

# *Libertas and Virtus of the Citizen in Cicero's De Republica\**

Valentina Arena

## Introduction

In 54 B.C. Cicero began the composition of the *De republica*, a work that he presented to his brother Quintus as a treatise on the best organization of the commonwealth and on the best citizen (*de optimo statu civitatis et de optimo cive*).<sup>1</sup> In 51 B.C. the completed work took the form of six books, structured in three pairs, each corresponding to one of the three days in which the dialogue allegedly took place, and characterised by a theoretical analysis followed by a historical account. Its subject matter, however, as Cicero himself suggests to his brother, can also be read in a twofold manner. The first three books of the treatise, concerning the government as a whole, present an analysis of the different constitutions (Book I), an account of Roman history (Book II), and an investigation of the role of justice in the foundation of governments (Book III). The last three books, centred on the *optimus civis*, focus on the education and institutions that produce good citizens (Book IV), the qualities and activities of the *rector* (Book V), and the duties of the *rector* at the moment of crisis, followed by the *Somnium Scipionis* (Book VI).<sup>2</sup>

---

\* I would like to thank Michael Crawford, Miriam Griffin, Fergus Millar, and Wilfried Nippel, as well as seminar audiences in London, Berlin, and Zaragoza, for their very helpful comments on earlier drafts of this paper. Many thanks are also due to the anonymous readers of *SCI* for their very useful suggestions.

The text adopted is the new Oxford edition by J.G.F. Powell (ed.), *M. Tulli Ciceronis De republica, De legibus, Cato Maior de senectute, Laelius de amicitia* (Oxford, 2006). Translations from the *De republica* and *De legibus* are quoted from J.E.G. Zetzel (ed.), *Cicero. On Commonwealth and On Laws* (Cambridge, 1999). All other translations are my own.

<sup>1</sup> Cic. *Q. Fr.* 3.5.1; cf. *Att.* 7.3.2. I prefer to translate the superlative *optimus* with 'the best', rather than, as often adopted, 'the ideal', whose Platonic reference may induce some confusion. See also J.G.F. Powell, 'Were Cicero's Laws the Laws of Cicero's Republic?' in J.G.F. Powell and J.A. North (eds.), *Cicero's Republic* (London, 2001), 22 and 26.

<sup>2</sup> The setting of the dialogue is certainly very important to Cicero, who agonised over placing it in the present time (Cic. *Q. fr.* 3.5.2). It seems clear that his chosen solution, a conversation between Scipio Aemilianus and his friends during the *Feriae Latinae* of 129 BC, simultaneously provides Cicero with a way to present his own political reflections and to create a verisimilar, even if not historical, representation of a dialogue amongst Roman senators of the time. Consequently, it seems that Cicero's own views can be found in the dialogue as a whole, rather than being attributed to one or other of the participants. Admittedly, however, the most prominent character in the preserved text is P. Cornelius Scipio Aemilianus Africanus. It is he, who, when interrogated by Laelius, discusses the best form of constitution in Book 1, offers an historical development of the Roman constitution in Book 2, summarises (apparently) the argument on justice in Book 3. and it is Scipio's dream which concludes the work. If Cicero's voice has to be identified with any of the interlocutors of the dialogue, it should be with that of Scipio.

My principal aim in what follows is to investigate the role that Cicero assigned to Roman citizens, or, to be more precise, to good Roman citizens, in the shaping and preservation of the *libera res publica*, that is, the temperate and balanced mixed constitution.

Scholars have long focused their attention on the figure of the *optimus civis*, universally identified with the *rector et gubernator rei publicae*, and have advanced a wide variety of interpretations in the attempt to identify his precise nature.<sup>3</sup> Thus, Cicero's *rector* has been broadly interpreted as anything from an extra-constitutional charismatic leader along the lines of the Augustan princeps, to a monarchical figure upon whom Pompey should have modelled himself, or even as an ideal dictator, who would be able to restore the ideal constitution of the middle Republic.<sup>4</sup> Recently, however, in the wake of Heinze's seminal article, there seems to be a growing consensus that the *rector rei publicae* should be taken as a representative of the category of statesmen, exemplifying the profession of the politician in its highest form, rather than any specific historical figure. In other words, he represents not what politicians were actually like in the middle or late Republic, but rather what good politicians, in Cicero's view, should have been like.<sup>5</sup>

---

For the setting, as well as the structure of the work, see J.E.G. Zetzel (ed.), *Cicero. De republica. Selections* (Cambridge, 1995), 5-17. J.G.F. Powell, 'Cicero's Republic', *CR* 46 (1996), 249 is sceptical about the labelling of odd-numbered books as more theoretical and the even ones as mainly historical. For a bipartition of the work see also J.-L. Ferrary, 'The statesman and the law in the political philosophy of Cicero', in A. Lacks and M. Schofield (eds.), *Justice and Generosity. Studies in Hellenistic Social and Political Philosophy. Proceedings of the Sixth Symposium Hellenisticum* (Cambridge, 1995), 50.

<sup>3</sup> See, for example, J.G.F. Powell, 'The *rector rei publicae* of Cicero's *De Republica*', *SCI* 13 (1994), 19: 'it is generally agreed that *optimus civis*, or best citizen, is to be identified with the person referred to as *rector rei publicae*, ruler or director or helmsman of the state'.

<sup>4</sup> For an interpretation of the *rector rei publicae* as an anticipation of the Augustan regime see R. Reitzenstein, 'Die Idee des Prinzipats bei Cicero und Augustus', *Nachrichten von der königlichen Gesellschaft der Wissenschaften zu Göttingen* (Göttingen, 1917), 399-436. E. Meyer, *Caesars Monarchie und das Prinzipat des Pompeius* (Stuttgart, 1918), 176-91 takes him as an exhortation to Pompey to take on the monarchical position. P.L. Schmidt, 'Cicero "De republica": Die Forschung der letzten fünf Dezennien', *ANRW* 1.4 (Berlin, 1973), 320-3 and K.M. Girardet, *Die Ordnung der Welt* (Wiesbaden, 1983) consider the *De republica* and the figure of the *rector* as very much embedded in the political climate of the 50's B.C.; Girardet postulates Cicero's proposal for the establishment of a *dictator r.p.c.* and a board of *decemviri* with great powers. For full bibliography on the topic until 1972 see the survey by P.L. Schmidt, cited above, 262-334, esp. 326-32. This bibliography is now updated by Zetzel (n. 2); see also the works cited below.

<sup>5</sup> R. Heinze 'Ciceros "Staat" als politische Tendenzschrift', *Hermes* 59 (1924), 73-94. Heinze's ideas have been further elaborated by later scholars. See, amongst others, E. Lepore, *Il princeps ciceroniano e gli ideali politici della tarda repubblica* (Naples, 1954); J.-L. Ferrary, 'Le idee politiche a Roma nell'età repubblicana', in L. Firpo (ed.), *Storia delle idee politiche economiche e sociali* (Torino, 1982), vol. I, 786-8; Powell (n. 3). Ferrary (n. 2), at 53 emphasizes that these terms were not part of the normal Roman vocabulary and their use stems from Cicero's desire to show that this leading public figure 'does not resemble any of the *principes* of the period in which Cicero was writing. Rather he is what they should be'.

None of these studies, however, has fully considered the qualities that all members of the community should develop and possess in order to maintain the liberty of the best form of commonwealth, the mixed constitution.<sup>6</sup> Through a close analysis of Cicero's conception of liberty in the *De republica*, of the role he reserves there for the *rectores* as models for other citizens, and of the function fulfilled by institutions and laws as a guide to virtue, it is possible to identify the central role that these qualities, which are the citizens' virtues, play in the preservation of the *libera res publica*.

Two reasons underlying this neglect of the role of *cives Romani* in Cicero's political treatise, *De republica*, are the fragmentary nature of the text and the long (although recently much less prominent) scholarly tradition of *Quellenforschung*. Even more significant is the widespread interpretation — transformed almost into an axiomatic truth — of Cicero as a conservative politician (in a broad sense), who is exclusively interested in the dominance of the senate and the suitable means to be used by the ruling elite in order to achieve this aim.<sup>7</sup>

However, it is my belief that a close reading of the text, along with a thorough analysis of Cicero's conception of liberty and virtue in the *De republica* and a consideration of the overarching argument of the work, may provide us with a new perspective into the role of Roman citizens in the functioning of Cicero's *libera res publica*, thus adding a further dimension to Cicero's political thought.

## I. The Liberty of the Commonwealth

In the first book of the *De republica* Cicero states clearly what he means by the liberty of the commonwealth. When discussing the simple forms of government — monarchy, aristocracy, and democracy — and presenting their individual shortcomings, Scipio says:

---

<sup>6</sup> See, for example, Powell (n. 3), 24-5: 'the only thing that can produce stability in a state, according to Cicero, is the quality of the people who run it; they need to be good men skilled in the art of government, who know how to deal with any situation that may arise'. This is certainly true, and, although it is a very important feature in Cicero's *De republica*, it is not the whole story. A similar statement can be found in Powell and North (n. 1), 4.

<sup>7</sup> The works on Cicero as politician are numerous and it is almost impossible to render justice to all the nuances and subtleties of each of them. See, amongst the most relevant, M. Gelzer, *Cicero: ein biographischer Versuch* (Wiesbaden, 1969); D. Stockton, *Cicero. A Political Biography* (Oxford, 1971); K. Kumaniecki, *Cicerone e la crisi della repubblica romana* (Roma, 1978); Ferrary (n. 5), 766-93; L. Perelli, *Il pensiero politico ciceroniano* (Firenze, 1990); T.N. Mitchell, *Cicero, the Ascending Years* (New Haven, 1979); id., *Cicero, the Senior Statesman* (New Haven, 1991); and, most recently, E. Narducci, *Introduzione a Cicerone* (Roma, 2005).

The neglect of the wider political dimensions of Cicero's analysis may also be due to a reading of the Roman political system as wholly concerned with the elite and its dynamics of power. Two books by F. Millar, *The Crowd in Rome in the Late Republic* (Ann Arbor, 1998) and *The Roman Republic in Political Thought* (London, 2002) are a notable exception to this trend. For the *status questionis* of the scholarly debate on the nature of the Roman political system, see, most recently, R. Morstein-Marx, *Mass Oratory and Political Power in the Late Roman Republic* (Cambridge, 2004), 1-12.

In monarchy, no one else has sufficient access to shared justice or to deliberative responsibility; and in the rule of an aristocracy the people have hardly any share in liberty, since they lack any role in common deliberation and power (*in optimatum dominatu uix particeps libertatis potest esse multitudo, cum omni consilio communi ac potestate careat*); and when everything is done by the people itself, no matter how just and moderate it may be, that very equality is itself inequitable, in that it recognises no degrees of status (1.43).

The liberty of the commonwealth is, then, guaranteed by (rather than consists of, as will be discussed later), a government in which the people are granted *some* role in public deliberations and, in consequence, hold some power.<sup>8</sup> When such a condition is not fulfilled, and the commonwealth is ruled either by the decisions of a single man or of chosen leading citizens, the people find themselves subjected to a form of slavery (*inest tamen in ea condicione populi similitudo quaedam seruitutis* 1.43).

In the course of analysing the different forms of commonwealth in the search for the best of them, Scipio maintains that monarchy, a form of commonwealth where 'the control of everything is in the hands of one person' (*cum penes unum est omnium summa rerum, regem illum unum vocamus, et regnum eius rei publicae statum* 1.42), will never be a free commonwealth, because the king can turn unjust and desist from pursuing the common good. Developing this point in the second book, he applies it to the historical development of the Roman 'constitution':

In any commonwealth in which there is one person with permanent power, especially royal power, even if there is also a senate, as there was at Rome in regal times and as in Sparta under the laws of Lycurgus, and even if the people have some rights, as was the case under our kings — even so, the name of the king stands out, and such a commonwealth cannot be called, or be, anything but a monarchy. (2.43)

Such a form of commonwealth is marked by two main deficiencies: it is the most unstable because it relies on a single person's character and, consequently, any fault of his may direct the state on a destructive path, and it is deficient in respect of the people's liberty: 'the people that is ruled by a king lacks a great deal, and above all it lacks liberty, which does not consist in having a just master, but in having none' (2.43). Thus, despite the elective nature of Roman monarchy, the popular conferral of *imperium* through a *lex curiata*, and the creation of the right to *provocatio*, the Roman monarchy granted the people nothing more than a taste of liberty that, far from being liberty itself, was its mere shadow and provoked in them only a more intense desire for it (2.50). According to Scipio, not even an aristocracy is a *libera res publica*, because in a commonwealth ruled by a group of leading citizens the people hardly possess any role in the decision-making process and any share in power (1.43, quoted above). Although they may, as is appropriate for free people (*liber populus*), choose the best men to whose deliberations they wish to entrust themselves (1.51), such an act will not guarantee the people's full enjoyment of liberty. As in a monarchy, so, too, in an aristocracy, the

<sup>8</sup> This had been also noted by J.-L. Ferrary, 'L'Archéologie du *De republica* (2, 2, 4-37, 63): Cicéron entre Polybe et Platon', *JRS* 74 (1984), 91.



leading group may exercise its will over the rest of the community, and consequently subject the community to its control.<sup>9</sup>

Liberty is the feature that Cicero highlights as the truly worthwhile trait of democracy. Nonetheless, according to his own criteria, not even democracy is a form of free commonwealth. According to those who defend democracy as the best form of commonwealth, liberty entails an equal share in power and public deliberation. In a democracy, not only do people vote so as to grant others power, but they themselves possess the equal right, in turn, to be elected, so that they can claim to be 'the masters of the laws and the courts, of war and peace, of treaties, of the status and wealth of every citizen' (1.48). Only in a democracy do the people find themselves in a position to be elected, have offices and commands entrusted to them, and canvass and rally support for themselves. In brief, the people of a democracy possess that which they usually must give 'even if they are unwilling to do so' and even if they do not possess it themselves. Thus, the supporters of democracy maintain:

'In no other state than that in which the people has the highest power does liberty have any home — liberty, than which nothing can be sweeter, and, which, if it is not equal, is not even liberty (*quae si aequa non est ne libertas quidem est*).' (1.47)

What is crucial to the democratic conception of liberty is its essential interdependence with the concept of political equality, according to which everyone should have an equal say in legislative and judicial deliberations, as well as an equal right to elect and to be elected, regardless of one's wealth or social background.<sup>10</sup> However, such equality is unacceptable to Cicero, since it does not recognise different degrees of status (*ipsa aequabilitas est iniqua, cum habeat nullos gradus dignitatis*), the abolishment of which leads to the destruction of a state's splendour (1.43). This is what happened to Athens, after the Areopagus had been deprived of its authority, and everything was determined by the decisions and decrees of the people. The democratic government proved disastrous for the people itself, and their liberty, when linked in this way to equality, showed its true nature as actual *licentia*. This is Cicero's view of the democratic conception of liberty. As Scipio says, translating, at times freely, a humorous passage from Plato's *Republic*:

In such a commonwealth everything is inevitably filled with liberty: private homes have no master, and this evil extends even to animals ... slaves behave with too much freedom, women have the same rights as their husband, and even dogs and horses and asses go about so freely in this atmosphere of liberty that people have to get out of their way in the

<sup>9</sup> This has also been observed by Ch. Wirszubski, *Libertas as a Political Idea at Rome during the Late Republic and Early Principate* (Cambridge, 1950), 82: 'monarchy and aristocracy ... deprive a section of the polity of a share in the conduct of public affairs'.

<sup>10</sup> On the relation between liberty and equality see Wirszubski (n. 9), 9-15. E. Fantham, 'Aequabilitas in Cicero's political theory and the Greek tradition of proportional justice', *CQ* 23 (1973), 285-90, interprets *aequitas* as equality that falls short of a higher concept of fairness. A.R. Dyck, 'On the Interpretation of Cicero, *De Republica*', *CQ* 48 (1998), 564-8, underlines at 565 that what distinguishes *aequitas* from *aequabilitas* is not a higher or lower concept of fairness, but rather that the former is the description of a specific situation (*aequitas* [sc. *honorum*]), while the latter is a principle of governance. Contrast the commentary of Zetzel (n. 2) *ad loc.*

streets. The final outcome of this extreme licence ... is that they begin to ignore the laws as well, so that they are utterly without any master. (1.67)<sup>11</sup>

Democratic liberty, according to Scipio, is excessive licence and prone to give rise to a tyranny, 'the most unjust and harshest form of slavery' (1.68).<sup>12</sup> Thus, in a democracy, where everything is done according to the decisions of the people, there is no room left for either the domination of a king or the rule of aristocrats (1.48). The democrats seem to be quite explicit about this, if, as seems probable, the following passage should be assigned to their speech:

Why should I call 'king', using the title of Jupiter the Best, a man who yearns for power and sole rule, lording it over an oppressed populace, rather than 'tyrant'? It is possible for a tyrant to be merciful as a king can be harsh, so that there is this difference only of their subjects, whether they are slaves to a mild master or a harsh one: it is in any case impossible for them not to be slaves. (1.50)<sup>13</sup>

Now Cicero, despite his rejection of the democratic conception of liberty, seems to approve of this claim by the democrats, namely that liberty, in the first place, requires the absence of a king and domineering aristocrats. When reviewing the positive features of the pure forms of government, Scipio claims that

kings captivate us by their affection, aristocrats by their judgment, and the people by its liberty, so that comparing them, it is hard to pick the most desirable,

and specifies that the facet of liberty which he endorses is that of

the populace shouting loudly that they will not obey one person or a few; that even for wild animals there is nothing sweeter than liberty, and that everyone is deprived of it, whether it is a king or aristocrats to whom they are enslaved. (1.55)<sup>14</sup>

A *libera res publica* is, then, a form of commonwealth where the people are not subject to either a king or aristocrats, and play some role in the deliberative process. This form of commonwealth is a mixed constitution, a form balanced and compounded from the three primary kinds of commonwealth, so that alongside the monarchic element and the authority of the senate's judgment, there is 'something set aside for the judgment and the

<sup>11</sup> Pl. *Resp.* 8. 562c-563e. See M. Ponclet, 'Cicéron traducteur de Platon', *REL* 25 (1947), 178-96 and J.G.F. Powell, 'Cicero's Translations from Greek', in id. (ed.), *Cicero the Philosopher* (Oxford, 1995), 273-300, esp. 279-83.

<sup>12</sup> Cf. also Philus' summary on the three simple forms of government: 'and if the people has the greatest power and everything is done by its decision, that is called liberty, but is in fact licence' (3.23). Cf. A. Dermience, 'La notion de "libertas" dans les ouvres de Cicéron', *LEC* 25 (1957), 163.

<sup>13</sup> Both Powell in his edition of the work and Zetzel (n. 2), *comm. ad loc.* place this passage at the end of the speech by the democrats, but it is not clear whether it is meant to represent their views or those of Scipio. K. Büchner, *Studien zur römischen Literatur II: Cicero* (Wiesbaden, 1962), 25-61 and *comm. ad loc.* argues that this paragraph is part of an argument in favour of monarchy; *contra* J. Kroymann, 'Die Stellung des Königtums im I. Buch von Ciceros Staat', *HSCP* 63 (1958), 309-32. For further bibliography cf. Schmidt (n. 4), 298.

<sup>14</sup> Cf. Pl. *Leg.* 3. 693b-c. According to V. Pöschl, *Römischer Staat und griechisches Staatsdenken bei Cicero* (Berlin, 1936), 18-23, this passage has a Peripatetic source.

wishes of the people' (1.69).<sup>15</sup> In such a government, the people are free (*liberi*) and, contrary to the situation in a democracy, 'a certain degree of equality' (*aequabilitatem quandam*), essential to the preservation of the splendour of the state, is maintained.<sup>16</sup> This form of government is free, because different elements in society fulfil their individual functions by exercising their different capacities. In this manner, the mixed constitution avoids the prevalence of sectional interests over the rest of the community, and it is the system of distribution of power, rather than the Polybian checks and balances, that maintains the liberty of the commonwealth by guaranteeing 'concern for all interests and respects for all rights'.<sup>17</sup> A commonwealth is not free, that is to say is in a condition of slavery, when those who govern it have the possibility of exercising any discretionary or prerogative powers; the system of the mixed constitution does not allow any room for this possibility. Thus, it is possible to conclude that for Cicero the form of free commonwealth is the mixed constitution, the government of which is not subject to the control of anyone else — be it a king, a group of leading citizens or a foreign power — and is able, in virtue of its unconstrained condition, to administer its political affairs according to the will of the whole community in the pursuit of its chosen end.<sup>18</sup> In such a constitutional arrangement all members of the community are involved in politics, but the roles that they are asked to fulfil are carefully calibrated according to their *gradus dignitatis*. Thus any Roman citizen has the right (and implicitly the responsibility, as we shall see) to vote, but only those citizens who have *dignitas* are allowed to hold magistracies and enter the senate, that is, to have an actual share in power.<sup>19</sup>

<sup>15</sup> Wirszubski (n. 9), 82 and H. Kohns, '*Libertas populi und libertas ciuium* in Ciceros Schrift *De republica*', in *Bonner Festgabe J. Straub* (Bonn, 1977), 205 have already identified Cicero's free form of commonwealth in the mixed constitution; *contra*, Dermience (n. 12), 157-67. M. Schofield, in his excellent study of the definition of *res publica* provided by Cicero at 1. 39 ('Cicero's Definition of *Res Publica*', in Powell [ed.], [n. 11], 63-83 = M. Schofield, *Saving the City. Philosopher-King and other Classical Paradigms* [London, 1999], 178-94), convincingly defines *libertas* as the people's rights of management over its own *res*. He then argues that, according to Cicero, 'a degree of liberty is essential to a true *res publica*'. However, monarchy and aristocracy, despite being true and legitimate *res publicae*, fall short, according to Cicero, of liberty. In principle, a king or a group of aristocrats, entrusted by the people with the administration of power, can organise the laws so as to mirror the will of the community. Such a condition, however, which depends on the character of those in power, is far too unstable and, as such, is contrary to liberty by its very nature.

<sup>16</sup> Cf. Cic. *Rep.* 2. 57.

<sup>17</sup> Wirszubski (n. 9), 83. On Polybius' constitutional arrangements and the way they differ from those of Cicero, see W. Nippel, *Mischverfassungstheorie und Verfassungsrealität in Antike und früher Neuzeit* (Stuttgart, 1980), 142-56; Ferrary (n. 8), 91; A. Lintott, 'The Theory of the Mixed Constitution at Rome', in J. Barnes and M. Griffin (eds.), *Philosophia Togata II. Plato and Aristotle at Rome* (Oxford, 1997), 82.

<sup>18</sup> For a clear formulation of this concept see Q. Skinner, 'The idea of negative liberty: Machiavellian and modern perspectives', 199, in id., *Visions of Politics* (Cambridge, 2002), vol. II, 186-212.

<sup>19</sup> For *suffragium* as the expression of liberty see Ferrary (n. 8), 91. *Contra* D. Frede, 'Constitution and citizenship: Peripatetic influence on Cicero's political conceptions in the *De republica*', in W.V. Fortenbaugh and P. Steinmetz (eds.), *Cicero's Knowledge of the*

## II. The Liberty of the Citizen

This conception of liberty, one that forbids domination by a king or by aristocrats, and provides for a certain degree of political involvement by the people in the form of *suffragium*, has long been recognised as Peripatetic in origin.<sup>20</sup> However, despite the numerous similarities between Cicero and Aristotle, it is possible to discern some important differences. In Aristotle's opinion, liberty consists of political capability, that is, consists of being capable of ruling and being ruled in turn (*Pol.* 1277b13-16).<sup>21</sup> According to him, man is a *zôon politikon*, an animal who lives in the *polis*.<sup>22</sup> This means that man is essentially a citizen, and, differentiated from the other animals by his possession of *logos* and *nous*, has as his distinctive purpose the pursuit of *eudaimonia*, human flourishing.<sup>23</sup> This highest value is attainable only in a *polis*, whose end is *to eu zên*,<sup>24</sup> and is independent of any particular constitution. Since, for Aristotle, citizenship is 'taking part in deliberation or judicial office',<sup>25</sup> it follows that, in his view, active political engagement is not only a means to achieve *eudaimonia*, but also an actual part of it.<sup>26</sup>

---

*Peripatos* (New Brunswick, 1984), 87, who maintains that Cicero does not manage to give any proper content to *libertas*.

<sup>20</sup> H. Hommel, 'Cicero und der Peripatos', *Gymnasium* 62 (1955), 319-34, esp. 324-8 demonstrates the Aristotelian influence on Cic. *Rep.* 1. 43. See also Frede (n. 19).

<sup>21</sup> Aristotle does not give a full treatment of liberty. He provides the most extensive analysis in *Pol.* 1317b2-17, where he is most probably reporting the view of the democrats. The definition he provides there is twofold: 'one form of *eleutheria* is ruling and being ruled in turn ... another sign is living as you wish.' While the latter definition of liberty, 'doing what you wish', is ascribed with great disapproval to the democratic view also at *Pol.* 1310a28-36, the former, 'ruling and being ruled in turn', appears, on the other hand, to be an essential notion of his *Politics*: it defines political rule in 1252a16 and is the fundamental feature of Aristotle's own ideal state in 1332b26-27. For a totalitarian reading of Aristotle's conception of liberty, see J. Barnes, 'Aristotle and Political Liberty', in G. Patzig (ed.), *Aristoteles 'Politik'. Akten des XI. Symposium Aristotelicum. Friedrichshafen/Bodensee 25.8-3.9, 1987* (Göttingen, 1990), 249-63 with R. Sorabji's comments in the same volume, 264-76. See also R. Mulgan, 'Aristotle and the Democratic Conception of Freedom', in B.F. Harris (ed.), *Auckland Classical Essays* (Auckland and Oxford, 1970), 95-111; and D.H. Frank, 'Aristotle on Freedom in the *Politics*', *Prudentia* 15 (1983), 109-16.

<sup>22</sup> The expression recurs seven times in the Aristotelian corpus: *Pol.* 1253a7-8; 1278b19; *EN* 1097b11; 1162a17-18; 1169b18-19; *EE* 1242a22-23; *HA* 487b33-488a13.

<sup>23</sup> *Arist. Pol.* 1278a21-30; cf. also 1280a31-b11. For the translation of *eudaimonia* as human flourishing, see J.M. Cooper, *Reason and Human Good in Aristotle* (Cambridge, Mass. and London, 1975), 89 n.1.

<sup>24</sup> *Arist. Pol.* 1253a7-10; 1280b33-5; see also *EN* 1097b11.

<sup>25</sup> *Arist. Pol.* 1275b18-20.

<sup>26</sup> See Frede (n. 19), 86-8. R. Mulgan, 'Aristotle and the Value of Political Participation', *Political Theory* 18 (1990), 195-215 contends that the argument that man is a political animal (which he translates as 'fitted for the life of the *polis*') does not imply that man must participate in politics to become virtuous and ultimately to attain *eudaimonia*, but only that he must be part of a *polis* and live under its laws. T. Duvall and P. Dotson, 'Political Participation and *Eudaimonia* in Aristotle's *Politics*', *History of Political Thought* 18 (1998), 21-34 argue along the same lines.

Therefore, it seems possible to argue that, in Aristotle's view, a man is free if he exercises the capacities and pursues the goals that serve to realise his deepest human purpose, the activity of the soul in accordance with the best and most complete excellence.<sup>27</sup> If he exercises his political capacities of ruling and being ruled in turn, he will succeed in pursuing his immediate goal of living in a *polis*, which is not only the essential precondition for the realisation of the highest human purpose, *eudaimonia*, but also an integral part of it. This Aristotelian conception of liberty is what Isaiah Berlin, in his seminal essay on liberty, has labelled as the positive idea of liberty, and more recently David Miller has called the idealist tradition of liberty.<sup>28</sup> If it is true that men are moral beings with determinate ends and purposes, it follows that men fully enjoy liberty if they commit themselves to conduct their life in a way that allows them to realise those ends and purposes. Aristotle's conception of liberty requires the exercise of political capacities, so that it is possible to say that men are free only if those capacities are fully implemented, that is to say if they act as citizens of the *polis*.

To judge from the surviving text of the *De republica*, such a teleological conception of civil association is missing in Cicero, as is the objective notion of human flourishing. It is true that Cicero presents the Peripatetic-Stoic view on the formation of human communities, according to which the primary motive for the assemblage of men was a natural instinct of gregariousness, which propelled men, who by nature were not prone to live in isolation, to herd together (1.39).<sup>29</sup> However, while for Aristotle 'living in a *polis*' was an essential part of men's attainment of happiness, since men can reach their natural *telos* only within a community, in Cicero such a teleological justification for the assemblage of men is missing, so that in the *De republica* 'the Aristotelian conception is left without its head'.<sup>30</sup> This may be due to a misreading by Cicero or to a deliberate misinterpretation of his Aristotelian source. In either case, the significant divergence from Aristotle highlights Cicero's contractual and utilitarian conception of the commonwealth in this passage of the *De republica*. According to Scipio's famous definition, a *res publica* is founded on a common agreement on law (*consensus iuris*) and a sharing of benefits (*communio utilitatis*).<sup>31</sup> Scipio claims that in a commonwealth the citizens do

<sup>27</sup> On the meaning of *eudaimonia* and its relation to the level of political participation see Duvall and Dotson (n. 26), 24-7. For the interpretation of liberty as an 'exercise concept', see C. Taylor, 'What's Wrong with Negative Liberty', in D. Miller (ed.), *The Liberty Reader* (Edinburgh, 2006), 141-62.

<sup>28</sup> I. Berlin, *Four Essays on Liberty* (Oxford, 1969), 145-54; Miller (n. 27), 3-4. For a discussion of the clear distinction between positive and negative freedom, and the identification of the existence of objective ends, which it is rational for every individual to pursue, as the basis of the positive conception of liberty, see T. Baldwin, 'MacCallum and the Two Concepts of Freedom', *Ratio* 26 (1984), 125-42.

<sup>29</sup> The Aristotelian origin of the idea of the natural aggregation of men has long been recognised; see, for example, Büchner (n. 13), 25-115 and R. Stark, 'Ciceros Staatsdefinition', in R. Klein (ed.), *Das Staatsdenken der Römer* (Darmstadt, 1966), 332-47.

<sup>30</sup> Frede (n. 19), 85.

<sup>31</sup> Cic. *Rep.* 1.39: 'The commonwealth is the concern of a people, but a people is not any group of men assembled in any way, but an assemblage of some size associated with one another through agreement on law and community of interest (*est igitur ... res publica res populi, populus autem non omnis hominum coetus quoque modo congregatus, sed coetus*



not simply give their assent, but have a shared agreement on *ius* (moral justice, as well as law, following Cicero's treatment in Book three) and apportion benefits to their fellow citizens according to their contribution to the community.<sup>32</sup> Thus a *res publica* appears assimilated to a *societas*, a legal partnership that was based on contract, relied on common agreement, was governed by law, and whose members received a share in profits in proportion to their contribution.<sup>33</sup> The commonwealth, when conceived in terms of such a partnership which encompasses the whole civic community, certainly has to be consistent with justice, but, contrary to Aristotle's conception of the state, does not represent the sole and ultimate element for the attainment of virtue and human flourishing. According to Scipio, the good commonwealth which assures the well-being of its citizens is a well-ordered system in which the community is organised so that everyone makes use of the community's advantages as well as his own, without abusing others for his own benefit or depriving them of what is theirs (5.7; cf. 3.24). In his conception of *vita beata*, citizens have to be 'solid in their resources, rich in property, well endowed with glory, honourable in virtue' (5.8). Thus, while according to Aristotle external resources are the means to a virtuous life, and may supplement, within certain limits, virtue in *eudaimonia*, for Cicero they are on an equal level with virtue itself and do not seem to be subject to

---

*multitudinis iuris consensu et utilitatis communione congregatus*'. H. Drexler, 'Respublica', *Maia* 9 (1957), 247-81 and *Maia* 10 (1958), 3-37 presents a detailed study of the meaning of *res publica*. See also Schofield (n. 15), who thinks that this definition functions as a criterion of legitimacy, and E. Asmis, 'The State as a Partnership: Cicero's Definition of *Res Publica* in his Work *On The State*', *History of Political Thought* 25 (2004), 569-99, who emphasises Cicero's notion of the state as a partnership. Both include further bibliography to supplement that found in W. Suerbaum, *Vom antiken zum frühmittelalterlichen Staatsbegriff* (Münster, 1977). For the use of this definition see L. Morgan, "'Levi quidem de re...': Julius Caesar as Tyrant and Pedant', *JRS* 87 (1997), 23-40. As for its philosophical background, M. Pohlenz, *Antikes Führertum* (Leipzig, 1934), 32-3 and 46-7 and id., *Die Stoa* (2 vols. Göttingen, 1948), vol. 1, 202-7 identifies the Stoic Panaetius as the main influence on Cicero's definition of the *res publica*, especially in its emphasis on the sharing of benefits. Stark (n. 29) admits a Peripatetic source behind Panaetius, whom, ultimately, he recognises as Cicero's main authority. J.-L. Ferrary, 'Le Discours de Laelius dans le troisième livre du *De Republica* de Cicéron', *MEFRA* 86 (1974), 745-71, esp. 757-60, underlines the Platonic-Peripatetic origin of Cicero's definition.

<sup>32</sup> Cancelli's interpretation of *iuris* in Cicero's definition as a subjective genitive is intriguing, but not fully convincing; see F. Cancelli "'Iuris consensu" nella definizione ciceroniana di "Respublica"', *RCCM* 14 (1972), 247-67. See H. Kohns, 'Consensus iuris — communio utilitatis', *Gymnasium* 81 (1974), 485-98, esp. 488-93 for a reading of *ius* as justice as well as a legal system.

<sup>33</sup> For the reading of the *res publica* as a *societas* I am in debt to Asmis (n. 31), 577-82. See also *Dig.* 3.4.1 (cited by Asmis) for an analogy between *societas* and *res publica*. Miriam Griffin has rightly pointed out to me that to a Roman *res publica* is bound to sound analogous to *res privata*, and its concrete notion of property of the people is clearest at *Cic. Rep.* 2.44. On Cicero's use of the metaphor of private property in regard to the commonwealth, see also Schofield (n. 15).

any limitation.<sup>34</sup> These, then, are the benefits that, as Scipio argues in his definition of a *res publica*, should be shared proportionally by citizens in a good commonwealth. However, this idea, according to which the commonwealth originated primarily to share advantages, seems to be contradicted in the fourth Book. There Scipio claims that the first cause of the creation of society is ‘the citizens’ shared association in a happy and honourable way of life’ (... *ad illam civium beate et honeste vivendi societatem; ea est enim prima causa coeundi* 4.3), which, in his opinion, should be achieved through behaviour dictated by custom, laws, and education. Although Cicero’s reason for changing, or perhaps refining, his focus is very hard to detect, such a statement should not be interpreted as a radical modification of his utilitarian conception of the state.<sup>35</sup> It is certainly true that with the transformation of the *communio utilitatis* by the addition of the ethical end (the *honestum*), the *causa coeundi* put forward in Book 4 becomes closer to the Aristotelian position presented above. However, it should be borne in mind that while Aristotle assigns absolute preeminence to virtue, Cicero, as already noted above, thinks that the *vita beata* of his fellow citizens consists of solidity in resources, wealth in property, abundance in glory, and honour in virtue. Despite the Peripatetic inspiration of the passage, this characterisation of *beate vivere* does not suggest in any way the Aristotelian concepts of *telos* and *autarkeia* and is related, as noted by Büchner, to the *iuris consensu et utilitatis communione* of the *res publica* definition at 1.39.<sup>36</sup>

It may be interesting to point out that Cicero also deals with the question of the origins of society in other works, discussing the issue each time from a different perspective and portraying a different picture. Both the *De inventione* (1.2-3) and the *Pro Sestio* (91) present a similar account of the origins of society, according to which men, in the absence of any natural instinct for association, gathered together when prompted either by a man of elevated eloquence (*De inventione*) or by men eminent for their merit and wisdom (*Pro Sestio*). Human beings were induced to form a society by the advantages derived from living together and by the conviction that in this manner everyone could also maintain what was his. As claimed in the *pro Sestio*, *res publicae* were partnerships

<sup>34</sup> As Asmis (n. 31), 595, nicely puts it: ‘Although he [Cicero] believes that service to the state is the greatest, most virtuous of all activities, he does not see the state so much as a school for virtue as an area in which virtue is applied in the pursuit of a common endeavour’.

<sup>35</sup> Cf. Pöschl (n. 14), 114; Kohns (n. 15), 213, links the first statement at 1.39 to the *causa coeundi* of the *populus*, and the second at 4.3 to the *civitas*. Perelli (n. 7), 27 considers the passage on the *naturalis congregatio* a polemical insertion derived from a source other than the one usually used by Cicero on the origins of the state. For ancient theories on the origin of society, see K. von Fritz, *The Theory of the Mixed Constitution in Antiquity: a Critical Analysis of Polybius’ Political Ideas* (New York, 1954), 45-59.

<sup>36</sup> K. Büchner, *M. Tullius Cicero. De republica* (Heidelberg, 1984), *comm. ad* 4.3. *Contra* Ferrary (n. 5), 776. The additional passages adduced by Ferrary to support his view, *Cic. Rep.* 3. 38 and *Att.* 10. 4. 4, do not refer to morality as a natural human *telos* whose realisation is only possible within the confines of the commonwealth. See also E.M. Atkins, ‘“*Domina et Regina Virtutum*”: Justice and Societas in *De Officiis*’, *Phronesis* 35 (1990), 258-89, esp. 269-72, who follows Ferrary’s interpretation. Perelli (n. 7), 20-2 also attributes the discrepancies between 1.39 and 4.3 to the different contexts in which the two statements are set. He stresses the fact that the idea of weakness as a foundation of human society is not totally disregarded in *Rep.* 1.39, but only considered of secondary importance.

of individual citizens joined to *communis utilitas*.<sup>37</sup> However, as we have seen above, Cicero's position was partially modified a few years later. Without completely abandoning the concept of *utilitatis communione*, Cicero introduced in the *De republica* the idea that when creating a human society, men were animated by a natural tendency to form herds. Ten years later, in the *De officiis*, Cicero again shifted his focus, presenting a varied picture which, at times, appears almost incoherent. On the one hand, he compares men to bees and claims that they live in groups due to their natural gregariousness (2.157-8), but on the other hand, not only does he appear obliged to admit that social life facilitates the satisfaction of one's own needs (1.12; 2, 12-15), but he also concedes that the reverse may be conceivable. 'For the main purpose in the establishment of political communities and citizenships was that men could hold on to what was theirs. Although it may be true that under the guide of nature men first gathered in groups; it was in the hope of safeguarding their possessions that they sought protection in cities (*id enim est proprium ... civitatis atque urbis, ut sit libera et non sollicita suae rei cuiusque custodia*' (2.73; cf. 2.78)).<sup>38</sup> A full analysis of Cicero's positions in the *De officiis* should not detain us here.<sup>39</sup> However, it is important to bear in mind that Cicero does not appear fully at ease in abandoning a conception of the commonwealth which is characterised by the presence of some contractual and utilitarian elements.

Thus, according to Cicero's position in the *De republica*, the commonwealth is founded on the concept of *utilitas communis*, interpreted as the sharing of benefits including 'material wealth, security, freedom, power, fame, virtue, happiness'.<sup>40</sup> The individual interests that compose the common interest appear to be different in nature and are not arithmetically equal, but distributed according to the criteria of proportionate equality. Thus, while Aristotle holds a positive conception of liberty, based on an understanding of humans' essential nature as political and attainable only in a community, Cicero does not seem to share either of these fundamental notions, and consequently appears to hold a different conception of liberty. In the preserved texts, Cicero never refers to an objective notion of human purpose in the achievement of which human nature can eventually realise its essence — for him a happy life is composed of resources, wealth, glory, and not only virtue — and, as shown above, he presents a contractualist and utilitarian conception of the commonwealth based on justice. As such, it is logical to infer that, in Cicero's opinion, men are free when they are unconstrained in pursuing their own individual interests within the *beatum et honestum*. He compares the working of the state with the musical harmony in the playing of a lyre or flute or in choral singing. In music

harmony is made pleasing and concordant through the regulation of very different voices; so too a state is harmonious in the concord of very different people, through the reasoned balance of the highest and the lowest and intervening orders. (2. 69)

<sup>37</sup> Cf. Cic. *Rep.* 1.41.

<sup>38</sup> Cf. Cic. *Off.* 1.21 on the establishment of private property as a consequence, rather than a cause, of the formation of human society.

<sup>39</sup> For an emphasis on the defence of property as a motive for the establishment of cities, see Perelli (n. 7), 22-4; A.R. Dyck, *A Commentary on Cicero, De Legibus* (Ann Arbor, 2004), *comm. ad* 2.73. *Contra* Schofield (n. 15), 70-1.

<sup>40</sup> Asmis (n. 31), 578.

While Cicero's stress is undoubtedly on the role of harmony with regard to song and concord with regard to the state, this analogy seems to allow for, and, in fact, to proceed upon, the assumption that individual citizens are very different from each other and have very different aims in life.<sup>41</sup> Such a diversity of goals, rather than being abhorred, is actually treasured by Cicero, whose aim is to determine a system according to which those individual interests may find a harmonious coexistence. It follows that, in the *De republica*, Cicero holds a conception of individual liberty according to which citizens possess their liberty when they are in the condition of being free from constraints to strive, within the *res publica*, for their own chosen ends.

However, in the surviving text of this treatise, Cicero does not explicitly associate the liberty of the citizens with the absence of impediments to pursuing one's chosen ends, but rather with two very important institutions, the right to *provocatio* and the magistracy of the tribunate of the plebs. They represent the protection of individual liberties against the concentration of judicial and coercive power in the hands of Roman magistrates. *Provocatio* protected a citizen's life and person. Although, in Cicero's account, it was already in existence during the monarchy, after the expulsion of Tarquinius Superbus a law was instituted according to which 'no magistrate should execute or whip a Roman citizen without him having the right of appeal to the people (*provocatio*)' (2.53).<sup>42</sup> In this way Valerius Publicola succeeded in granting the people a moderate amount of liberty (*modica libertas*), leaving, however, the authority of the aristocracy untouched (2.55). In this commonwealth, then, there was not an equitable balance of rights, duties and responsibilities, to ensure that the magistrates had enough power, the senate enough authority and the people enough liberty. As soon as the people recognised this inequitable balance, they asked for more rights for themselves (2.57). In addition to the safeguarding of their lives and persons, they obtained protection against the arbitrary injustice perpetrated by Roman magistrates through the establishment of the tribunes of the plebs. These officials were entitled to intervene on behalf of any citizen who, having been wronged by a magistrate, had appealed to them for help (*auxilium*), and held the right of *intercessio* to counterbalance the potentially excessive power of the magistrates.<sup>43</sup> The right to *provocatio* and the establishment of the tribunate of the plebs were

<sup>41</sup> Cicero does not refer here to political orders, but rather to social groups. We may assume that different social groups may represent different interests and, therefore, that particular citizens of each group may have varying dispositions and chosen aims (not the least within the groups themselves).

<sup>42</sup> For Cicero's antiquarian excursus on the *provocatio* and his skill in handling tradition, see E. Rawson, 'Cicero the Historian and the Antiquarian', *JRS* 62 (1972), 33-45 = ead., *Roman Culture and Society* (Oxford, 1991), 59-79, esp. 64. Cf. also Dyck (n. 10), 567-8.

<sup>43</sup> On the rights of the tribunes of the plebs and their association with *libertas*, see Wirszubski (n. 9), 22-7. For Cicero's view of the tribunate and the interpretation of this passage see L. Perelli, 'Natura e ratio nel II libro del *De republica* ciceroniano', *RIFC* 100 (1972), 295-311; id., 'Note sul tribunato della plebe nella riflessione ciceroniana', *Quaderni di Storia* 5 (1979), 285-303, where he argues that *libertas* refers here to the personal liberty of the citizens put at risk by their debts. On the role of *ratio*, *natura rerum* and *natura rerum publicarum*, see also K. Girardet, 'Ciceros Urteil über die Entstehung des Tribunates als Institution der römischen Verfassung', in *Bonner Festgabe J. Straub* (Bonn, 1977), 179-200, and Ferrary (n. 8), 94-5. Cf. also Cic. *Leg.* 3.15-17.

regarded as protectors of liberty. Consequently, when the decemvirate was formed upon the resignation of the consuls and the tribunes from office, and the right to *provocatio* was suspended, Scipio argues that liberty had lost its guarantees (3.44).<sup>44</sup>

Both these institutional features constitute, in Cicero's account, the means by which the liberty of the citizens is protected from the *domination* of the ruling class, rather than from actual interference. The suspension of the right to *provocatio* (which would expose the Roman citizen to the whip of a magistrate or, even worse, to the possibility of being executed by him) and the absence of a tribune of the plebs (which would leave the citizens defenceless in the face of abuses by magistrates) do not narrow down the range of options open to the citizens, but rather place them in a position of domination by the ruling class.<sup>45</sup> As such, they express a negative conception of freedom, which is not, however, freedom from constraints or arbitrary interference, but rather freedom from dependence on the arbitrary will of a Roman magistrate.<sup>46</sup> In Pettit's and Skinner's formulation, domination can be defined as being subject to the arbitrary will of another person or group of persons, 'thereby leaving yourself open to the danger of being forcibly or coercively deprived by your government of your life, liberty or estates', that is, in a word, living at the mercy of another.<sup>47</sup> Both the right to *provocatio* and the office of tribune of the plebs represent the legal bulwarks that allow the citizens to achieve their own chosen ends; they are, in other words, the means through which the Roman citizens succeed in conducting a life unobstructed by the Roman magistrates in the pursuit of their own chosen goals. Thus, a Roman citizen is free when he does not depend on others and, being unconstrained by other agents, is therefore able to act according to his own will and judgment in respect of law and moral justice.

This liberty of individual men appears to be possible only in the free form of commonwealth, the mixed constitution.<sup>48</sup> As we have seen above, in Scipio's view, the form

<sup>44</sup> *Contra P. Brunt*, 'Libertas in the Republic', in *id.*, *The Fall of the Roman Republic* (Oxford, 1988), 331 who considers these rights as specific concerns of the popular conception of liberty and thinks that 'Cicero pays lip-service to liberty in this sense'.

<sup>45</sup> On the relationship between freedom from interference and freedom from domination, see P. Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford, 1997), 74-7 and 103-6; *id.*, 'Reworking Sandel's Republicanism', *Journal of Philosophy* 15 (1998), 73-96; S. Wall, 'Freedom, Interference and Domination', *Political Studies* 49 (2001), 216-30. I have not found in Cicero's *De republica* any reference to the conception of freedom as non-interference.

<sup>46</sup> For the formulation of negative freedom as liberty from interferences, see Berlin (n. 28). On the so-called third concept of liberty, that is the neo-Roman conception of negative liberty from domination, see Pettit (n. 45) and Q. Skinner, *Liberty before Liberalism* (Cambridge, 1998). According to Taylor (n. 27), 176-9, negative freedom is an 'opportunity concept', that is to say, one who is free from constraints, restrictions or interferences to do something may still choose not to do it. For a shifting of this distinction between negative and positive liberty, see G. MacCallum, 'Negative and Positive Freedom', *Philosophical Review* 76 (1967), 312-34. MacCallum claims that the distinction between negative and positive liberty is based upon a serious confusion and the concept of liberty is a univocal, triadic relation existing between agents, constraints and ends.

<sup>47</sup> Pettit (n. 45, *Republicanism*), 58; Skinner (n. 46), 69-70.

<sup>48</sup> Kohns (n. 15), 201-11 underlines the difference between the liberty of the community and the liberty of the citizens and the importance of political participation as a condition of



of community that best assures the liberty of the citizens, in the sense of being free from the dictates of the will of another to pursue one's own chosen ends, is the mixed constitution. Under monarchy and aristocracy the citizens are deprived of their liberty, since in these forms of commonwealth they are enslaved either to a king or a group of aristocrats; they live in fear of being forced to serve the masters' ends and are unable to lead their own chosen life. In a democracy, on the other hand, the excessive liberty that they enjoy is not actually liberty at all, but rather licence, since it does not even allow for the respect of laws.<sup>49</sup> Only in the mixed and balanced constitution, which is not subject to the control of anyone other than the community itself, is the liberty of individual citizens stable and guaranteed by the right to *provocatio*, the magistracy of the tribunate of the plebs, and the exercise of the *suffragium*.<sup>50</sup> In order to maintain the *libera res publica*, it is of primary importance that *all* members of the community take part in the decision-making process, elect the community's magistrates and pass the laws to which everyone must be subject. In such a system of self-government —which, in Scipio's opinion, is not, and should never become, a democracy — those who rule will be deprived of any discretionary power over the citizens, and therefore will be divested of any possibility of reducing the rest of the citizenry to slavery.

It follows from this analysis of the concept of liberty in the *De republica* that participation in the deliberative process is a duty.<sup>51</sup> Such participation is not conceived as a purely formal concession, aimed at retaining the leadership of the commonwealth in the elite's hands and deflecting the people's hatred away from the leaders, but rather as an essential guarantor of the liberty of the commonwealth.<sup>52</sup> In order to maintain this liberty, it is essential that each individual citizen be prepared and able to fulfil his political role in society, either in his capacity as a voter, or as a voter as well as a candidate for a magistracy, according to the place he holds in society.

---

liberty. For the explanation of the interdependence between individual liberty and the liberty of a community, and the role played by virtue, I am greatly in debt to Skinner (n. 18), as well as his previous version, 'The Idea of Negative Liberty: Philosophical and Historical Perspectives', in R. Rorty, J.B. Schneewind, and Q. Skinner (eds.), *Philosophy in History* (Cambridge, 1984), 193-221. See also Dermience (n. 12), 159.

<sup>49</sup> Cf. Cic. *Rep.* 1.50, 55, 67; 2.50.

<sup>50</sup> Some modern interpreters consider *provocatio*, *auxilium*, and *suffragium* as meanings of liberty, rather than liberating agencies. See, for example, J. Bleicken, *Staatliche Ordnung und Freiheit in der Römischen Republik* (Kallmünz, 1972), 33-4.

<sup>51</sup> Ch. Wirszbuski (n. 9), 83 talks about the citizens' right (rather than duty) to take part in the decision-making process in Cicero's conception of the state. Scipio, when discussing the reform of the centuriate system introduced by Servius Tullius at 2.39-40, underlines the importance of structuring the voting system so as not to deprive anyone of the right to vote and to guarantee the greatest power to those with the highest interest in maintaining the state in the best possible condition. This discussion, concerned with the way in which the political system works, does not focus on the citizens' attitude towards civic activities. Scipio does not say, as is often claimed, that it is a good thing that the multitude does not take part in voting, but only that it would be dangerous for the commonwealth if the multitude were to prevail.

<sup>52</sup> As a representative of this view, see Perelli (n. 43, *Quaderni di Storia*), 294-5.

Ateius Capito, a Roman jurist close to Cicero's time, is able to present a definition of law, according to which a law is 'a command with general application by the people or plebs formally proposed by a magistrate'.<sup>53</sup> In the very different political climate of the second century AD, a Roman lawyer could still define law as 'what the people [or plebs] commands and establishes',<sup>54</sup> while Salvius Iulianus could assert that 'the laws are binding on us only because they have been accepted by the judgment of the people'.<sup>55</sup> It is through the participation of citizens in the decision-making process that laws were enacted that could express, at least in theory, the general will of the community, and not only the will of its most ambitious members. Such laws, when enacted, could prevent any individual member of the body politic from exercising undue or coercive influence and therefore would protect the citizen body from falling into servitude. Not surprisingly, the protection of liberty is often equated with laws and compliance with them: 'we are all slaves of laws so that we may be free (*legum idcirco omnes servi sumus ut liberi esse possimus*)', Cicero claims.<sup>56</sup> A Roman citizen, in Cicero's view, does not consider laws as arbitrarily interfering with his life, but rather as guarantors of his individual liberty. Since laws enforce the common interest and render the *res publica* a self-governing community where none is able to prevail over the others, laws maintain the liberty of the commonwealth, which, in turn, allows individual citizens the freedom to pursue their own chosen ends.<sup>57</sup> Thus, as Brunt says, 'no Roman actually said ... that freedom consists in people's being governed by laws made with their own consent, but this principle is implicit in the Roman system', and, one may add, it is implicitly central in Cicero's conception of the liberty of the commonwealth in the *De republica*.<sup>58</sup>

### III. *Virtus* and the *Res Publica*: The *Summi Viri*

In Section I, I have argued that according to Cicero, a *libera res publica* is a form of commonwealth where the people are not subject to either a king or aristocrats, and have some role in the deliberative process. This form of commonwealth is the mixed constitution, where different elements in society fulfil their own function by exercising their different capacities and thereby avoid deployment of any discretionary or prerogative powers by the elite. In a mixed constitution, the government is not subject to the control

<sup>53</sup> Gell. *NA* 10.20.2.

<sup>54</sup> Gaius 1.3.

<sup>55</sup> *Dig.* 1.3.32. See Brunt (n. 44), 319. J. Harries, *Cicero and the Jurists. From Citizens' Law to the Lawful State* (London, 2006), 54 emphasises Cicero's effort in downgrading the importance of the final decisions made by the *populus* or *plebs*.

<sup>56</sup> Cic. *Cluent.* 146. For an interpretation of the laws as guarantors of specific rights and privileges and a more contextualised interpretation of the passage, see Brunt (n. 44), 318. On the relation between laws and liberty, cf. also Cic. *Leg. Agr.* 2.102; *Cluent.* 155; *Rab.* 10; *Off.* 2.24, 81; 3.83, 149; cf. Livy 2.1.1.

<sup>57</sup> See Pettit (n. 45, *Journal of Philosophy*), 83-4 on the difference between interference and domination by laws.

<sup>58</sup> Brunt (n. 44), 319. If my reading is correct, then from a purely theoretical point of view, it is not true that the association of *libertas* with *lex* inevitably postulates the absolute acceptance of the existing order, as Perelli claims (n. 7, 80), since the laws, in principle, expressed the will of the community.

of anyone else — be it a king, a group of leading citizens or a foreign power — and, in virtue of its unconstrained condition, is able to carry out its policies and pursue its chosen ends according to the will of the whole community.

In Section II, I have argued that according to Cicero's conception of individual liberty, citizens are free when they do not depend on the arbitrary will of another and, unimpeded by constraints, are able to pursue their own chosen ends in respect of law and moral justice. The citizens' right to *provocatio*, their exercise of *suffragium*, and the establishment of the tribunes of the plebs are, therefore, essential means to this end. These institutions are liberating agencies that free Roman citizens from dependence on the will of the ruling group and thereby allow them to act according to their own judgment and choice. The liberty of the citizens can only be assured in a free commonwealth, the mixed constitution, an elective and self-governing *res publica*. In order to avoid subjection to the will of an elite or of an individual, in this form of government all citizens of the body politic are called upon, at least in principle, to take part in the decision-making process and fulfil their political role in society according to their *gradus dignitatis*.

In this section, I shall argue that in order to maintain the liberty of the commonwealth and preserve, in turn, the liberty of individual citizens, it is crucial that all members of the body politic uphold civic *virtutes*.<sup>59</sup> Thus, in Cicero's theoretical framework, both the leaders of the commonwealth and ordinary Roman citizens need to cultivate civic virtues, that is to say, need to possess those capacities that will enable them to perform the appropriate civic duties essential for the preservation of the liberty of the commonwealth.<sup>60</sup>

In the preface to the first Book of the *De republica*,<sup>61</sup> Cicero explicitly states that the statesmen who lead the commonwealth and must always act in the interest of the common good need to possess those virtues which are totally different from the wisdom of the philosophers. The intellectual knowledge of the latter, Cicero argues, can be possessed without putting it into practice, while 'virtue consists entirely in its employment' (1.2).<sup>62</sup> More specifically, Cicero continues, 'its most important employment is the governance of states and the accomplishment in deeds rather than words of the things that philosophers talk about in their corners' (1.2). Cicero's polemical target is the Epicureans, who advocated the withdrawal from an active public life in search of *ataraxia*, and against whom he deploys the claim of the Peripatetics, that engagement in active politics is the highest of human activities: 'the men who lead cities by their counsel and authority should be considered far wiser than philosophers who have no experience of public life' (1.3). There is an indispensable need for virtue since nature itself has instilled in men the desire to defend public safety and increase the resources of the human race (1.1). Despite the Peripatetic influence here, Cicero does not see *virtus*, as discussed above, as the ultimate end to which men should aim, but rather as only one of the goals, and not necessarily the most important one, to which men should aspire in order to live a happy

<sup>59</sup> For the full development of the connection between liberty and virtue I am very much in debt to Skinner (n. 18) and Pettit (n. 45, *Journal of Philosophy*).

<sup>60</sup> See below Section IV.

<sup>61</sup> See A. Grilli, *I proemi del De republica di Cicerone* (Brescia, 1971), 27-47.

<sup>62</sup> A. Ernout, 'Les noms latins en -tus', in Id., *Études et commentaires* (Paris, 1946), 225-32, underlines the meaning of *virtus* as activity in his semantic study.

life.<sup>63</sup> In Cicero's conception, *virtus* is an essential quality which leads to the preservation of the *libera res publica* and, implicitly, the highest possible degree of personal liberty. These *virtutes* as well as their opposite, the *magna vitia* in the fifth book, are not moral qualities, but rather capacities (or incapacities), which enable (or inhibit) Roman citizens to act for the preservation of the mixed and temperate *res publica*, and the maintenance of its liberty.<sup>64</sup>

The first *virtus* that is required of the *summi viri* is *fortitudo*, courage, since it is essential for Rome not to fall under the dominion of an external power, if she wishes to keep her independence. Courage is, in the first instance, the 'scorn for death and pain' to be shown on the battlefield, but it is also associated with greatness of spirit, fierceness, and pugnacity (5.9). If Gaius Duilius, Aulus Atilius, and Lucius Metellus had not possessed this virtue and employed it against the Carthaginians during the first Punic war, Rome would have not have been freed from the Punic threat and would have lost the independence indispensable for the preservation of the liberty of its individual citizens (1.1). Similarly, if Quintus Fabius Maximus, Marcus Marcellus, and Scipio Africanus had not deployed their *fortitudo* during the second Punic war, but had preferred the allurements of pleasure and ease, the citizens of Rome would have had to serve the ends of the Barcids, that is to say their new Carthaginian masters, rather than being able to pursue their own chosen purposes (1.1).<sup>65</sup>

In internal affairs, the important *virtus* that Cicero requires of statesmen is *civilis prudentia*. Prudence means the ability to 'see the paths and turns of the commonwealths, so that when you know in what direction any action tends, you can hold it back or anticipate it' (2.45).<sup>66</sup> As shown by its etymology (*providere*), *prudentia* indicates the capacity to see ahead (6.1), and does not refer to theoretical wisdom, but rather to the practical knowledge (*phronesis*) of Aristotelian inspiration. As such, *prudentia* has the pragmatic function of preparing the statesman 'to be armed against things which disturb the stability of the state' (6.1).<sup>67</sup> Since political variations take place primarily because of the role

<sup>63</sup> See above Section II.

<sup>64</sup> Perelli (n. 43, *RIFC*), 308-9 interprets *magna vitia* as 'difetti di saggezza politica', rather than moral vices. On the importance of public service see Cic. *Rep.* 1.8. On the highest function of virtue as preserving the existing commonwealths see Cic. *Rep.* 1.12.

<sup>65</sup> W. Nippel salutarily reminded me of the fundamentally militaristic nature of virtue in Rome. For the martial aspect of *virtus* in Cicero, see G. Liebers, *Virtus bei Cicero* (Dresden, 1942), 11-16 and 150-4. For an overview of Roman *virtus*, see M. McDonnell, 'Roman Men and Greek Virtue', in: R.M. Rosen and I. Sluiter (eds.), *Andreia. Studies in Manliness and Courage in Classical Antiquity* (Leiden, 2003), 235-61, now expanded in M. McDonnell, *Roman Manliness. Virtus and the Roman Republic* (Cambridge, 2006). McDonnell argues at 336 that Cicero's use of virtue draws, at various times, both on the martial meaning of the word and the ethical concept of Greek origin. See also R. Kaster's review of McDonnell's work in *BMCR* 2007.02.08.

<sup>66</sup> Cf. Cic. *De or.* 1.26. For the Peripatetic origin of *prudentia*, see Cic. *Fin.* 5.11; its origins, however, might be found in Pl. *Plt.* 269c-274a. See Pöschl (n. 14), 86-95.

<sup>67</sup> Contrary to Aristotle's view, there is no opposition between the lawgiver and the politician in Cicero's presentation of the *prudens*; see Ferrary (n. 2), 66-73. On the role of the lawgiver, see also J.E.G. Zetzel, 'Citizen and Commonwealth in *De republica* Book 4', in Powell and North (eds.) (n. 1), 94-7. However, as Cicero will elaborate in the *De officiis*

of individual *consilium*, rather than, as Polybius conceives it, by nature, it is essential for the *magnus civis* to be able to recognise such changes and alterations in commonwealths and 'to anticipate them when they are about to occur, holding a course and keeping it under his control while governing it' (1.45). The possession and active deployment of *prudentia*, that is, the ability to judge the best course of action and the capacity to execute such actions, will enable the statesman to preserve the commonwealth from alteration and thus maintain its nature as a free mixed constitution.

It is also essential that the statesmen possess another virtue, *temperantia*, a quality that is usually accompanied by modesty, sobriety, moderation, and *parsimonia*, frugality. These qualities are needed in order to prevent some members of the elite rising above the others, by means of adopting a system of lavish distribution that is by its very nature contrary to virtue. Thus, in order to assure that the balanced and temperate commonwealth works properly, without allowing any part of the body politic to rise above the rest of the community by an excessive and immoderate use of their wealth, the statesman should keep in mind that 'the best source of revenue both for private families and for the commonwealth is frugality' (4.7).<sup>68</sup>

The final quality that statesmen must cultivate is justice, *iustitia*. This *virtus* lies at the very foundation of the commonwealth, since in its absence one of the constitutive elements of the definition of the *res publica*, *consensus iuris*, would be missing, and so the commonwealth itself would not exist (3.43-45). *Iustitia* requires men 'to spare everyone, to look after the interests of the human race, to render to each his own, to keep hands off things that are sacred or public or belong to someone else' (3.24). Consequently, the statesman or *rector rei publicae*, as Scipio refers to him, has to be 'eager to learn about justice and laws and give close attention to their sources' and he has to be 'very learned in the fundamentals of law, without which no one can be just, and not ignorant of the civil law'. At the same time, he should always concentrate on their practical function, so as to be able to 'serve as a manager and overseer for the commonwealth' (5.5).

This 'guide and helmsman of the commonwealth' (*rector et gubernator rei publicae*),<sup>69</sup> whose 'character is sought in virtue, labour and industry' (5.9), is the one who is able to preserve the *libera res publica*, thanks to these qualities. He is 'good, wise, and knowledgeable about the interests and reputation of the state, almost a tutor and manager of the commonwealth' (2.51). In order to maintain the liberty of the commonwealth, it is of vital importance that these *rectores*,<sup>70</sup> who are in charge of the administration of power, cultivate these virtues, that is to say, possess the capacities that enable them to perform the civic duties essential for the preservation of liberty. Cicero points to people

---

(1.153), there is a distinction between *sapientia*, which provides an understanding of the universe, and *prudentia*, which is concerned only with making specific practical choices. See Atkins (n. 36), 258-89.

<sup>68</sup> Cf. Cic. *Off.* 2.60. See Zetzel (n. 67), 94-5.

<sup>69</sup> For Cicero's use of *rector*, see Cic. *De or.* 1.211 and *Rep.* 2.51; for his use of *gubernator*, see *Sest.* 98.

<sup>70</sup> Cicero adopts the singular for *rector*, *gubernator*, *tutor*, and *procurator* to indicate a category, a group of people who, thanks to their merit, should rule the commonwealth. See Lepore (n. 5); Ferrary (n. 5), 787; Powell (n. 3), 26-7.



like Scipio, Laelius, and the other participants in the discussion, fictitiously placed in 129 BC, as examples of such virtuous statesmen, but the rarity of such men in the senate is lamented (2.67). The dearth of men of virtue has caused the disappearance of the morality of old and of ancestral institutions (5.1), so that a conflict between the support of the common good and the pursuit of immediate personal advantage has engendered the disintegration of the commonwealth, which is now fading away like a wonderful picture whose outline is lost. As Cicero proclaims in the preface to the fifth book, 'it is because of our own vices, not because of some bad luck, that we preserve the commonwealth in name alone, but have long ago lost its substance' (5.2).

#### IV. *Virtus* and the *Res Publica*: The Citizen

In order to restore the *res publica* of old, which, in Cicero's opinion, represents the best form of government, it is not sufficient for the commonwealth to be led by virtuous *rectores et gubernatores*. This certainly constitutes the *condicio sine qua non* for the free *res publica*, but it is only a necessary condition, and not a sufficient one for the maintenance of the perfect form of commonwealth. It is important that every citizen in the commonwealth display these virtues, which will allow him to serve the common good according to his place in society, and thus assure the continued liberty of the commonwealth.<sup>71</sup> Although this is not explicitly attested in the preserved fragments of Cicero's text, this conclusion seems to follow from (a) Cicero's conception of *libertas* and (b) the role of directing towards *virtus* that Cicero assigns to (1) statesmen, (2) institutions, and (3) laws. In this section, I shall examine the part played by each of these three elements in guiding citizens towards virtue.

Cicero is under no illusion about the weakness of human beings, whose nature he regards as easily corruptible. He notes in the *De legibus*<sup>72</sup> that all people have been granted reason and therefore justice by nature (*Leg.* 1.33), but 'such is the corruption of bad habits that it extinguishes what I may call the sparks given by nature, and that contrary vices arise and become established' (*Leg.* 1.33). Following the Stoic belief according to which all men have equal capacity to achieve virtue, which the Stoics see as an attainable goal, Cicero claims that 'there is no person of any nation who cannot reach virtue with

<sup>71</sup> Previous scholarship has univocally concentrated only on the importance of *virtus* for the *rectores*. See, amongst others, K. Büchner, 'Der Eingang von Ciceros Staat', *Hommages à Jean Bayet, Collection Latomus* 70 (Bruxelles, 1964), 134; W. Eisenhut, *Virtus Romana* (München, 1973), 61-2; J. Sarsila, *Some Aspects of the Concept of Virtus in Roman Literature until Livy* (*Studia Philologica Jyväskyläensia*, 16, 1982), now revised in id., *Being a Man. The Roman Virtus as a Contribution to Moral Philosophy* (Frankfurt am Main, 2006), 137; W. Nicgorski, 'Cicero's Focus. From the Best Regime to the Model Statesman', *Political Theory* 19 (1991), 230-51; Powell (n. 3), 19-29; Ferrary (n. 2), 48-73; McDonnell (n. 65), 335-6.

<sup>72</sup> P.L. Schmidt, *Die Abfassungzeit der Ciceros Schrift über die Gesetze* (Rome, 1969) has demonstrated definitively that the *De legibus*, written immediately after the *De republica*, was conceived by Cicero as its essential complement; see too id., 'The Original Version of the *De Republica* and the *De Legibus*', in Powell and North (eds.) (n. 1), 7-16, where he argues that the two works were originally intended to constitute one book. See also Dyck (n. 39), 5-12, in particular on the question of dating. *Contra* Zetzel (n. 2), 28.

the aid of a guide' (*Leg.* 1.30). In order to achieve this aim, and ensure that all members of the community are virtuous, Cicero assigns the role of guidance and teacher of *virtus* to the *rector et gubernator rei publicae*, whose aim is the well-being of the citizens, whose life should be 'solid in resources, rich in wealth, well endowed in glory, and honourable in virtue' (*Rep.* 5.8). This leader of the commonwealth, who governs his own soul as the mahout governs the elephant in Africa, by a gentle touch, directing it to wherever he wants (*Rep.* 2.67), is 'enslaved to no desires when he himself embraces all the things to which he educates and exhorts his citizens, and he imposes no laws on the populace which he does not himself obey' (*Rep.* 1.52). The statesman has the duty to educate his fellow citizens by means of example, offering 'his own life as a law to his citizens' (*ibid.*). He never ceases to observe and educate himself so as to recognise that part of his soul that belongs to the divine sphere, and also 'summons others to imitate him, through the brilliance of his mind and life he offers himself as a mirror to his fellow citizens' (2.69). When offering himself for contemplation, as illustrated by the image of a mirror, the statesman also leads his fellow citizens to recognise the divine element present in themselves. He encourages them to recognize their own souls, thus promoting the development of the *virtus* which each of them is capable of attaining. Just as harmony is achieved among the different sounds of lyre-playing or choral singing through the regulation of the different voices, so too, in the commonwealth, concord is reached by agreement among different people belonging to different *ordines*. When educating the citizens to virtue by means of personal example, the statesman helps create harmonious concord in the commonwealth. Since such *concordia* is preserved only if all members of the community act for the common good, it is necessary for each of them, whatever their place in the social hierarchy, to become virtuous, that is to say each must come to possess those qualities which will allow him to fulfil the civic responsibilities appropriate to his role in society, and necessary to the preservation of the free mixed constitution.<sup>73</sup> It seems, then, that Cicero assigns to the leader of the commonwealth the important role of educating his fellow citizens, by way of example, to cultivate their virtues.

However, in addition to outlining the teaching role of the *rectores rei publicae*, Cicero also states that the virtuous life of the citizens has 'to be accomplished on the authority of the commonwealth, in part through institutions, and in part through laws' (*Rep.* 4.1). Despite the very fragmentary state in which the fourth book is preserved, it appears clear that the discussion of the commonwealth's *instituta* begins with a debate on the education of young male citizens, criticised by Polybius for its unstructured character (4.1).<sup>74</sup> An important role in the education of young people is reserved for guardians, in

<sup>73</sup> Ferrary (n. 2), 64-5 convincingly explains the image of the mirror, but concludes that the role of the *prudens* is to join all the different elements together so that harmony and *concordia* may be generated out of diversity. J.E.G. Zetzel, 'Natural Law and Poetic Justice', *CPh* 91 (1996), 301 notes how the metaphor of the harmony indicates that justice concerns the behaviour of individuals and classes. Cf. *Cic. Fam.* 1.9.12 where Cicero attributes to Plato a passage from Xenophon's *Cyropaedia* (8.8.5) which underlines the tendency of the citizens of the commonwealth to resemble their leaders.

<sup>74</sup> The importance of institutions and social-moral values in maintaining the *libera res publica* is discussed by Cicero in Book 4. The best attempt at reconstructing the argument of this very fragmentary book is made by Zetzel (n. 67), 83-97, to which I am indebted. See also Büchner (n. 36), 345-52.

their double function of directing young men in their first years of military service and of supervising women in the conduct of their lives. It is in the discussion of the supervision of women that we find a reference to another aspect of the *instituta*, the role of the censor (4.6). The censor's inspection is certainly directed, in the first place, towards members of the governing elite. However, he is also concerned with the morals of the rest of the community: he can expel actors from the citizen body (4.20b) and also has to teach men how to supervise their wives (4.6). In this way, the censor not only guides the behaviour of men in relation to their women, but also indirectly influences the lives of those dependent on men.

It is interesting to observe that the essential mechanism by which censorship operates is based on shame, and the only direct damage it causes is to the reputation of the accused. Such punishment is called *ignominia*, because it affects a man's *nomen* in the eyes of his peers (4.9). This sense of shame can be found at work not only amongst the male members of the elite, but also amongst women, who are said to refrain from drinking because of their education in *verecundia* (4.4). Thus, institutions such as censorship appear to fulfil the function of educating members of the community in moral self-regulation, since these members should not be 'frightened so much by fear and penalties established by laws as by a sense of shame, which nature has given men as a sort of fear of criticism that is not undeserved. The leader of the commonwealth strengthens this sense of shame by his opinions, and he brings it to perfection by institutions and education, so that shame does as much as fear to keep citizens from crime' (5.6).

Since men tend to indulge in bad habits, and often allow vices to prevail, Cicero also attributes considerable importance to the role of laws, which, together with the example set by leaders and the instillation of an appropriate sense of shame, can use their coercive power as a means to achieve virtue.

In order to assure that men are compelled by laws to behave virtuously, it is necessary that the laws by which they abide be good laws. As Cicero polemically asserts,

The most stupid thing of all is to consider just all things that have been ratified by a people's institutions or laws. What about the laws of tyrants? If the notorious thirty tyrants at Athens had wanted to impose laws, or if all the Athenians were pleased with tyrannical laws, is that a reason for calling those laws just? (*Leg.* 1.42)

Such laws would certainly not be just, and this is also true of the law proposed by the interrex Lucius Valerius Flaccus in 82 BC, a law that granted Sulla the dictatorship with power of life and death (without trial) over whatever citizen he wished (*Leg.* 1.42). Thus, 'justice is not determined by popular vote or by decrees of princes or the decisions of the judges', because otherwise it would be 'just to commit highway robbery or adultery or to forge wills if such things were approved by popular vote' (*Leg.* 1.43). The criterion for distinguishing between good laws and bad laws is nature, that is, a natural feeling according to which men are able to discriminate right from wrong and apply this distinction to legislation.<sup>75</sup> In Cicero's opinion, bad laws do not, in fact, deserve to be regarded as laws at all, and are termed so only in the language of the common man.<sup>76</sup> Only good laws

<sup>75</sup> For an analysis of the application of nature to the judgment of laws, see Girardet (n. 4), 65.

<sup>76</sup> See Dyck (n. 39), *ad* 1.44. *Contra* Girardet (n. 4), 80 n. 63, who regards the initial identification of bad laws as provisional.

should be awarded the status of law, since they are ‘the highest reason, rooted in nature, which commands things that must be done and prohibits the opposite. When this same reason is secured and established in the human mind, it is law’ (*Leg.* 1.18). Laws, as the etymology of the word shows,<sup>77</sup> are essentially the judgment of what is right and what is wrong, and their effect is ‘to order people to behave rightly and forbid them to do wrong’ (*Leg.* 1.19).<sup>78</sup> These are the only laws deserving of the name, since ‘it should be clear that in the interpretation of the word “law” itself there is the significance and intention of choosing something just and right’ (*Leg.* 2.11). Those who passed decrees which were unjust and destructive to their people produced something very different from laws, since they did not fulfil the original proposition that ‘laws were invented for the well-being of citizens, the safety of the states, and the calm and happy life of humans’ (*Leg.* 2.11).<sup>79</sup>

Good laws, which reside in the mind of the wise, preserve the existence of the commonwealth, since their adoption makes the life of members of the community honourable and happy.<sup>80</sup> Laws deter men from their habitual behaviour of vice and coerce them into acting in a certain manner that they would not otherwise pursue. In this way, men find themselves acting virtuously, and so fulfil their civic duty and contribute to the maintenance of the *libera res publica*.<sup>81</sup> Thus, Cicero enters here into a circular argument, according to which virtuous laws will compel men to become virtuous, and at the same time, these very laws will require the presence of virtuous men, in the role of *rogatores* as well as voters, in order to be implemented.<sup>82</sup> If Ferrary is correct in identifying the good laws of the *De legibus* with the *mos maiorum* of old,<sup>83</sup> it is possible to understand fully Cicero’s statement, in the preface to his fifth Book of the *De republica*, that ‘ancestral morality provided outstanding men, and great men the morality of old and the institutions of our ancestors’ (5.1). Through the establishment of good laws and customs, the commonwealth had formed virtuous citizens who were prepared to serve the common good and preserve it. At the same time, these men themselves reinforced and upheld the laws and customs in which they had been moulded. As Cicero

<sup>77</sup> See Cic. *Leg.* 1.19, for the derivation of the word *lex* from *legere*, to choose. Cf. *TLL* s.v. *lex*, 7.2, 1238-56.

<sup>78</sup> Cicero differs from Stoicism in his conception that natural law could be written, as shown in Book 2 of his *De legibus*; see Girardet (n. 4), 83.

<sup>79</sup> Dyck (n. 39), *ad loc.* convincingly interprets *vita quieta* as an undisturbed life, in the sense of ‘the kind of life possible in a community with ordered personal and property relations, not subject to vendetta or other forms of rough justice.’

<sup>80</sup> Cf. Cic. *Leg.* 1.19: ‘law is a power of nature, it is the mind and reason of the prudent man, it distinguishes justice from injustice’.

<sup>81</sup> For the peripatetic origin of the idea that laws provide a proper education in civic virtue, see Frede (n. 19), 83.

<sup>82</sup> Zetzel (n. 73), underlines at 307 n. 29 that ‘the role of the *prudens* is to recognise and acknowledge the law that the divine legislator has placed in him — as it has been placed in every human being’. Later, Zetzel develops his argument, reserving to the other members of the community the passive role of receiving from men of superior wisdom the knowledge of the moral order of nature (n. 67, 92-3). Ferrary (n. 2), 70-3 places greater emphasis on the role of the *prudens* as the primary source of natural law. Cf. Cic. *Rep.* 5.3 for the legislative activity reserved for statesmen.

<sup>83</sup> Ferrary (n. 2), 68-70, following Girardet (n. 4), 97-105.

says, quoting a famous verse from Ennius, 'the Roman commonwealth stands upon the morals and men of old' (5.1; Ennius, *Ann.* 467 W).

Thus, despite the absence of a full treatment of the virtues of the citizens in the preserved text of the *De republica*, it is nonetheless possible to infer from the arguments highlighted above the importance that Cicero must have attached to the virtues of all members of the civic community. With, admittedly, a certain degree of speculation, one may assume that just as members of the ruling class are required to exercise their courage on the battlefield,<sup>84</sup> so too the soldiers are expected to show their *fortitudo* when defending their community from external aggression. Consequently, courage is a quality that should be instilled in every citizen, whatever their class of census and role in the army, so that they will be able to fight strenuously in order to defend the liberty of the commonwealth, as well as their own. We may infer that, in addition to courage itself, ordinary citizens are asked to cultivate and display those virtues which accompany *fortitudo*, such as magnanimity and nobleness, as well as a form of political prudence, which manifests itself especially as caution and the ability to deliberate. Utilizing these qualities, ordinary citizens must be willing and able to contribute personally to the defence of the community against internal and external enemies, since when the liberty of the commonwealth is at stake, no one is a private citizen. This is demonstrated by the virtuous actions of Lucius Brutus who, as *privatus*, that is to say, without holding any magistracy, upheld the whole commonwealth (*cum privatus esset, totam rem publicam sustinuit*, 2.46). He was able to do so, Scipio claims, thanks to his outstanding talent and virtue (*vir ingenio et uirtute praestans*, 2.46), which allowed him to understand the contingent political circumstances and to act with greatness of spirit. If Brutus, a member of the elite, cannot be regarded as representative of an ordinary Roman citizen, it is important to note that Scipio, when highlighting the general significance of this episode, claims that Brutus 'was the first in this state to show that in preserving the liberty of the citizens no one is a private person (*primus in hac civitate docuit in conseruanda ciuium libertate esse privatum neminem*, 2.46)'. Thus, playing with words, Scipio maintains that when the commonwealth is at risk, no one should concentrate on his personal affairs, without contributing to the preservation of liberty.<sup>85</sup>

In Cicero's political vision, one may argue, every citizen has to cultivate those qualities that will stimulate him to contribute personally to the defence of the commonwealth and its liberty, the highest of values, since without it individual citizens are unable to enjoy their own property and pursue their own chosen ends. Thus, just as the ability to judge the best course of action and the capacity to implement such a course are the fundamental virtues of the *rectores rei publicae*, so, one may speculate, the other members

<sup>84</sup> Cf. Cic. *Rep.* 1.27 on the conception of military command as a duty.

<sup>85</sup> The same principle can be applied in the case of Scipio Nasica, responsible for the death of Tiberius Gracchus, and in the case of Milo, accused of having killed Clodius. In both instances, Cicero claims that since the very existence of the *res publica* was at risk, the only possible action left to virtuous citizens was to kill those attempting to destroy the commonwealth (On Scipio, see Cic. *Cat.* 1.3; *Mil.* 8; *De or.* 2.106; on Milo, see Cic. *Mil.* 6; 8-11; 14; 30-1; 34; 63; 70-8; 97. See also W. Nippel, *Aufbruch und 'Polizei' in der römischen Republik* [Stuttgart, 1988], 141-2). For the different uses of the word *privatus* in this context, see *TLL* s.v. *privatus*, 10, 1389-92.



of the community need to possess a form of political wisdom that will allow them to preserve the liberty of the commonwealth. In order to achieve this aim, it is essential that all Roman citizens agree to play an active role in public life, each according to his own place in the echelons of society, and it is crucial that all male adults in possession of full Roman citizenship not abstain from casting their vote.<sup>86</sup>

Thus, while the *rector* needs to be prudent in order to be able to take into account the interests of the people without necessarily accepting their claims (5.8), the people, one may infer on the basis of Cicero's conception of the liberty of the commonwealth, will need to display their political wisdom so as to articulate and advance their own interests, while respecting the common agreement on justice. If the community wants to be free from the domination of one of its sections so as to pursue its own chosen ends, it is necessary that the whole body politic take part to the decision-making process. It is only in this way that the community will be able to attain its own aims and articulate its own needs, rather than being enslaved to the needs and ends of those in power.<sup>87</sup>

Following an analogous attempt to give an approximate, but plausible, content to the virtues of citizens, it is possible to consider *temperantia* and *iustitia* as two of the qualities that every Roman citizen should possess and deploy. In order to assure his own freedom, it is important that every citizen respect what belongs to others (3.24). Citizens should also avoid all forms of intemperate behaviour that may lead to their abstention from the exercise of their specific capacities in society, and to the disruption of the commonwealth (4.7ff.). In order to avoid such disruption and preserve the *libera res publica*, it is essential that all members of the community possess the quality of justice, in virtue of which they are committed to laws. This is one of the constitutive elements of the *res publica*, an element that cannot be disregarded if the liberty of the commonwealth is to be preserved. As seen above, laws, which represent the will of the people, should be equally binding on all, and no one should be permitted to be above them.<sup>88</sup> It appears, therefore, essential that every Roman citizen display the virtues required for the performance of their civic duties, and thus preserve the *libera res publica*.

The *libera res publica* of old is now in decay, and Cicero seems to see the remedy as the cultivation of virtue on the part of all its citizens. All members of the community must learn to act virtuously, willingly fulfilling their civic responsibilities according to their place in society. Cicero seems to exhort all Roman citizens to become *optimi*, the best morally, because this is the only way to avoid conflict between common good and personal advantage, a conflict that is currently destroying the *res publica*. Such moral behavior on the part of the citizens will preserve the liberty of the perfect commonwealth, as well as their own.

## Conclusion

The contingent character of the *De republica*, aimed at searching for appropriate remedies to the political problems of Cicero's own time, has long been recognised, and the

---

<sup>86</sup> On the importance of *suffragium* as a guarantee of liberty, see above Section II. For Scipio's description of the centuriate system, see n. 51.

<sup>87</sup> Cf. Cic. *Rep.* 1.9.

<sup>88</sup> Wirszubski (n. 9), 7-9. See also Section I and II above.

work seems to serve as a protreptic, calling all members of the community to an active public life.<sup>89</sup> The *rectores et gubernatores rei publicae* should abandon their much loved fish-ponds and their life of leisure in order to dedicate their time and energy to political activities, thus acting as an example for the others.<sup>90</sup> These leaders are composed of members of the Roman nobility and those who, trusting in their personal merits and dedication to the common good, hope to become part of it. They are no longer the *optimates* of blood, as many traditional Romans would like, but rather those *optimi cives* who, thanks to their *prudentia*, *studium*, and *industria*, may succeed in becoming part of the leading group in Rome, despite their non-senatorial origin.<sup>91</sup>

However, virtuous statesmen will not suffice to preserve the liberty of the commonwealth. Although an extensive treatment of the virtues of ordinary citizens is not found in the preserved text of the *De republica*, a close analysis of the conceptions of liberty, together with an examination of the guiding role of the *rectores*, and the investigation of institutions and laws as agents which enforce virtue, all reveal the importance of the possession of appropriate virtues by each individual member of the community. Since the liberty of the commonwealth, which in turn preserves the liberty of individual citizens, is characterised by the absence of a king or domineering aristocrats as well as by the allocation of some power to the people, it follows that all citizens need to cultivate those qualities that will lead them to perform the civic duties essential to the preservation of the mixed constitution, the only form of government truly free.<sup>92</sup> As Cicero's generalization at the end of the Brutus episode (above, 62) shows, all citizens are called upon to be magnanimous in promoting the good of the community over their private affairs, since none is a private citizen when the liberty of the commonwealth is at stake. Contrary to the generally held opinion, unless all members of the community cultivate their *virtutes*, the plutocratic Roman elite will close its ranks even more tightly and the commonwealth will collapse.

It may not be totally inappropriate to advance a further hypothesis, as a corollary of my argument. When Cicero describes his work to Quintus as a treatise 'on the best organisation of the state and the best citizen (*de optimo statu civitatis et de optimo cive*, *Q. Fr.* 3.5.1)', he may be referring, in addition to the best form of commonwealth, to the best citizen, understood, one may tentatively suggest, as a comprehensive category that represents all the members of the best form of commonwealth, rather than a specific class of people with a distinct political function and social characterisation proper to the *rectores rei publicae*. It is certainly true that in the vast majority of the surviving text the *civis* to which Cicero refers is undoubtedly the statesman, be he called *rector*,

---

<sup>89</sup> See, for example, Powell and North (n. 1), 2 and Powell's contribution in the same work, 20-32. For a description of the work, or at least its preface, as a protreptic to political action, see Zetzel (n. 67), 86-7.

<sup>90</sup> For Cicero's complaint against the *piscinarii*, see *Att.* 1.18.6; 1.19.6; 1.20.3; 2.1.7; 2.9.1; *Parad.* 38.

<sup>91</sup> See also Lepore (n. 5), 202-18.

<sup>92</sup> See above, Section I.

*gubernator, conservator, moderator*, or even simply *civis*.<sup>93</sup> However, in the *Pro Sestio*, written just a few years before the composition of the *De republica*, Cicero had stressed the moral value of the new *optimates*, who included, in striking contrast with the traditional aristocracy, Romans living in municipal towns, as well as country districts, along with business men, and even freedmen.<sup>94</sup> In this oration, Cicero gathers together the healthy sections of the civic body, and characterises the *optimates* as those who do no harm, are not wicked, and are not embarrassed by their domestic affairs (that is to say, are not insolvent debtors). They are aligned with the traditional *optimates*, so that even the people itself is not longer popular. (*Sest.* 114) Thus, in the *Pro Sestio*, the *principes optimatum* are represented as the political leaders who actively govern the commonwealth in the senate, while the *optimates*, in this new, extensive meaning, act as public opinion, whose political will is interpreted by the *principes*.<sup>95</sup> These *principes* direct the commonwealth and thereby seem to have the role that Cicero later assigns to the *rectores rei publicae* in his *De republica*. Similarly, one may suggest, the *optimates* of the *Pro Sestio* are the antecedents of the *optimi cives*, the virtuous citizens to whom all members of the community should aspire. In the letter to his brother Quintus cited above, Cicero, while agonising on the most appropriate setting and characters for his dialogue, refers to Aristotle as a possible model for his work. In his ‘writings on the state and the excellent individual (*De republica et praestanti viro*)’, Cicero says, Aristotle spoke in his own person, rather than through other speakers. The Aristotelian work to which Cicero alludes here is not known, but it seems plausible that he is referring to the *Politica*.<sup>96</sup> If this is the case, the Aristotelian *praestans vir* does not have necessarily to be identified with the best ruler, who knows the art of governing, but rather with the best citizen, the virtuous member of the *polis*.<sup>97</sup> It would then be possible to maintain that in the *De republica*, Cicero was interested in the ethics of all the members of the community, rather than just the leaders, and, in this sense, he hoped that they would all become *optimi*.<sup>98</sup>

While this last suggestion does not aspire to be anything more than an intriguing and provocative proposition, it does remain plausible to assert that, in Cicero’s opinion, the preservation of the liberty of the commonwealth requires that other members of the

<sup>93</sup> For *rector*, see Cic. *Rep.* 5.5; 6.1; for *gubernator*, see 2.51, where he is also named *tutor et procurator rei publicae*; for *conservator*, see 6.13; for *moderator*, 5.8. For *civis* see 5.3; *magnus civis* 1.45.

<sup>94</sup> Cic. *Sest.* 97-8; cf. 143.

<sup>95</sup> Lepore (n. 5), 217 and *passim*. R. Kaster, *Marcus Tullius Cicero. Speech on Behalf of Publius Sestius. Translated with Introduction and Commentary* (Oxford, 2006), *ad loc.* and 31-7 considers the *optimates*, translated by him as ‘the best sort’, as ‘the civil community properly so called’.

<sup>96</sup> D.R. Shackleton Bailey (ed.), *Cicero: Epistulae ad Quintum Fratrem et M. Brutum* (Cambridge, 1980), *ad loc.*

<sup>97</sup> Cf. Lepore (n. 5), 73-6 and *passim*, according to whom *praestans vir* usually translates the academic-peripatetic notion of *politikos*, which, in his opinion, becomes a synonym of *princeps*, the political man above the contingent *partes*, in essence a model for the *optimus civis*. See also Powell (n. 3), 23-4.

<sup>98</sup> This idea is also found *in nuce* in Lepore (n. 5), 100-7 and *passim*. However, despite underlining the importance for Cicero that all Roman citizens become *boni*, Lepore associates the *praestans*, the *summus vir*, and the *optimus civis* with the *rector rei publicae*.

community develop their appropriate virtues, along with the *rectores*. Only if each member of the commonwealth fulfils his civic responsibilities in accordance with his place in society will the *res publica* of old be restored and the liberty of individual citizens along with it. Thus, in advocating the exercise of individual virtues on the part of all members of the community, Cicero defends the liberty of the commonwealth and the plurality of interests of its citizens.

University College London