

PRESIDENTIAL ADDRESS 2005

Boston, Massachusetts

Liberty and the People in Republican Rome

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WHY HAVE I CHOSEN TO USE OUR TIME TOGETHER today on the theme of popular liberty at Rome? Certainly recent events have brought strongly to our minds the conflict between the values of liberty and security, but I want to leave our present century behind, while concentrating on a value perhaps more talked about by politicians than interpreted. Most of us have at some time read and admired the monograph by Chaim Wirszubski in which he carefully distinguished what the senatorial class meant by their own political liberty—freedom to govern—and that of the people, whose active exercise of liberty consisted largely in freedom to pass the laws recommended by their senatorial betters and to elect the magistrates whom the same elite governing class had kindly offered them. Instead I want to consider the personal liberty or free condition of the (adult male) Roman citizen, the man in the *vicus*: how it differed from that of non-citizens and slaves, and how he experienced the burdens and rights of citizenship. I have found one of the best guides is Claude Nicolet's *Le métier de citoyen*, not least because Nicolet pays far more attention to the early and middle republic than do most historians. But even Nicolet plays down the other aspects of citizenship when he discusses its implications in order to explain the half-way status Rome granted to the people of Caere, that is, Roman citizenship *without* voting power. For myself I doubt that the power to vote, not just in elections but for legislation and in major popular trials, meant much to the average citizen: even if he lived near enough to come to the Comitium or the Campus, and could afford to leave his business untended, he would be voting in a mass unit that carried less weight than the many units of the elite knights and first class, a unit that might not even be called to vote if a majority had already been reached. So despite the powerful

recent advocacy of Fergus Millar¹ and subsequent more nuanced discussions by Mouritsen and now Morstein-Marx, I want to concentrate on the extent to which the everyday life of ordinary Roman citizens was affected by citizenship—defined compactly by Nicolet as “their military and financial obligations (balanced by the fact that their civil status was assured and they could benefit from the protection of the civil and criminal law).”²

Liberty surely consists in the degree of the citizen’s autonomy day by day, his control of person, labor, and property. So reconstructing his rights and responsibilities will occupy half our time, before I move on to the more provocative issue of freedom of speech, and how and where the ordinary man could exercise it—I hope this will balance the citizen’s work and service with a proportion of play and even license.

The *populus Romanus* was primarily its fighting men, both on active service and in the assemblies that gathered to hear policy speeches, elect leaders, pass or reject bills, and cast their verdict in major trials. Hence orators and historians treat the citizens who assembled on any given occasion as the sovereign Roman people. But the tradition has left us two contrasting images of the Roman citizen, neither of which could be universally true. Whereas Cicero, and Scipio Aemilianus almost a century before him, treats the assembled plebs as newcomers to Rome, once captive Greeks and Levantines or their children, shopkeepers, craftsmen, and parasitic con-men, city slickers unsuitable for military service, Livy offers a very different picture of the citizens in Rome’s early and middle republic, and it is from his shifting narrative that I want to extrapolate the republican myths of citizenship and liberty.

Livy’s Roman citizen is a sturdy smallholder, going outside the community or his own village each day to cultivate his *iugera*, a man whose yearlong work on the land is almost as hard as military service—we might compare Virgil’s metaphors in the *Georgics* of the farmer campaigning like a soldier to conquer wild nature on his land.³ Such smallholders were a reality in Italy as recently as fifty years ago, when I was taken by friends in Tuscany to visit their poor relations in the country. While my friends had urban jobs in their large prosperous village outside Florence, or commuted to the city itself to work, their poor relations lived on the produce of their five acres: some chickens, a vegetable garden, a small orchard, some olive trees and vines, and a plot of grain. This was subsistence farming with a vengeance, and for anything like shoes or clothes they had to depend on handouts. They were free in one sense,

¹ Millar 1995 and 1998, also earlier articles in *JRS* 74, 76, and 79 (1984, 1986, and 1989).

² Nicolet 44, adapted from the original French.

³ Cf., e.g., G. 1.99 *exercetque frequens tellurem atque imperat arvis*.

for they had no employer, and could call themselves their own masters, but economically they were at the mercy of the weather and indebted to prosperous members of their family.

The model for early Rome has to be this peasant, and I would like to consider the legendary history of early republican Rome from his point of view. Citizens had been nominally free under the kings, but we can symbolize their oppression by Rome's counterpart of Boston's recent Big Dig, the labor imposed by Tarquinius Superbus on Roman citizens to construct the Great Drain, or Cloaca Maxima. When the elder Pliny describes this forced labor he implicitly reproaches Livy for the brevity of his account (*Nat.* 36.120): "I will report what the historians have passed over," he says, "that the plebs of Rome, weary of toiling below ground with no end in sight, began to kill themselves until Tarquin decreed that suicides should be stripped and publicly exposed, exploiting both Roman shame and horror of predatory animals."⁴ Oddly, neither Pliny nor Livy's brief mention (1.56.2) makes the point that this kind of work was thought proper for slaves, and it was in contrast with slaves that freeborn citizens measured the obvious benefit of their status.

Citizens of other states enjoyed largely similar status while within their own communities, but Rome soon assumed the attractions of a metropolis, and once at Rome citizens of other Italian communities would not enjoy full benefit of the laws that constituted the citizen's charter. Yet although Livy's first words as he celebrates the republic at the opening of his second book are "the Roman people, now free," the Romans still had no published laws, and Livy defines their liberty by the time limit set on the new consular power. It is one of the problems of trying to extract history from his text that beneficial laws to protect the citizen are passed again and again. There is supposed to have been a law under the monarchy giving citizens the right of appeal from the king's capital sentence to the assembly of the people—*provocatio*. Within the first years of the republic Valerius Publicola passes another *provocatio* law, establishing the right of appeal from capital sentence by magistrates, as well as a law dedicating to the gods the person and property of any man attempting to gain kingly power (2.8.2), and later Valerii are credited with two more such laws.⁵

Next in Livy's narrative come the economic issues. The common folk are exempted from tolls (*portoria*) and the tribute, on the ideological grounds that the poor were already paying enough *stipendium* (this would later be the name

⁴ See further Gowers 23–32.

⁵ On *provocatio*, "right of appeal," see Cornell 1995: 196–97, 226–27, 276–77.

given to a soldier's pay, and the tax that provided it) if they brought up citizen children. This leads Livy to introduce another recurring social problem, the seizure of persons for debt.

Nowhere, now or in the past, is a man so deprived of all autonomy and forced to give instant obedience to unexplained and often unreasonable commands as on military service (though in some ways the life of a hospital patient approaches it). But the chief horror of military service for the citizen peasant was not his own subordination so much as the incompatibility of his absence on military service with the maintenance of his bit of land: in Livy's account of the early republic this conflict of military duty and household responsibility is soon highlighted as the chief cause of citizen debt and the source of endless friction between the senatorial officer class and the plebs. This must have been all the more painful in view of the apparently arbitrary nature of the annual levies, with their reiterated interruption of citizens' lives. From Livy's narratives and from Polybius' detailed analysis of the levy itself⁶ it is clear that the consuls expected to lead the legions that they commanded on campaign each spring against neighboring tribes: if there was not a threat from the Volsci or Aequi they would imagine one, then review the state of their forces to see what supplement was needed to bring them up to strength. While the levy was often universal, we hear of levies limited to specific tribes, and on other occasions, to specific districts.⁷ The local or tribal officials would call out the new crop of seventeen-year-olds,⁸ and any others not serving, and send them to the Capitol, where the military tribunes would take their pick, always starting from a man with a well-omened name. Unlucky the man whose name was Faustus. According to Polybius the military tribunes picked their first group, choosing by their appearance as stout fighters, and these men each picked another soldier (*vir virum legit*), until the required number was made up; then after swearing an oath of obedience to their consular commander to appear at the time and place he specified, the enlisted men were sent home to prepare themselves.⁹ For a century, until the war on Veii, campaigns were re-

⁶ Plb. 6.19. Brunt ch. 22 finds Polybius' description incompatible with the conditions of Rome in his own century, but quite plausible for the fifth to third centuries.

⁷ Specific tribes: Brunt 634; cf. Livy 4.46.1 *non ex toto passim populo placuit. decem tribus sorte ductae sunt*. Specific districts: extrapolated from 6.12 where Livy surmises that Rome's enemies obtained their levies by varying the age groups and enlisting from different peoples.

⁸ *Nomina dare*: Livy 5.10.4; cf. 3.41.7 *ad nomina respondere*.

⁹ Cf. Plb. 6.21 on the oath, with further clauses supplied by Livy's retrospective account at 22.38.3 (see Nicolet 41–43), Livy 3.20.3–4 *edicimus itaque omnes qui in verba iurastis crastina die armati ad lacum Regillum adsitis*, and 2.32.1 *quoniam in consulum verba iurassent sacramento teneri militem rati*.

stricted to the summer fighting season,¹⁰ but our sources nowhere explain how or when soldiers could expect to be discharged and return home, or exactly how they were recalled in the following year. The official requirement was sixteen campaigns between the ages of 17 and 46, and although we hear of exemptions (*vacationes*)¹¹ there is no indication of any compassionate grounds on which a man once chosen could claim exemption. It was the need or desire of some men *not* to serve that created an annual source of conflict, and provoked the first creation of the tribunes of the plebs within a generation of the republic. Men in whose district there was no draft in a given year were presumably free to go on farming, and those deemed physically substandard might escape the draft forever. According to the historical tradition men beneath the property requirement for the lowest class—those *infra classem*—were ineligible for the legions because they could not afford the equipment, although they would later be drafted into the naval forces. But if any man's father was too old to serve but still living, the son himself would have no property. Surely the men newly come of age, the seventeen-year-olds with living fathers, were not exempt but must have been rated on their father's property.

The peasant-soldier's life must have been an unending double bind. If he had no or little property he had nothing to live on except the sweat of his brow doing casual labor for neighbors, or perhaps as a tenant sharecropper. But if he had a plot of land—and a few *iugera* were enough to qualify him¹²—his military service would leave it neglected through the summer months. You probably all know the pathetic story of Attilius Regulus, the commander of the Roman invasion of Africa in the first Punic war, who had to beg help from the Senate for his wife and children because his farm-manager had died, and the hired hand had run off with the farm equipment.¹³

The prototype, however, for these hard-luck stories is Livy's poignant character myth for the abolition of *nexum* or *nexus*, that is the personal labor re-

¹⁰ Brunt 398 suggests early campaigns limited to six months, but at 640 reduces this to a few weeks or even days.

¹¹ On *vacationes* for those who have served the requisite number of campaigns, *seniores*, the infirm, certain priesthoods, etc., see Brunt ch. 22, note 1. In Livy 7.28 an urgent levy is held *sine vacationibus*, and 8.19.10 a *tumultus Gallicus* again results in enlisting men *sine ulla vacationis venia*, even the city rabble of craftsmen and *sellularii*, a category thought most unsuitable to military service. Elsewhere some levies are marked as *intentior* (8.17.7, 8.38.1).

¹² Brunt calculates the minimum qualification of *assidui* at either 6 (according to Polybius) or 16 (according to Cicero) *iugera*.

¹³ According to V. Max. 4.4.6, the Senate contracted to let out Regulus' land and provide maintenance for his wife and children and replacement of his stolen equipment.

quired of a debtor without assets under the control of his creditor.¹⁴ Within the first years of the republic, there was a scandal that promised to end this cruel practice. An older man burst into the Forum bearing every sign of abuse, filthy and starving with matted hair; yet the people recognized him as a former centurion (*ordinem duxisse*): his back was scarred with war wounds confirming his claim to have won awards for bravery. His story was that while he was serving against the Sabines, his land had been ravaged, his house burned, all his property plundered, and his cattle rustled. Then he had been required to pay tribute, and had fallen into debt. Burdened by interest he had had to sell his ancestral plot, and finally pay his creditor with the service of his body. The victim's cries provoked a surge of other emaciated debt bondsmen rushing into the Forum all uttering the *quiritatio*, or appeal for citizen aid¹⁵ (a scene surely worthy of Monty Python).

News of a timely Volscian invasion led to a show-down: the consul tried to hold a levy and the indignant people refused to enlist. The consul was forced to present two new statutes to the citizen assembly (2.24.6): that no man might bind or imprison a Roman citizen so as to prevent him enlisting, and that no one might sell up the goods of a soldier on active service, or forcibly detain his children and grandchildren. The implication is that creditors had been able to take a man's son as a substitute for the father's labor. In another confrontation soon after, the youths eligible for the draft allegedly refused to answer to their names when the consuls called them to enlist. From the ensuing riots emerged the proposal by a certain Appius Claudius to create the new magistracy of Dictator, so that there would be a military commander whose orders overrode popular appeal. Luckily one of the many noble and humane Valerii (Livy's historical inheritance from Valerius Antias) was at hand, whose populist record made his dictatorship acceptable to the plebs. But the arbitrary annual draft continued to foment disaffection and led to the first abandonment of Rome by the fighting plebs, until the next solution offered was the creation of the tribunate, armed with the *ius auxilii* to rescue men claiming grounds for exemption from the draft.¹⁶

It was again economic pressure from conflict between the citizen's livelihood and his military duties that seems to have provoked the landmark appointment of the Decemvirate to create a corpus of existing or new civil laws in 451. Not all historians believe that the Senate actually sent an embassy to

¹⁴ On *nexum* see Watson 111–24.

¹⁵ 2.23.8 *Implorant Quiritium fidei*: compare the three examples in the tale of Verginia below, and n. 25, with Lintott on other early forms of self-help.

¹⁶ For the creation of the tribunes see Cornell 1995: 259–60, and for the Decemvirate 272–92, also the papers of Raafaub, Cornell, and Momigliano.

Athens to review and copy the legislation of Solon.¹⁷ But if we turn to Solon's own words, quoted by Aristotle in the *Athēnaiōn politeia*, we are confronted with a very similar economic situation—similar but with a difference. Even before Rome had a published body of secular law, the citizen's property had enjoyed the protection of religion, specifically the god Terminus, the boundary stone who could not be moved even for Tarquin's construction of the temple of Jupiter Optimus Maximus. When Rome finally got her tables of the law, they contained a savage sanction against any man who usurped his neighbor's land by shifting his boundary stone. In Solon's elegy, however, the same stones stand both for the citizen's right and the hypothecation of his land by the creditor. Let me quote (*Iamboi*: 24.3–15 ap. Arist. *Ath.* 12.3–18):

Earth herself, greatest Mother and best of Olympian gods, would bear me witness, earth, from whom I uprooted the boundary marks planted in many places, earth formerly enslaved and now free. I brought back to Athens, their divinely founded country, many who had been sold, some justly, some unjustly, some fleeing from urgent debts . . . and I released those here suffering cruel slavery and trembling at their masters' moods, making them free.

Here we have both debt slavery and land mortgaging—something unmentioned in the Roman tradition. Yet Solon also chooses the image of the boundary stone to represent his own protective role as arbiter between the property owners and the landless (Solon, *Iamboi* 25.8–9 Diehl):

I stood between them like a boundary stone on the no man's land of the battlefield.¹⁸

Roman thought constantly identified liberty with the protection of the laws. Thus Cicero defines a People as one bound by an agreed body of law and shared interests, and Law itself as the bond of civil society.¹⁹ But the existence of laws was only the first step towards their effective use by the ordinary Roman. First they had to be published, which also raises questions about the literacy of the man in the *vicus*: perhaps the strongest reason why simple plebeians needed a *patronus* not just to speak for them but to explain the law. But the ordinary citizen still had no access to the legal calendar—something only provided towards the end of the fourth century—and no knowledge of the correct formulae for civil actions. The early laws themselves were often *imperfectae*, incomplete because they prohibited or condemned an action

¹⁷ Livy 3.31.8, which also mentions other unnamed Greek cities; cf. 3.33.5.

¹⁸ Cf. Arist. *Ath.* 12 end: *Hōsper en metaichmiōi, horos katestēn*.

¹⁹ Cic. *Rep.* 1.39 and 49. Livy 3.34.6 hails the ten tables of the law as the past and present *fons publici iuris*.

without including any sanction, like the supposed *Lex Valeria de provocatione* of 449, marked by Livy as ineffective because it merely stigmatized abuse as *improbe factum*.²⁰ The laws could be a deterrent, but this was far from guaranteeing redress, and the ordinary citizen would be afraid to go to law because of the systematic mystification practiced by the legal experts: he would expect to lose his suit. Even now we are rightly afraid to sue if our corporate adversary has more powerful lawyers than us.

But although Cicero chooses the tabulation of the laws by the *decemviri* as the landmark defining the people's commonwealth, (*Rep.* 2.61), both he and Livy move swiftly from the ten good tables of the first Board of Ten to the iniquitous ban on marriage between patrician and plebeian attributed to the second Board of Ten, and the tyranny of that second board perpetuating its own reappointment. When the new tyrannical Board summons the intimidated Senate only Valerius Potitus protests that the *decemviri* by forbidding men to speak freely in the Senate were provoking him to assemble the people to avenge their lost liberty²¹; I believe this is Livy's first mention of free speech as such, and it is notably something to which the Senate, not the people, claims entitlement. By abolishing elections and annual magistracies these worse than kings had destroyed the due rotation of holding office (*vicissitudinem imperandi*) that was the sole guarantee of equal liberty.²² You will soon notice that Livy allows for more than one *sole* guarantee of liberty; besides the time limit on office, he also hails the right of appeal and the tribunician right of intervention.

The story accelerates: the *decemviri* were created as a magistracy without right of appeal, and when they demand a levy for the Sabine war, there is no option; the men of fighting age must enlist (3.41.7). It is quickly followed by two scandals. The appetizer is the murder of the popular agitator Siccus while on military duty, covered up by a report that he had been attacked by enemies while reconnoitering, but exposed when the detail sent to bury the dead found his body fully armed and surrounded by the corpses of his actual, Roman, assassins (3.43).

²⁰ The key text is Livy 10.9.3 on the increased sanctions of the third Valerian law of 366. Livy explains the repetition at two levels: politically *plus paucorum opes quam libertas plebis poterat*, and more specifically, although the earlier Valerian law had forbidden the beating and beheading of citizens who had appealed to the people, the only sanction against the offender was to stigmatize his action as *improbe factum*.

²¹ 3.39.6 *viderent ne vetando in curia libere homines loqui extra curiam etiam moverent vocem*.

²² *Vicissitudinem imperandi quod unum exaequandae sit libertatis*.

Then comes the real *nefas*, a word Livy does not throw around.²³ The tyrannical *decemvir* Appius Claudius abuses his legal powers to gratify his lust for Verginia, the maiden daughter of a gallant soldier.²⁴ She is vulnerable to his attack precisely because her father is currently serving as a centurion on Mt. Algidus. You know the basic story, which has borrowed circumstantial details from Roman comedy: when the villain cannot bribe or seduce his target, he has a client seize the defenceless maiden on her way to school in the Forum with her nurse. The old lady calls on the *fides* of the Roman people, uttering the ritual cry known as *quiritatio*,²⁵ and the crowd that rushes to defend her leads Appius' agent to give up the idea of abduction. Instead he substitutes a false charge that she is one of his girl slaves who had been abducted by Verginius.

What matters about this story is that now, when Rome has laws for the protection of citizens, a lying claimant and a perjured magistrate can make a mockery of these laws. And it is again military service that has deprived the girl of her father's protection (she seems to be motherless). Even so, her betrothed, the tribune Icilius, offers a heroic speech that makes politics of personal injustice by denouncing the Board of Ten for overriding the two citadels protecting Roman liberty,²⁶ the tribune's *ius auxilii* and the citizen's right of appeal to the people, but he is overpowered by Appius' lictors. All he can obtain is an adjournment, while family members are sent to fetch Verginius from camp before the next day's hearing. In the last breathless act of this drama Verginius arrives just as the magistrate and his co-conspirator begin the last phase of the lawsuit, but is fended off by Appius' lictors and unable to intervene. Livy paints a scene of grief and indignation, with a chorus of *matronae*,

²³ Livy 3.44.1 points the moral before he tells the tale: as Lucretia's rape and death brought the expulsion of the Tarquins, so the fate of Verginia precipitated the end of the Decemvirate.

²⁴ The story is simpler in Cic. *Rep.* 2.63 and D. S. 12.24.2. For the balance of fact and imagination in the story of Verginia see Wiseman 1979: 106–7.

²⁵ 3.44.7 *Fidem Quiritium implorantis*; cf. n. 15 above. This is the second of three such appeals during the story of the tyrannical *decemviri*; cf. Valerius at 3.41.4 and Icilius at 3.45.9 *ego praesentium Quiritium pro sponsa, Verginius militum pro unica filia ... implorabimus fidem*. Elsewhere Livy uses *quiritare* (39.8.8 and 10.7) and *quiritatio*, (33.28.3, cf. Varro, *L.* 6.68) on which see Lintott ch. 1 "Popular Justice": *quiritatio* was always an emergency appeal against present violence, whereas *flagitatio* (see below) was the initiative of one who believed himself financially or legally wronged.

²⁶ *Duas arces libertatis tuendae*; for the speech see 3.45.6–11, which also enunciates the principle that a Roman girl should only leave her father's home to enter that of her husband.

first dumbstruck with grief then wailing and lamenting. The girl is adjudged as a chattel, *mancipium*, of the false claimant, and Verginius can save his daughter's honor only by taking her life. The result is another abandonment of the city by the plebs, a bill of amnesty passed by the tribune Icilius at the popular assembly, and the clean sweep of the new consuls Valerius and Horatius, who pass new laws forbidding the creation henceforward of any magistracy immune to popular appeal. Once again—or so it seems—Livy sums up: “now that the tribunician power and the liberty of the plebs had been established,” Verginius is free to proceed against Appius; only the villain's suicide before trial ends the saga.

Was military service always such a ruinous burden? At this stage soldiers went unpaid and had to provide their own supplies.²⁷ When the Senate finally decrees a *stipendium* for the troops, a corresponding *tributum* is levied from civilians to finance the military budget. This would last until the cost of the armed forces was transferred to Rome's subject provinces after Pydna in 167.

By then it may have become profitable for good soldiers to prolong their service. We normally date the professional army of propertyless *proletarii* to the Numidian and Gallic campaigns of Marius, but one figure emerges from Livy's narrative of the third Macedonian war who clearly stands for the professional soldier. This is the former sergeant-major Spurius Ligustinus, a war hero who has served twenty-two campaigns, and originally protests at the levy not because he is unwilling to serve but because he is being asked to serve at a lower rank. From whatever source, Livy has confected a personality who encapsulates his biography in one telling speech and has every reason to seek renewal of his military service. Ligustinus tells the crowd assembled for enlistment that he is Sabine, and grew up in a little hut on a *iugerum* of land, the hut in which he still lives with his family. His father betrothed him to his cousin, whose only dowry was her free birth (*libertas*), chastity, and fertility. Why mention her *libertas*? Because only a freeborn citizen woman could give birth to citizen sons—this was, in fact, her chief function. Ligustinus' cousin and wife bore him eight living children, six sons, of whom four are now serving as soldiers, and two daughters, both married. This man is proud of the generals under whom he served, and lists his campaigns in Macedonia and Spain, the triumphs in which he was selected to parade, his promotions, first to centurion, then to chief centurion, and the military awards he has received.²⁸

²⁷ Twice in book 3 (23.3 and 27.3) Livy mentions instructions to soldiers to take supplies of cooked food with them.

²⁸ For sample awards to centurions between 200–167 see Brunt 395. Spain was particularly lucrative.

In fact he particularly mentions Cato, under whom he served in Spain, as a commander who knew a good soldier when he saw one. Was Cato then Livy's source? Had he been reading the *Origines*? With a chief centurion's pay, with bounties paid at the end of each campaign and first pick of the spoils, this man has enjoyed an income way beyond any possibilities on the farmstead—and escaped the sounds of quarrelling and weeping children. Surely it is his wife who deserves our sympathy, and women like her, such as Horace's Sabine mother of "manly offspring, trained to till the clods with hoes and carry home sticks when the sun shifted the mountain shadows and relieved the weary oxen of their yoke."²⁹ (Never underestimate a Sabine mother, even if Ovid and Juvenal find her unappetizing.) If Ligustinus is not an Augustan recruiting device, he is a circumstantial document of the positive side of Roman warfare, and there must have been a hard core of others like him.

For those who survived, even military service had an end, bringing a return to civilian life, perhaps enriched, as we have seen in the case of Ligustinus, by awards and a share of the spoils. The happy symbol of return was of course the triumph, the most common source of public festivity apart from the recurring religious festival games. And now I want to refocus on the positive side of citizen liberty, both the carefree moments of celebration and the degree to which there was freedom of speech for the individual Roman or collective people. The abuse of their triumphant general chanted by the soldiers is notorious but perhaps deceptive.³⁰ For one thing, it seems to have been an apotropaic custom. Like the slave in the commander's chariot who reminded him that he was mortal, the soldiers cutting their general down to size averted the risk of divine envy. We might add that the songs reported by Suetonius took the form of sexual accusations that were a kind of oblique compliment³¹: *Urbani servate uxores, calvum moechum adducimus*. Caesar's sexual versatility whether as forceful lover of civilians' wives or as supposed catamite of Nicomedes almost 30 years before his Gallic triumph was as much a compliment as an insult. We don't have to go far into the past to recall a charismatic leader whose sexual record has not harmed him with the more earthy of his fellow-citizens. And sexual innuendo seems also to have been acceptable on

²⁹ Hor. *Carm.* 3.6.37–44 *rusticorum mascula militum / proles, Sabellis docta ligonibus / versare glebas et severae / matris ad arbitrium recisos / portare fustes, sol ubi montium / mutaret umbras et iuga demeret / bobus fatigatis*.

³⁰ On the triumph songs in the popular trochaic rhythm called *versus quadratus*, and often sung in alternating question or comment and response, see Horsfall 38, 65, and 111–12, and Richlin.

³¹ Richlin 95 points to Plutarch's *Lives* for similar soldiers' songs at the triumphs of Aemilius Paullus and Sulla.

the stage, where Rome's first great comic dramatist, Naevius, speaks aside to the audience of the commander who often did glorious deeds in action, but whose father had to drag him away from his mistress's room clad only in his outer cloak. But then Naevius was long remembered for his boasts of freedom of speech: "We are speaking with a free tongue at free Liber's games," *libera lingua loquimur ludis Liberalibus*.³²

There were no games in honor of Liber in Cicero's or even Terence's Rome. But Ovid records that they had once been celebrated, along with the other public games for Jupiter, Hercules, Ceres, Apollo, and Cybele. The crunch came after Naevius, and almost certainly around the time of the inquisition against the Bacchanal cult in 186. We owe a debt to Peter Wiseman for recovering the pre-literary past of Liber's festival, and another to our own John Miller for his recent study of how Ovid presents and enlivens what was left in his day of the Liberalia.³³ Now Wiseman, who at times has been boldly speculative in reconstructing Rome's public performances to celebrate her cults and legends before the introduction of formal Greek drama, has argued convincingly, from the corpus of bronze mirrors surviving from 5th to 3rd century Latium around Rome, that Liber/Bacchus' mythical triumphs were staged with public song and dance, along with his train of satyrs and nymphs (often shown exposing their naked beauty) and maenads. These performances would not, in fact, be very different from the apparently invented reconstruction of Livy 7.2, and would extend to provide a sort of satyr-play travesty of other non-Bacchic myths. It is always difficult to distinguish visual representations of drama and burlesque from direct representations of the original myths, but Wiseman has pointed to the combination of nudity and ornament as marking women entertainers rather than mythical heroines.³⁴ Another legacy from the Bacchic celebrations is the popular favorite Marsyas,³⁵ the Silen who stole Minerva's discarded invention, the *aulos* or pipe needed to accompany both sacrifices

³² Naevius' other surviving metatheatrical statement is more ambiguous. From the *Tarentilla* Charisius quotes another slave boast: *quae ego in theatro hic meis probavi plausibus / ea non audere quemquam regem rumpere / quanto libertatem hanc hic superat servitus*, "That no king should dare to overthrow what I confirmed here in the theater by the applause I received, how far this condition of slave (in the play?) surpasses this (Roman?) liberty." In fact the reference to liberty need not be to life at Rome.

³³ Wiseman 2000: 265–300, and Miller 199–224. See also Wiseman 1998.

³⁴ Compare the representation of slaves in comic scenes on vases by showing the wrinkles in their tights; very few real slaves would have had tights to wear.

³⁵ Wiseman 2000: 273–74 dates this statue to the plebeian resurgence of around 300 B.C.E., and attributes it to one of the Marcii Rutili, but also cites Coarelli 91–111, who credits it to Marcius Censorinus the censor of 295.

and drama. For some three hundred years the defiant statue of Marsyas gesticulating and carrying a wineskin stood near the Comitium and we shall need to return to him.

When Ovid reaches March 17, he disdains the usual hymnic celebration of Liber's mythical triumphs to honor the god as inventor of sacrificial cakes (*liba*), and as Miller has neatly shown, ties in the god's gift of *liba* to the people³⁶ with the legend, told two days earlier, in which old Anna of Bovillae baked her country cakes to feed the ancient plebs when it seceded to the Sacred Mount before obtaining its tribunes (*Fasti* 3.663–74). Liber's other gift is honey, and Ovid diverts his readers with a comic sketch of Silenus' blunder when he sought honey from a tree full of hyperactive bees. But where is the drunken celebration we might expect? True, the people of Rome have only had two days to recover from the festivities of Anna Perenna, but I would suggest that Ovid's featured cakes and honey are a cover-up, or at least a substitute, for the expected carousing with Bacchus' gift of wine. One aspect of the old *Ludi liberales* persisted: the choice of Liber's anniversary as the preferred time for fathers to confer on their sons (*liberi*) the *vestis libera*, or toga of manhood³⁷ that made them not only free but adult citizens. "Why Liber's day?" asks Ovid. "Because the god too had been a boy, because he was known as Father, and his name stood for freedom." Romans saw their old Italian god as patron both of children and the state of liberty (*Fasti* 3.778–79): "Because you are *Liber*, it is through you that the garment of freedom is put on, and the path to a freer adult life" (*vestis quoque libera per te sumitur et vitae liberioris iter*). This was the time when the country folk (*rusticus . . . populus*) came to the city for Liber's festival, when the "inventor of the grape" had his own Games on his own anniversary, which he now has to share with Ceres. The theme of thwarted popular celebration, as Wiseman argues, is discreetly revived in May when Ovid's Flora explains how she overcame official resistance to celebrating her *Floralia* with mimes and the scandal of women—*nude* women—on stage. Augustus, who associated Liber/Dionysus with his enemy Mark Antony, was happy to leave the temple of Ceres, Liber, and Libera (and Flora's temple nearby) in ruins after the fire of 31 B.C.E., until a famine more than thirty years later forced him to make a public gesture of religious restoration.

³⁶ 3.725–26 *quare / vitisator populos ad sua liba vocat*. The plural is probably a metrical convenience, since *populum* would elide, but implies other folk besides the Romans. Miller compares Varro's notice at *L.* 6.14 that old women garlanded with ivy, whom he calls *sacerdotes Liberi*, sat with a griddle baking *liba* that they sacrificed for those who bought them. Virgil too includes *liba* in the feast of Bacchus at *G.* 2.394.

³⁷ Called *toga libera* at Ovid, *Fasti* 3.771 and Propertius 4.1.131.

Was Naevius alone in his advocacy of speaking out? You all know the story of his rude comment on the unwelcome election of yet another member of the dynastic Metelli as consul, and their answering threat; you may remember that later Romans (Festus 32 Lindsay and Gellius 3.3.15) interpreted as an allusion to his imprisonment an aside of three lines from Plautus' earliest comedy, *Miles gloriosus*: the speaker watches as the slave thinks up a new trick propping up his chin in his hands, and gets anxious because he recalls "the barbarian poet whose mouth was propped up as he was watched night and day by a double guard."³⁸ What we do find in both Plautus and Ennius is not criticism of any named grandee but the language of popular protest: first from Plautus, who in his *Poenulus*, presented during the Hannibalic war, brings on a group of poor men whom the rich young hero has paid to serve as (false-) witnesses. When he scolds them for their slowness they retort (*Poenulus* 515–23):

Look you, we may seem humble poor folk (*plebei et pauperuli*) to you, but if you abuse us, a rich man highly placed in society, we aren't afraid to damn you. We aren't answerable to you for what you love or hate. When we paid cash for our status (*quom argentum pro capite dedimus*) it was our cash, not yours. We have a right to be free. We don't give a damn for you, if you happen to fancy we are slaves bound to serve (*servos . . . addictos*) your love-life. It is right for free men to go through town at a leisurely pace; we think it a slave's role to run and hurry along.

The language is Roman, indeed they seem to be Roman freedmen, ex-slaves who have bought their liberty, a social category without a Greek equivalent. Does Plautus want his audience to identify with these *plebei et pauperuli*? Surely many humble townfolk would share this attitude even if the speakers seem to identify themselves as new citizens who have bought themselves out of slavery? We may find Ennius more unambiguous: while a line from his lost *Phoenix* proclaims that "true freedom is moral innocence," *ea libertas est qui pectus purum et firmum gestitat*, a popular quotation from his equally lost *Telephus*, quoted by Persius in a bolshy mood, proclaims that "it's a mortal sin for a poor chap to speak out," *palam muttire plebeio piaculum est*. This surely comes from the famous episode in Euripides' play where Telephus, disguised as a beggar, asks pardon for speaking out as a beggar, *ptôchos ôn*.³⁹ Jocelyn has

³⁸ On Mil. 211, *apage hau place ..., nam os columnatum poetae indauidi barbaro / cui bini custodes semper totis horis occubant*, see Leo 73, and for this and other stories about Naevius' public criticism of political figures and supposed imprisonment see Smith and Jocelyn.

³⁹ Cf. E. *Telephus* fr. 703 Nauck.

suggested that the line is a reproach by Telephus's interlocutor, but it is difficult not to read this as a protest on behalf of the Roman underlings. These instances of *plebeius* are exceptional, unique in what survives of Ennius. So is the expressive verb *muttire*, a word used by Plautus, like its synonym *mussitare*, for slaves muttering (as we still put it) or grumbling—"speaking out of turn." According to Livy, Tarquin was called Superbus, "the Arrogant," because the Roman crowd gave him this nickname *mussitantes*, that is, in the surreptitious gossip often referred to as *in circulis*.⁴⁰

How did the individual seek redress for a wrong, or voice criticism or accusations against an enemy? If the enemy was as humble as his victim, the old Italian tradition of self-help authorized gathering a bunch of friends to chant abuse at him either in the street, or if he stayed home, at his door: the moneylender in Plautus duns the young man for his debts by chanting "Gimme my interest, pay me my interest, all of you pay me, / are you going to give me my interest here and now? Am I getting my interest?"⁴¹ And the practice persisted: Cicero uses this practice of *flagitatio* as a metaphor when he represents Brutus claiming the literary work he has promised, and Catullus invokes all his hendecasyllables to join him in dunning a discarded girlfriend for his writing tablets, first abusively, then with hollow courtesy: "chaste and gentle lady, give me back my writing tablets."⁴² And yet as Cicero reports in *De re publica*, the Twelve Tables had long since made it a capital offence for anyone to sing or compose a chant that would bring shame and disgrace on another person, "because restitution should be controlled by the authorized magistrates, in the courts where the accused could defend himself, not depend on the whims of a versifier."⁴³ But the courts were not for the humble,

⁴⁰ *Mussitare*: Mil. 311, 477; *muttire*, *muttitio*, Mil. 565–66, *Amph.* 519; *Ita* (sc. *Superbum*) *clam quidem mussitantes volgo tamen eum appellabant* Livy 1.50.3, 7.25.1. Compare Virgil's freer use of the synonym *mussare*: *Aen.* 11.345, 454; 12.657, and (in a metaphor) 718. For the street gossip of *circuli* see now O'Neill.

⁴¹ *Most.* 603–4: *Cedo faenus, redde faenus, faenus reddite. Daturine estis faenus actutum mihi? / datur faenus mihi?* On *flagitatio*, "naming and shaming," see Lintott ch. 1 "Popular Justice."

⁴² Cf. Cic. *Brut.* 17–18 (note the noun *flagitator*), Catullus 42. For the practice of *flagitatio* see Usener.

⁴³ Cic. *Rep.* 4.12 (*ap. Augustinus C.D.* 2.9) *duodecim tabulae cum perpaucae res capite sanxissent, in his hanc quoque sancendam putaverunt, si quis occentavisset sive carmen condidisset quod infamiam faceret flagitumve alteri. praeclare!* (Says Cicero) *iudiciis enim magistratum disceptionibus legitimis propositam vitam, non poetarum ingeniis habere debemus, nec probrum audire nisi ea lege, ut respondere liceat et iudicio defendere.* The interpretation of this law mentioned in this and other passages goes back to Fraenkel 397–415 = 185–200.

or mere street gossip; we only find them in action for a more public form of abuse—abuse on the public stage: the first cases of slander are reported under the rubric of *iniuria* in the late second century, when mime actors were accused for slandering *by name* the satirist Lucilius and on a later occasion, the tragic poet Accius, head of the *collegium poetarum*. Given the elite connections of Lucilius, it is surprising that the praetor acquitted his lowborn antagonist, whereas the jurist Mucius Scaevola found the actor who named Accius guilty.⁴⁴ It is however important that these performers actually named the public men in question—we recall the Athenian prohibition on *onomasti kômôdein*. Naevius had not named young Scipio in his salacious story, and most of the actors whose words were construed as political criticism in the age of Cicero and Catullus also spoke ostensibly about the mythical figures of the tragedies they were presenting.

But what about Catullus (and Calvus)? Here we turn from oral to written abuse, from the high publicity of the popular stage to the almost private circulation of epigrams and scoptic verse. Catullus certainly abused the governors Gaius Memmius and Piso in his verse; more to the point are his poems abusing Caesar and his Chief of Staff (I almost said Vice President) Mamurra, not just for the standard sexual irregularities of adultery and pathic homosexuality, but for profiteering and extortion from the newly conquered provinces (29.1–4 and 17–24):

Who can endure that Mamurra should have whatever good stuff the longhaired Gauls and far distant Britain possessed?" . . . First he squandered his father's property, then the spoils of Pontus, then that of Spain, known to the gold-bearing stream of Tagus, and now we fear for Gaul and Britain. Why do you cherish this evil? What can this fellow do except swallow up juicy fortunes? Was it on this account, father and son-in-law, that you ruined everything?

In 29 Catullus names Mamurra, but comes no closer to Caesar than "*cinaede Romule*" and allusions to his *sinistra liberalitas*. But in 57 Caesar is both named and abused, as he is in the distich rejecting Caesar's goodwill (113 *nil nimium studeo*), while Mamurra is both freely named and nick-named as the Big Prick (94, 105, 113–14) or the Bankrupt of Formiae. It seems that naming and shaming was accepted practice in personal poetry, and even accepted with good grace by Caesar. Suetonius reports that Caesar gladly ended feuds, inviting

⁴⁴ *Rhet. Her.* 2.19: *C. Caelius iudex absolvit iniuriarum eum qui Lucilium poetam in scaena nominatim laeserat, P. Mucius eum qui L. Accium poetam nominaverat condemnnavit.* Cf. Smith 171–72. According to *Rhet. Her.* 1.24, the mime's only defence was that *licere nominari eum cuius nomine scripta dentur agenda*. Without knowing the type of accusation we cannot judge whether Caelius was applying the same standards and principles.

Catullus to dinner, despite the Mamurra poems, when Catullus gave him satisfaction, and continuing his relationship of guest friend with Catullus' father in Verona.⁴⁵ In fact Suetonius mentions in the same discussion Caesar's support for Memmius, who had attacked him in Senate speeches, and his tolerance (*Jul.* 75) of both Aulus Caecina and Pitholaus despite the former's written volume of accusations and the latter's abusive verse. Did it make a difference that these men spoke or wrote for a privileged audience, and did not attack him *coram populo*?

But this was in the fifties, probably before the renewal of Caesar's command agreed at Luca. In these same years Cicero was writing privately of freedom utterly destroyed by the Gang of Three, but did the common people share this feeling? Or even wealthy apolitical grandees like Papirius Paetus, Matius (Caesar's personal friend), or Atticus? When Cicero reports gleefully in 59 that the actor Diphilus looked pointedly at Pompey as he uttered *nostra miseria tu es Magnus!* "to our wretched cost art thou the Great One" and describes the reception of Pompey and Caesar with catcalls, were they hissing from the rear of the bleachers, or just the front stalls occupied by the Senate?⁴⁶ Cicero proclaims in the *pro Sestio* that the real feelings of the people are shown in the public meetings (*contiones*—except, of course, those of Clodius), at the games, and at the theater, but the free speech of Aesopus in 56 did not keep to the script of the scheduled tragedy, Accius' *Eurysaces*, but inserted the famous monody from Ennius' *Andromache* to lament the exile of a patriot and the destruction of his house. This *libertas*, this pointed political allusion so proudly recorded by Cicero, was no doubt encouraged, even paid for, by the political group backing Cicero newly returned from exile. Many of the common people may have relished the trimming of senatorial liberty.

And Cicero's house? Clodius had consecrated a shrine of *Libertas* on the ground confiscated from Cicero's demolished house and Catulus' adjacent portico. This shrine served a double purpose, both to highlight the official disgrace of the exiled Cicero and to recall that before Catulus the house had belonged to the people's hero Fulvius Flaccus, murdered alongside Gaius Gracchus, and had been razed to the ground by an angry Senate. It may not have been Rome's first shrine of Liberty, and the statue may indeed have been

⁴⁵ Suet. *Jul.* 73 *Valerium Catullum a quo sibi versiculis de Mamurra perpetua stigmata imposita non dissimulaverat, satisfacientem eadem die adhibuit cenae, hospitioque patris eius ... uti perseveravit.*

⁴⁶ Att. 2.19.3: *Populi sensus maxime theatro et spectaculis perspectus est; nam gladiatoribus qua dominus qua advocati sibilis conscissi; Ludis Apollinaribus Diphilus tragoedus in nostrum Pompeium petulanter invectus est: "Nostra miseria tu es Magnus"—miliens coactus est dicere.*

misappropriated from Greece, if not actually stolen, as Cicero claimed, from a common courtesan's tomb.⁴⁷

But just this once I am avoiding Cicero's top-down viewpoint, to take up the last known public display of free speech against Caesar, by the mime writer Decimus Laberius. Laberius was a free spirit; indeed he actually dared to refuse to compose a mime for Clodius. Surprising perhaps, since Laberius, who thought himself a gentleman, was usually happy enough to compose mimes that no gentleman would perform on stage. It was unwise of him to voice public scorn for his rival librettist, the ex-slave Publilius Syrus. So in the year of Caesar's quadruple triumph, when Caesar's agents sponsored performances of new mimes, they offered Laberius 500,000 HS in Caesar's name to perform in his own play. By tradition Laberius would forfeit his status as an *equus* by appearing on stage, but Caesar had made him an offer he could not refuse, and when he spoke the prologue he made this clear, opening by blaming Necessity (Bonaria 4–11):

I whom no ambition nor any bribery,
No fear or force or yet authority,
Could in my youth demote from my condition—
See how easily in old age the mild request
Charmingly spoken and in *clement* spirit
By one preeminent, has cast me down
From my estate. For who could stand that I
Refuse the man whom even gods themselves
Can deny nothing.⁴⁸

Laberius made it clear in this prologue that Caesar's "kind invitation" had humiliated him and robbed him of his social standing as a knight. To stress his point he took the role of a slave called Syrus—like the mime-writer Syrus with whom he was competing—and pretended to be running away from a beating, with the ritual appeal to the citizens

⁴⁷ The evidence is not unbiased: Cic. *Dom.* 111–12; for other references see Papi.

⁴⁸ Laberius (Bonaria 142–48), cited by Macr. 2.7.5:

Quem nulla ambitio, nulla unquam largitio
nullus timor, vis nulla, nulla auctoritas
movere potuit in iuventa de statu:
ecce in senecta facile demovit loco
viri excellentis mente clemente edita
submissa placide blandiloquens oratio.

porro, cives, libertatem perdimus!

On Citizens, we are losing our Liberty!

then—if Macrobius is reporting in proper sequence—challenged Caesar with words more proper to a tragedy, and the tragedy of a tyrant such as Atreus (Bonaria 137)⁴⁹:

necesse est multos timeat quem multi timent.

The man whom many fear must fear the many.

We have no idea of the plot of his new libretto, but both Macrobius and Seneca in his *de Ira* insist that Laberius, as if he were the mouthpiece of public emotion (*vox publici adfectus*),⁵⁰ drew the gaze of the whole auditorium upon Caesar. As for Caesar, he pronounced Syrus the victor, addressing his verdict to Laberius in comic verse (*favente tibi me / victus es Laberi a Syro*), but gave Laberius not only his promised fee but the gold ring that restored him to his former rank. But who wants the gift of a benevolent dictator? Laberius was expected to stage a second libretto, and in it he spoke of his defeat, and prophesied there would be others.⁵¹ Did the common people feel for Laberius' humiliation, or side with Caesar in rejecting the hierarchies of the governing elite?

Despite the popular practice of attaching abusive verse to the statue of the Silen Marsyas hoisting his wineskin near the Comitium,⁵² tales of anonymous messages left on the statue of Lucius Brutus "the Liberator," and diadems offered and refused at the Lupercalia, there cannot be much ambiguity about the actual desires of the Roman crowd, who showed their love of the dead

⁴⁹ The sentiment is classic, found in an unidentified tragedy of Ennius, and in a marginally subtler form in Sen. *Thy.* 203–4.

⁵⁰ *Vox publici adfectus*: Sen. *Dial.* 4.11.3.

⁵¹ Macrobius quotes as (Bonaria 165–68): *non possunt primi esse omnes omni in tempore / summum ad gradum cum claritate veneris, / consistes aegre, et citius quam ascendas cades. / Cecidi ego, cadet qui sequitur, laus est publica*. If this is simply understood as an admission of theatrical defeat, what is the drift of the last three words? That glory and honor are public property, not that of any individual?

⁵² Wiseman (see n. 35 above) on the statue of Marsyas in the Forum notes that other statues at Paestum and Alba Fucens must have been erected at or after the foundation of these colonies in 303 and 273. This is confirmed by Servius on *Aen.* 4.58 (cf. on 3.20) reporting that other Italian cities also set up statues of Marsyas to mark their autonomy. The Silen's association with liberty (*in vino libertas*?) is the reason why Augustus' daughter Julia is said by Sen. *Ben.* 6.32 and Plin. *Nat.* 21.8–9 to have held riotous nightly gatherings (protest meetings, surely?) by his statue, and crowned it as a form of defiance of her father and his patron god Apollo, who flayed Marsyas after defeating him in the music contest.

Caesar, as they had of the dead Clodius, by burning his body in the heart of the Forum, Rome's political space, and taking the Senate's furniture and even the Senate House as their fuel. Most of them would not live to see what became of the republic; or else (like the live lobster as the pot boils around him) they would not notice when Caesar's heir, after a show of restoring the *Res publica* to Senate and People, slowly but inevitably discarded his velvet glove. First the Leading Citizen turned to prohibiting horoscopes in 11 B.C.E., then he legislated investigating the authors of anonymous pamphlets, and finally he burnt the books of several abusive rhetorical historians, sending the most outspoken into exile.⁵³ The time soon came when the elder Seneca and later authors would regard Julius Caesar as a model of restraint and tolerance and both stage and courtroom were tamed into submission.

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⁵³ See Smith citing Tac. *Ann.* 1.72 and Dio 56.27.1, apparently of 12 A.D., and Sen. *Con.* 10 *praef.* 4-5 for the book burnings of Labienus, whose *libertas* was so excessive that *libertatis nomen excederet*, and later of Cassius Severus, subsequently exiled. As Smith notes, Augustus also legislated to authorize inquisitions into the authors of anonymous pamphlets (Suet. *Aug.* 55), but by the time of Tiberius Augustus was seen as the model of restraint who spared Cremutius Cordus (Sen. *Suas.* 6.23, Tac. *Ann.* 4.34).

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