later changes back (to Asinius Pollio). If, however, Appian used Pollio after 59 instead of relying on the Livian annals (and, as Gabba argues, some other non-Livian source before the Social War), then it seems quite possible that for the 80s he had likewise gone back to Sisenna, the standard history of the period" (Badian 1964, 212–14) and, despite Sall. *Ing.* 95.2, not outright pro-Sullan (Rawson 1979). Of course, Livy was necessarily dependent on Sisenna, so it would be an empty exercise to try to distinguish very sharply between these strands in our accounts.

<sup>58</sup> App. *B. Cit.* 1.571/251–2.

Christian Meier has pointed out, we should keep in mind that what was immediately in prospect was not a civil war, but a police action led by the duly elected consul against a seditious tribune in the style of Saturninus.<sup>59</sup> Retrospective judgment must avoid the fallacy of impugning hindsight to historical agents.

There is some memorable editorializing by Appian here in which he purports to tell us what the soldiers were really thinking and why they were the first to bring up this course of action openly.<sup>60</sup> But let us set this aside for the moment, reminding ourselves that what is in the agents' minds can only be inferred circumstantially, and for this very reason conjectures – often very tendentious – about these mental phenomena are conveniently easy to make and virtually impossible to refute. In such matters, Appian's conjectures (or those of his source) may not always be better than those we ourselves might reach on the basis of the available evidence. So we might turn Appian's assumptions on their head, and ponder whether it is not rather likely that the average centurion and the men under his command could have convinced themselves that Sulla's cause was in fact the legitimate one. Before them stood their duly and deservedly elected consul, the highest magistrate of the Roman people, a military hero of the final phase of the Italian revolt under whom they had themselves served and whom indeed they had honored with the "grass crown" for saving the army – *this* army, in fact.<sup>61</sup> Quite apart from the personal ties of loyalty between a commander and his men, these were powerful markers of legitimacy that must have predisposed his men in his favor. Then there was what he told them: the outrages done to him – and surely the *whole* story from the violence of the "tyrannical" tribune with whom he had contended at the outset, through the murder of his colleague's son in the violence that had intimidated the whole city and deprived even the senate of its freedom, his own expulsion along with the other consul, followed finally by the last straw, the "illegal" vote depriving a consul of the Roman people of his duly assigned province.<sup>62</sup> It does not actually seem surprising that Marius'

military tribunes were stoned when they arrived to take the army away from the consul.<sup>63</sup>

The common interpretation of Sulla's army as essentially treasonous or disaffected from the traditions of the republic has no doubt drawn some of its plausibility from Appian's comment that when the legions moved out for Rome, "the officers of the army (οἱ μὲν ἄρχοντες τοῦ στρατοῦ) except for one quaestor deserted him and ran off to Rome, since they could not bring themselves to lead an army against their country."<sup>64</sup> Since this intriguing episode has often been seen as a precious clue to the real attitude of the senate or nobility in this crisis, there has been much discussion as to whether by *archontes tou straton* Appian chiefly meant senatorial senior officers, who are presumed to reflect the attitudes of the senatorial order as a whole, or *equites*, who were by this time making inroads into the military tribunate, and even sub-questorian centurions.<sup>65</sup> The fact that Appian notes the exception of a single *quaestor*<sup>66</sup> seems to point toward the former interpretation, but in the important parallel case of Cinna, Appian's wording suggests rather the contrary.<sup>67</sup> The apparent contradiction is overcome if we regard *archontes* as convenient shorthand, flexible and quite general ("officers"), including legates, quaestors, tribunes and centurions. In that case, however, the assertion is obviously either extremely inexact or grossly exaggerated, since it is virtually inconceivable that Sulla marched four (or six) legions to Rome in good order after having lost his entire officer corps – especially the "middle cadre" (de Blois) of tribunes and centurions who were crucial not only for daily operations

propaganda but a natural concern. The precedent of Marius' recruitment in 107 of a new army *per ambitionem* (Sall. *Ing.* 86.3) to carry on the war in Numidia will have been recalled.

<sup>59</sup> Plut. *Sull.* 8.4–9.1. Note ὅς ἐπιθύητο τοῦτρα, which (for what it is worth) implies that the soldiers were motivated by outrage rather than material self-interest. Keaveney 2005a, 52–3 rightly stresses Sulla's claims to legitimacy and his troops' "clear political awareness" in accepting those claims. Cf. Meier 1966 (1980), 223, and 237 ("die Soldaten glauben kommen, im Sinne des senates und der rechtlichen Ordnung zu handeln," although he still accepts the primacy of Appian's fear-motive).

<sup>60</sup> App. *B. Civ.* 1.57/235.

<sup>61</sup> See Mitchell 1979, 69–70; Lewick 1982 (senatorial officers not singled out); *contra*, Keaveney 1983, 63–4; Keaveney 2007, 38; and apparently de Blois 2000, 22, 29, who infers that senatorial higher officers and the "middle cadre" reacted differently to Sulla's appeal in 88, although this is not actually stated in the evidence. The episode is read with varying degrees of emphasis as a senatorial verdict on Sulla's cause by (e.g.) Meier 1966 (1980), 224 (though cf. 223); Gabba 1976, 27; de Blois 1987, 87–8; and esp. Keaveney 1983, 63–8 (cf. 2003a, 53); Mitchell and Lewick complicate the picture.

<sup>62</sup> Generally identified as L. Licinius Lucullus (Badian 1964, 220). Rawson awkwardly notes that Horrensus and Sisenna may also have been on Sulla's staff – if so, did they desert him (1979, 334)? App. *B. Civ.* 1.65/298 τοῦς τε ἄρχοντας αὐτοῦ καὶ ὅσοι ἀπὸ τῆς Βουλῆς ἐπείσθησαν. See above, n. 37.

<sup>59</sup> Meier 1966 (1980), 224: "Er unternahm vielmehr zunächst nur eine Polizeiaktion gegen den *seditious tribunus* und dessen *factio* und bewirkte mit seiner Armee und ohne Senatsbeschluss, was früher auf Grund des *senatus consultum ultimum* auf nicht weniger gewaltsame und viel blutigere Weise ins Werk gesetzt worden war."

<sup>60</sup> See above, nn. 9, 10.

<sup>61</sup> The *corona graminea/obsequialis*: Plin. *HN* 22.12; see Behr 1993, 53–4. On the military operations of 89, see Keaveney 2005a, 43–4.

<sup>62</sup> See above, n. 22. Incidentally, although Badian 1970, 47 and Seager 1994, 170 plausibly suppose that Sulla himself aroused the fear in his soldiers that Marius might replace them, Appian has him refer only to Marius' *habris*: Dahlheim 1993, 100, n. 4 rightly notes that this concern was hardly Sullan



but even for maintaining the army's obedience.<sup>68</sup> And if Appian's claim is grossly exaggerated, then it is hard to say just what, if any, historical reality we can extract from it.

Perhaps some conspicuous, high-ranking officers did in fact refuse to take part in the undertaking, citing precisely the grounds Appian mentions. If we allow Appian's claim this much credibility, then let us also look equally closely at the wording of the explanation he gives: "since they could not bring themselves to lead an army against their country." That is far from saying that they actually favored Sulpicius' and Marius' cause over Sulla's in this mess — any more than in 49 Cicero, in the passage with which this paper began, favored Caesar over Pompey. Indeed, the *archontes'* rationale seems identical to that expressed by Q. Mucius Scaevola Pontifex in defense of his decision to remain in Rome during the *Cinnamum tempus*, despite his revulsion for the regime: he saw how badly it would turn out, yet he preferred even this to marching upon Rome in arms.<sup>69</sup> This too Cicero approves in February 49, though without suggesting an ounce of sympathy for Caesar's cause or any betrayal of Pompey's. These officers' restraint and scruples may well have been greater than their soldiers' but their views on the injury done to the consuls by Sulpicius and Marius may have been no less severe. Therefore, given the moral and legal complexities involved in this fateful decision and our uncertainty about crucial details, including just who these *archontes* were, it seems rash to draw out of this murky episode the considered verdict of the senatorial order upon Sulla's cause in general.<sup>70</sup>

Most modern historians tend to follow Appian without demur when he makes mention only of mercenary motives for the readiness of the Capuan

<sup>68</sup> Legions: cf. Oros. 5.19.4 with App. *B. Civ.* 1.57/253; Plut. *Sull.* 9.5; Gabba 1967: 166; Erdmann 1972: 88. On the influence of the "middle cadre," see above, n. 46.

<sup>69</sup> *Cic. Att.* 8.3.6. On Scaevola, see Mitchell 1979: 88–90; on Cicero's application of Scaevola's example to his own case, Mitchell 1991: 245.

<sup>70</sup> Similarly, the ambassadors sent to Sulla by the senate (App. *B. Civ.* 1.57/253–6; Plut. *Sull.* 9.5) in a Rome dominated by Marius and Sulpicius are also sometimes rather naively interpreted as authentic expressions of the will of the nobility or senatorial order. Appian clearly notes that the last embassy at least was sent at Marius' and Sulpicius' behest, while Plutarch explicitly says that "the senate was not a free agent but was governed by the commands of Marius and Sulpicius." True, Plutarch used Sulla's memoirs; but Appian's account is not slavishly pro-Sullan. It stands to reason that some senators will indeed have sympathized with Marius and Sulpicius, while others who favored Sulla's original cause will have been shocked and terrified by the possible consequences that were now suddenly looming. But to take these ambassadors as evidence of the authentic will of the senatorial order at this moment is to overlook the fact that opposition to Sulpicius and Marius was paralyzed by the rout of both consuls in the first phase of the conflict. On interpretation of the embassies, see Mitchell 1979, 71, n. 35; and *contra*, Keaveney 1983, 65–8.

legions to follow their consul.<sup>71</sup> And yet if we consider the question of legitimacy from the legionary perspective we might see their actions not as a sign of alienation or disaffection from the republic but perhaps indeed the reverse.<sup>72</sup> For what it is worth, Appian may well be right (*B. Civ.* 1.57/250–2) that the legions feared that Marius would enroll a different army in place of themselves, and therefore that they would be deprived of the easy pickings of an eastern campaign. But historians are familiar with "double determination" in human motivation: human beings are frequently conscious of having more than one motive for a given action, and these motives often work on different planes ("expediency" and "justice," for example) whose relative weight is inherently problematic to assess from the outside and frequently controversial. Motivation is far from a "zero-sum game," and the attested and quite plausible material interest that the legions besieging Nola had in defending their consul against the *hubris* of Marius and Sulpicius in no way excludes the hypothesis that they saw themselves as acting in defense of the republic's traditions rather than against them. If at a deeper level these kinds of patriotic self-justifications coincided with hopes for material benefit, in principle (as we have seen) this is no different from the way in which the "profit motive" influenced Roman soldiers reaching back to 264 and no doubt beyond.<sup>73</sup>

Too rarely, if ever, does Sulla's consular status receive appropriate emphasis as a *prima facie* mark of legitimacy for the soldiers who followed him from Capua to Rome — presumably because Appian says nothing explicitly about it, while he does say something about the troops' more "mercenary" motives. Yet much is lost when the historian, in an excess of

<sup>71</sup> Keaveney 2005a, 51–2 is a notable exception, in a paragraph substantially rewritten since the original edition of 1982. The changes seem to reflect Keaveney's recent work on the "revolutionary" Roman army, in which he refers often to this episode in passages that clarify his most recent position (Keaveney 2007, 25–6, 37–8, 94–5).

<sup>72</sup> Morstein-Mark & Rosenstein 2006, 633; "Legality" and "legitimacy" are often conflated (see below); but even the question of legality was thoroughly confused, given the doubtful status of Sulpicius' laws and the entirely reasonable doubt whether, after Sulla and his colleague were effectively driven from Rome through the use of violence, the senate could be thought to enjoy autonomous agency. Under such circumstances the "Rechtsargument" (on which Dahlheim 1993: 100–4 puts misplaced stress) becomes hopelessly tangled. The sterility of the legalistic approach becomes evident when Dahlheim finds a crippling weakness of Sulla's case in the lack of a *senatus consultum ultimum* (SCU) authorizing armed suppression of Sulpicius, while on the very next page acknowledging that even the introduction of the SCU itself was "ein Akt der Usurpation." The SCU was itself a "political" instrument whose justification could be found not in strict law but in larger norms and values: cf. Drummond 1995, 79–113; Lintott 1999a, 89–93. And did not the senate itself soon decide (now under Sulla's supervision) that Sulpicius' laws were themselves "illegal"?

<sup>73</sup> See above, n. 10.

evidentiary scrupulousness, declines to unpack the unspoken implications of our sources simply because something is not explicitly said. After looking closely at the example of Cinna, which lies only just around the historical corner, I hope it will seem less bold than it might otherwise seem to presume a higher level of Roman civic consciousness among the late-republican soldiery than is normally conjectured, and thus to suggest that when Sulla denounced the *hubris* done him by Sulpicius and Marius, he was actually invoking republican civic values, which included the highest respect for the consuls, whom the Roman people had elected.<sup>74</sup>

Elsewhere, while advocating a more nuanced assessment of Julius Caesar's public justification of his march into Italy, I have argued in favor of the sociological, Weberian concept of "legitimacy" rather than the juristic notion of "legality" that tends to dominate our field<sup>75</sup> — chiefly, I suspect, because the towering figure of Mommsen set the terms of that debate in the middle of the nineteenth century; but no doubt also because it reflects the long-standing modern project of imposing a highly juristic structure upon the political use of violence. For the analysis of civil war, however, the concept of "legitimacy" is more useful than "legality," both because the latter idea biases the debate in favor of those who happen at the time to be in control of institutions (who, to varying degrees, are in a position to make the law what they want it to be), and because the arbiters of "legitimacy" are ultimately the citizenry in general rather than the legal experts. For the purposes of a historian who is empirically investigating social and political movements, citizens, not lawyers, are the ones who really matter; since citizens determine political legitimacy by their active or passive support for a regime (or the reverse), whatever the lawyers have to say on the matters referred to their jurisdiction.

Political legitimacy, as Weber and those in the Weberian tradition have seen it, is what produces the interesting, and anarchists might say oxymoronic, phenomenon of "willing obedience" in political subjects. Weber was interested in the different ways in which "willing obedience" was engendered in political subjects, and how this could be used to establish an abstract typology of societies in terms of their organization of domination (the famous triad of traditional, rational-legal and charismatic); the contemporary theorist David Beetham focuses instead on the different elements that constitute the judgments that create "willing obedience" in political subjects in any given society; past as well as present — namely (in his view), *legality* (adherence to the established law or custom), *normative*

*justifiability* (adherence to central political values and beliefs) and what he calls in a quasi-technical sense *legitimation* (that is, confirmation and affirmation by public acts of consent, such as elections).<sup>76</sup> Yet however we slice the cake, in the Weberian tradition, which is a much more fruitful approach for historians than the juristic one, the "focalization" of legitimacy (to borrow a useful term from narratology) is oriented through the eyes of the mass of citizens whose remarkable and sometimes quite paradoxical obedience is counted on by regimes of all kinds day in, day out.

Now if we look at the Roman republic in these terms, we could ask ourselves when, if ever, the "willing obedience" of its citizens to the republican political system was withdrawn. The outbreak of civil wars in 88 and 49, on a traditional view, might seem to mark such a moment. Yet we must be careful here: the republican political system, or the political traditions of the republic — in a phrase, the *mos maiorum* — cannot simply be identified with the senate at any particular moment. On the contrary, a particular senate — say, one that could go so far as to vote a consul out of office and possibly even replace him with another on its own authority, to take Cinna's case — might behave starkly at variance with deeply traditional standards of legality and normative justifiability. The senate was not, in short, *the* locus of legitimacy, plain and simple. We have been too ready to treat it as such, however, so that in moments of crisis, which are in part *crises of legitimacy*, whichever party happens to be opposed by the majority vote of the senate (no matter how legitimately or illegitimately that majority is constituted or conducts itself) tends to be regarded by modern scholars as rebelling against legitimate authority; "the state," the republic and its political traditions. I have argued above that if we consider the matter carefully from the perspective of the soldiers to whom Sulla and Cinna addressed their appeals in 88 and 87, that is not what we see.

On the other hand, in both cases I think we can observe the reverence of Roman citizens, and perhaps especially soldiers, for the consul and the consulship. Especially noteworthy, however, is the rationale for this reverence suggested in the speech Applan provides for Cinna, where the respect the office inspires is rooted explicitly and emphatically in its nature as a gift of the Roman people, which they confer by means of their *votus*, demanding in return deference and thereby exercising some control over their political elite. From this perspective, the consulship is a symbol of legitimacy whose potency derives from its nature as the embodiment of a *decision of the people*. This gives special point to those occasional spectacular acts

<sup>74</sup> See above, nn. 24, 25.

<sup>75</sup> Cf. above, n. 72.

<sup>76</sup> Weber 1968, 212–13; Beetham 1991, 15–24; cf. Morstein-Marx 2009, 33–40.

of popular “delegitimation” when the *fascēs* were ritualistically destroyed by angry crowds: what this ritual seems to represent is the withdrawal by the *populus Romanus* of the gift it had bestowed.<sup>77</sup> On the other hand, derogation of the consulship by other magistrates or the senate could also be seen from this same perspective as an offense against the majesty of the citizenry who had elected the consul: thus in Cinna’s speech the deposition of the consul is represented as thrusting the Roman people out of their proper role as electors, as arbiters of *honos* in the community – the principal mechanism by means of which they force their political leaders to orient themselves toward the people and their interests. When Cinna says “Why would we cultivate the tribes in elections any longer? Why would we need you any longer?” he is pointing to the danger of a complete breakdown of a central feature of the republican system – the sabotaging of the meritocratic principle so that *honores* would be distributed by and for the few without regard for the *commoda* and *dignitas* of the Roman people.<sup>78</sup> These were civic arguments, and it is of considerable interest that in these appeals the “popular perspective” so redolent of the Forum and *rostra* is shown to have been shared as well by soldiers, who are usually seen more in the character of virtual clients or quasi-mercenaries than as the “citizens” that Cinna (or Appian’s Cinna) calls them.<sup>79</sup>

<sup>77</sup> See Goltz 2000. Famously, following the precedent of Valerius Publicola the *fascēs* were also lowered before the people in *contiones*: Livy 2.7; Plut. *Publ.* 10.7; Cic. *Rep.* 2.53; Val. Max. 4.1.1. Our sources interpret this as a way of demonstrating the subordination of consular *imperium* to the *maiestas* of the people, but this does not actually stand in contradiction with the idea that the consul gains his authority precisely by embodying the people’s will.

<sup>78</sup> Cf. Morstein-Mark 2009, esp. 5–12.

<sup>79</sup> In his more recent work, Arthur Keaveney has begun (quite rightly) to emphasize the “political awareness” (2009a, 92 – not in the 1982 edn) of the late-republican Roman army, in opposition to those who have seen it as a “professional,” almost mercenary force; this is in fact now the leitmotif of his recent book on the army in the “Roman revolution” (Keaveney 2007). Somewhat paradoxically, however, the “political awareness” of the army turns out to play much the same role in Keaveney’s interpretation of the downfall of the Roman republic as did the “professional” client army in the traditional interpretation: he deplors “the indisputably ruinous precedent” whereby Sulla “politicized the Roman army” and asserts that “he introduced into the military gathering issues and concerns which had no business there but properly belonged in its civil counterpart in the city” (Keaveney 2007, 95). In my view, this presupposes an anachronistic distinction between soldier and citizen that is found in many modern states but is quite alien to ancient republics and democracies. Romans remembered that their state had been liberated more than once by their citizen-soldiers when its proper functioning had been suspended by “tyrants” (cf. the expulsion of the Tarquins and the first two Secessions of the Plebs). This is a state in which the assembly of the *populus* was originally an assembly of the army, and whose generals, whom the soldiers swore to obey, were magistrates of the Roman people. The army of the Roman republic was *always* politicized.

## CHAPTER 13

### Consules populares

Antonio Duplá

#### THE POPULARES AND THE CRISIS OF THE REPUBLIC

The *optimates*–*populares* conflict is one of the distinctive events of the last century of republican Rome.<sup>1</sup> From the mid-second century until the civil wars of the 40s, the ancient authors describe a series of critical episodes that allow a degree of continuity to be established.<sup>2</sup>

At relatively regular intervals, we witness popular movements led by the plebeian tribunes, socio-economic demands (whether to do with agrarian reform, the corn supply or the founding of colonies), disputes between the senate and the assemblies about their respective powers, an abundance of laws and proposals<sup>3</sup> as well as of assemblies (especially *contiones*), and even repressive mechanisms of doubtful “constitutionality,” such as the so-called *senatus consultum ultimum*. In this sense, the harmony (*concordia*), real or imaginary, that the ancient authors attribute to other republican periods appears to have been lost: the citizens and the ruling classes frequently appear divided and the mechanisms of consensus and social cohesion function less effectively.<sup>4</sup>

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<sup>2</sup> On *optimates* and *populares*: Strassburger 1939; Hellegouarc’h 1963; Martin 1965; Meier 1965; Serrao 1970; Seager 1972; Perelli 1982; Vanderhoek 1987; Burckhardt 1988; Mackie 1992; Wiseman 1994; Ferrary 1997.

<sup>3</sup> This continuity seemed evident to the ancient authors (Cicero, Sallust, Velleius Paterculus, Appian, Cassius Dio, etc.); *assidua senatus adversus plebem certamina* (Tac. *Dial.* 36.3).

<sup>4</sup> *Corruptissima re publica, plurimae leges* (Tac. *Ann.* 3.27); Cic. *Vat.* 16; Millar 1986, 1995, 1998; Ducos 1984, 154–70.

<sup>5</sup> “There is ‘consensus’ in a society when we can observe among its members a fairly general agreement on the form of government regarded as legitimate.” (M. Duverger, *The Study of Politics*, 193; cited in Mackie 1992, 52, n. 10). But, from then on, “Selbstverständliches war nicht mehr selbstverständlich” (Burckhardt 1988, 16).