THE ROMAN ARISTOCRACY AND POSITIVE LAW

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THE paradoxical circumstances in which Rome's positive law, the *leges* and *plebiscita* enacted by the Roman people, were generated in the middle and late Republic is a critical issue for Roman legal history.[1] On the one hand, the circumstances were resoundingly public, demanding full publicity and open discussion of proposals of law in meetings (*contiones*) before assemblies cast their votes. On the other hand, they were formidably rigid, governed by strict formalities and conventions that hindered any spontaneous production of law. (I have in mind the restricted role of the Roman people and the supposed prohibition against amending draft proposals in the public debate.) In this paradox is grounded a modern presumption, found in every discussion of positive law-making, that neither the Roman people nor Roman magistrates contributed substantially, in their respective ways, to the production of positive law. Instead, in public meetings magistrates merely recommended to the Roman people, or advised them against, the proposals that their clerical assistants and senatorial legal specialists, the jurists, had drafted for them, away from the public gaze.[2] In the circumstances there was no serious public argument about law.

Historical developments during the late Republic help to reinforce this presumption. During this period, when the idea of popular sovereignty held sway, the public meetings of the Roman people and their magistrates were all too often occasions for clamor and controversy, violence, and even bloody confrontations. These incidents dramatically illustrate the increasing political instability of the late Republic and the need to impose rigid controls on a system gone awry. But the paradox surfaces much earlier, in traditions about the production of the Twelve Tables that stress the need for publicity and yet restrict the production of law to an elite group of Romans.[3] Obviously, popular sovereignty and the

1. This paper is presented here more or less as it was read, except for some rephrasing and reorganization to clarify the argument. I have kept the footnotes brief.

2. For a clear statement of this view of drafting positive law, see F. Schulz, *History of Roman Legal Science* (Oxford, 1946), p. 87; A. A. Schiller, *Roman Law: Mechanisms of Development* (The Hague–Paris–New York, 1978), p. 235; and cf. most recently the assumptions in R. A. Bauman, *Lawyers in Roman Republican Politics* (Munich, 1983).

3. See the discussion of W. Eder, "The Political Significance of the Codification of Law in Archaic Societies: An Unconventional Hypothesis," in *Social Struggles in Archaic Rome: New Perspectives on the Conflict of the Orders*, ed. K. Raaflaub (Berkeley and Los Angeles, 1986), pp. 262–300.

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constitutional disarray of the late Republic are inadequate as explanations in this instance.

Some other explanations must be sought for the paradoxical circumstances of positive law-making, and I shall argue in this paper that they are rooted in the fiercely competitive character of the Roman aristocracy. While my purpose is to locate Roman positive law more securely in the political and cultural landscape to which it belongs, I do not intend to address the political character of the Roman Republic directly.[4] Instead, I propose to examine the public argument about law in order to elucidate two issues: first, the dynamics of the interaction between magistrates and people; second, the engagement of magistrates and senators in the production of positive law. At first glance the connection between these issues is superficial: they both happen to arise from the meetings of the Roman people and their magistrates that provided the occasions for the public argument about law.[5] By the end of the paper I intend to have established a fundamental connection between them.

Delivering his first speech to the Roman people as consul, in January of 63 B.C., Cicero launched his opposition to a proposal of law put forward by the tribune P. Servilius Rullus in the following way (*Leg. agr.* 2. 5. 12–13 Loeb trans.):

> [W]hen I was informed at the outset, when I was consul-elect, that the tribunes-elect were drawing up an agrarian law, I felt a desire to learn their intentions. . . . But I was kept in the dark, I was shut out. . . . I accordingly withdrew my offers of assistance. . . . In the meantime they continued to assemble privately, . . . to summon darkness and solitude to their aid in their secret meetings. . . . At last the tribunes enter upon office; the speech of Rullus in particular is expected. . . . I waited for the man's expected law and speech. At first no law is posted. He orders a meeting for December 12. A crowd gathers round on tiptoe of expectation. He unrolls a very long speech in very fine language. The only fault I could find was that . . . [no one] could be found who was able to understand what he said. . . . At last, however, as soon as I was elected, the law was publicly posted. By my instructions, a number of copyists come running up all together, and bring an exact transcript of it to me.

From this point onward in the first of three public speeches he delivered against the Rullan proposal (one of which is lost), Cicero aired in eloquent detail his objections to the man and his proposal of law.[6] As consummate political oratory, *De lege agraria* 2 has few rivals.

I begin with this speech partly because Cicero, in the passage above, presents us unintentionally with one of the most vivid descriptions we

4. The current debate about the political character of Rome was introduced by F. G. B. Millar, "The Political Character of the Classical Roman Republic," *JRS* 74 (1984): 1–19, and "Politics, Persuasion and the People before the Social War," *JRS* 76 (1986): 1–11; cf. A. Lintott, "Democracy in the Late Republic," *ZRG* 117 (1987): 34–52. On the democratic element in the law-making process, see C. Williamson, "Law Making in the Comitia of Republican Rome: The Process of Drafting and Disseminating, Recording and Retrieving Laws and Plebiscites" (Ph.D. diss., University of London, 1984), esp. pp. 46–57.

5. The best general discussion of public meetings is C. Nicolet, *Le métier de citoyen dans la Rome républicaine* (Paris, 1976), pp. 386–91.

6. Three speeches: see *Att.* 2. 1. 3.

have of the central place of publicity in the process of positive law-making. More important, the speech against the Rullan proposal, delivered to the urban plebs (2. 26. 70 and 79), provides a unique opportunity to examine the public argument about positive law in the context of the circumstances and the expectations, explicit or assumed, that generated it. The speech (together with its shorter and fragmentary companion, *Leg. agr.* 3) is unique for two reasons: first, it is one of only two complete speeches for or against a law, called *suasiones* and *dissuasiones*, among the many fragments of such speeches we have; second, it is the only speech we have that is concerned with a lengthy piece of legal drafting.[7] *Leges* and *plebiscita* comprised decisions of all kinds—about war and peace, for instance—and not all enactments of the Roman people were "law" in the sense in which we understand the word. The Rullan proposal had at least forty clauses, dealing (int. al.) with the sale and distribution of lands in Italy and abroad, with colonization, and with the institution and election of a ten-man commission to see to these arrangements. Since we know of the proposal only through Cicero's speeches, the text in its entirety and the arrangement of all its clauses are lost.[8] Yet we have a good idea of its probable complexity from a *lex agraria* enacted about fifty years before, in 111 B.C., and engraved on the back of a bronze tablet, enough of which has survived, in pieces, to fill nearly fifteen printed pages with a text having at least fifty-nine clauses concerned with the possession and disposition of public land.[9] Given the length, the tortuous legal detail, and the doubtful legibility of this text, the historian wonders how it—or any proposal like it—was handled during the decision-making process: for example, how long did it take the herald to read the text aloud to the people? My question here, however, is broader: what functions did open discussion and public debate of such a text serve? For that question the *De lege agraria* 2 is invaluable, since it constitutes the richest source we have for the formation of the public argument about law.

I emphasize formation in order to get away from the superstructure of political rhetoric, which has commanded the attention of many scholars over the years.[10] Politics and eloquence are not my concern here; nor is Cicero's deliberate misrepresentation of the proposal, discussed fully by

7. The other complete speech is *Pro lege Manilia;* the fragments of speeches by other Romans are collected in H. Malcovati, *Oratorum Romanorum Fragmenta*[3] (Turin, 1967).

8. On how much of the exact wording of the statute can be recovered from Cicero's speeches, see the recent study by J.-L. Ferrary, "Rogatio Servilia Agraria," *Athenaeum* 66 (1988): 141–64; and cf. E. G. Hardy, "The Agrarian Proposal of Rullus in 63 B.C.," in *Some Problems in Roman History* (Oxford, 1924), pp. 68–98.

9. *CIL* 1^2 585; see K. G. Bruns, T. Mommsen, and O. Gradenwitz, eds., *Fontes Iuris Romani Antiqui*[7] (Tübingen, 1909; repr. 1969), no. 11.

10. On the rhetoric, see esp. Hardy, "The Agrarian Proposal of Rullus," and C. J. Classen, *Recht-Rhetorik-Politik: Untersuchungen zu Ciceros rhetorischer Strategie* (Darmstadt, 1985), pp. 309–67.

E. G. Hardy in a study published in 1913. I am concerned instead with what Cicero chooses to discuss about the proposal, and how he discusses it.[11]

Briefly, Cicero chooses to discuss the substance and form of the proposal, in some depth. He states that it is his intention—his job as consul, in fact—to review the Rullan proposal for the people (2. 6. 14); and review it he does, very methodically. He starts on the first clause (at 2. 7. 17), then moves on to the second (at 2. 7. 18), and so on. The review is incomplete: Cicero talks about fewer than fifteen clauses. Nonetheless, we have the impression that he preserves the sequence of the clauses he does discuss. Within this orderly framework the level of discussion is legalistic, by which I mean that Cicero concerns himself with the language of the proposal, with its legal precedents and constitutional ramifications, and with issues of Roman positive law. He argues that the proposal is poorly drafted—specifically, that it is dangerously worded and does not take cognizance of existing electoral procedure or statute. To make his case, Cicero focuses on detail: he quotes from, or paraphrases, the text of the proposal. At one point he calls on the herald to read from the text (2. 18. 47–48). To emphasize constitutional inconsistencies he brings in existing law and shows exactly how the Rullan proposal deviates from it (2. 8. 21). In sum, Cicero deals with concrete issues of constitutional substance and legal draftsmanship, and he delivers precise details to back up his criticisms.

This is what I mean by the formation of the public argument about law; and I suggest that what we see reflected in Cicero's treatment of the Rullan proposal at this level, misrepresentations aside, are conventions of talking about positive law (conventions of both the middle and late Republic) requiring detailed and technical public examination of draft statutes. I stress that these are long-standing conventions of talking about law, not features peculiar to this one speech. Circumstantial and explicit descriptions of other public debates about law corroborate the conclusion: so Cicero's report to Atticus, on 15 March 60 B.C., about changes in a draft proposal that he had proposed and the people had supported (*Att.* 1. 19. 4 *secunda contionis voluntate*), in a meeting devoted to the land proposal of the tribune Flavius; and so, too, Livy's brief excursus on the conventional discussion of the faults of laws (*vitia legum*), in connection with a declaration of war put forward in 167 B.C. by the praetor M'. Iuventius Thalna (45. 21. 1–7). Both instances, I think, require us to understand the public scrutiny of draft statutes.

I am not suggesting that public scrutiny was even and impartial. Obviously, *De lege agraria* 2 is intended to persuade, and we may be

11. For discussion of the immediate political and social context of the proposal, see E. Gruen, *The Last Generation of the Roman Republic* (Berkeley and Los Angeles, 1974), pp. 389–96.

sure that Cicero, in the service of persuasive ends, has chosen his material very deliberately. Every topic and every detail in the speech can be analyzed, and has been analyzed, in terms of politics and persuasion—so much so that Hardy and Ferrary, who have produced fundamental studies of the content and actual wording of the Rullan proposal, agree that Cicero's political rhetoric limits what we can know of it precisely because he does pick and choose what he wants to talk about. Yet Hardy and Ferrary seem to start from the presupposition that there was no substantial public discussion of the Rullan proposal; instead, the primary aim of the speeches was persuasion.[12] On this point I disagree. The methods and aims of persuasion and the nature of political oratory notwithstanding, I imagine that speeches for and against a law were conventionally crafted around a close review of the substance and language of the proposals.

The convention is in fact assumed in the *De lege agraria* 2 itself, in the foundations Cicero builds in the first minutes of his speech for his denunciation of the Rullan proposal. Fueling all Cicero's criticisms of the language and wording of the proposal, and of its dangerous and glaring misuse of existing law, is the accusation that Rullus did not know what he was doing. He was an incompetent lawmaker.[13] I take it for granted that the accusation was credible to Cicero's audience, in this case some portion of the urban plebs (how big or small a portion is irrelevant), and thus that it has wider ramifications. It provides a glimpse of the aristocrat's understanding of the people's expectations about what magistrates—specifically, magistrates and ex-magistrates who were or had been lawmakers, that is, tribunes, praetors, and consuls—did on occasions of positive law-making. Magistrates had skills and responsibilities, and the people noticed how well they implemented them.[14]

A convention that produces the level of technicality and the volume of detail exhibited in *De lege agraria* 2 raises a question about the functions of open discussion and public argument. Cicero's reading of his

12. See Ferrary, "Rogatio Servilia Agraria," pp. 141 and 164, agreeing with Hardy, "The Agrarian Proposal of Rullus," pp. 71–72.

13. He was hostile to the Roman people, he dissimulated, he did not know Rome's positive law, he was furtive in promulgating his proposal to the people, he maneuvered to keep the Roman people ill-informed (*Leg. agr.* 2. 1–6). The competent lawmaker, according to Cicero, enacted statutes in the people's interest, was knowledgeable about Rome's positive law, and was direct and conscientious in bringing his knowledge and expertise to the public argument about law—like Cicero, the *consul popularis,* who desired to advise and assist the tribunes in formulating their proposal, and who acted promptly to send copyists (*librarii*) to transcribe the proposal, so that he could study it and bring the people his expert analysis (ibid. 6. 14). Rullus acted out of self-interest, whereas Cicero held the people's interests uppermost and fulfilled his responsibilities toward them.

14. Of course, Cicero may have misread his audience: the defensive tone of *Leg. agr.* 3 and the fact that there was yet a third public speech suggest that *Leg. agr.* 2 was not the overwhelming success scholars sometimes assume (e.g., P. A. Brunt, "The Fall of the Roman Republic," in *The Fall of the Roman Republic and Related Essays* [Oxford, 1988], p. 46). My point is that Cicero constructed an argument that he thought would succeed; whether or not it did is irrelevant. On the interest of the urban *plebs* in the Rullan proposal, see the comments of Gruen, *Last Generation,* pp. 393–96; for a different view, Brunt, "The Army and the Land in the Roman Revolution," in *Fall of the Roman Republic,* pp. 245 and 250–51 (the urban *plebs* was not interested in land allotment).

contemporaries assumes that they took the public argument about law seriously, and not for the reasons usually advanced by Roman aristocrats, to say nothing of modern scholars. The functions of public meetings convened to discuss positive law have always been described in terms of explaining the law to the Roman people, who otherwise could not understand the complex and complicated language in which positive law was couched.[15] The terms are Roman: without a doubt one of Cicero's primary aims in speaking to the people about the Rullan proposal was to tell them what it was really all about (as opposed to what the tribunes and their supporters said it was really all about). Yet when Cicero concerns himself with concrete issues of drafting he must take it for granted that the Roman people can appreciate technical details and that it matters to them exactly what the law says; given the proposal we should not be surprised. The conclusion that the Roman people were sophisticated about positive law, and that their magistrates recognized this, seems unavoidable.[16] The comic poet Plautus provides confirmation from the middle Republic in the allusions to Roman positive law and law-making in his plays, which can have been effective as comedy only if they resonated with a popular appreciation of the language of positive law and the process of law-making.[17]

To be sure, the attitude among magistrates and senators about the role of the people in making enactments was strongly paternalistic. As is well known, they did not view the people's knowledge about positive law and the law-making process as serious.[18] Whether the people shared that view we unfortunately cannot know; the reality is that whatever their level of knowledge about positive law, it hardly mattered, because the people did not participate formally in the production of positive law in any way except as voters. But it is worth stressing that in situations that do allow popular attitudes to emerge, the aristocratic view is never represented in quite the same way. In spite of the paternalistic attitude of Roman aristocrats toward the people, a strong measure of self-reliance is plainly operative in the manner of their participation in positive law-making, specifically in their support of or opposition to proposals of law, expressed through their votes.[19] This self-reliance may only have been a matter of choice, and indeed probably was only that.

15. Cf. L. R. Taylor, *Roman Voting Assemblies* (Ann Arbor, 1966), p. 16.

16. Arguably, the Roman people had a range of knowledge about positive law-making equal to that of commentators: comparison of *Leg. agr.* 2 and 3 with *Leg. agr.* 1 (delivered in the senate) suggests that discussion of law in public meetings was no less technical than discussion in the senate, even if Cicero chooses to talk about different areas. On the danger of underestimating the ordinary Roman's appreciation of law-making procedure, see P. Moreau, "La rogatio des huit tribuns de 58 av. J.-C. et les clauses de sanctio reglementant l'abrogation des lois," *Athenaeum* 77 (1989): 164, n. 58. For a comparison of *Leg. agr.* 1 and 2, see Classen, *Recht-Rhetorik-Politik*, pp. 309–67.

17. E.g., Plaut. *Amph.* 64–74 and *Pers.* 70–74.

18. In *Leg. agr.* 2, Cicero seems to assume that the people rely on the knowledge of magistrates and senators, an ideal dependency he makes more explicit in *De legibus* (3. 4. 11, 19. 43).

19. E.g., Livy 45. 35. 7: the army intends to stay away from an assembly. On the independence of the people, see the comments of Brunt, "Fall of the Roman Republic," p. 26, and "*Libertas* in the Republic," in *Fall of the Roman Republic*, pp. 315–16.

But the reality of voting was far more complicated than the paternalism of Roman aristocrats implies. There were legitimate needs, legitimate complaints and solutions, and magistrates who represented them.

Another approach to the public argument is needed. I come at last to the two issues I set out at the beginning of my paper, the dynamics of the interaction of aristocrats and people and the engagement of aristocrats in the production of positive law. I suggest that fueling their interaction in the open discussion about law are two cultural conditions that span the middle and late Republic, involving the customary methods of publicizing information and the customary arenas for aristocratic competition. At issue in the first of these conditions is the communication of information in a community of restricted literacy.[20] Written and oral modes of publication operated in tandem in Rome in the first century B.C., but the continuing predominance of oral communication as the effective and customary means of publicizing information is evident in the formal emphasis on proclamation, and emerges from scattered references in ancient sources.[21] Oral communication brought law into the public domain. Consequently, the exigencies of oral communication may be seen to be partly responsible for the level and manner of presentation of detail in Cicero's speech against the Rullan proposal.[22] The careful articulation of fairly complex material in the speech is striking. Yet Cicero assumes no previous knowledge of the proposal's contents or access to the text on the part of his audience. He tells them what they need to know, with the result that modern scholars have charged him with manipulation and bias. But to what degree is the people's knowledge of the proposal dependent on Cicero's preselection of material? It is worth remembering that *De lege agraria* 2 is one of several public speeches that were delivered in at least four meetings: there were three public speeches by Cicero and at least two by Rullus. Presumably there were other speeches, by other senators and magistrates. That is a lot of talking. Looking at the detail of *De lege agraria* 2 from the perspective of customary ways of disseminating public information in the late Republic, I think we may reasonably suppose that one of the functions of the public argument, and part of the convention of speaking for and against proposals of law, was simply to communicate the proposal. The public debate helped to insure the central place of publicity in the decision-making process.

The second cultural condition concerns the customary arenas for competition among Roman aristocrats. Public meetings provided one such arena; specifically, the public debate about law provided aristocrats

20. On literacy in Rome, see W. V. Harris, *Ancient Literacy* (Cambridge, Mass., 1989), pp. 149–284.

21. See C. Williamson, "Monuments of Bronze: Roman Legal Documents on Bronze Tablets," *CA* 6 (1987): 164, and more fully in ead., "Law-Making in the Comitia of Republican Rome," pp. 64–80.

22. The formation of the argument depends on information Cicero himself supplies, as he gives the details that the people need to follow his objections: he tells the people about legal precedents (*Leg. agr.* 2. 8. 21), and he paraphrases or quotes large sections from the law (ibid. 18. 47–48).

with the opportunity of exercising influence.[23] The exercise of influence dominated the public debate and the whole process of positive law-making. It began even before a lawmaker promulgated a proposal of law, when he sought the advice of other magistrates and ex-magistrates in drafting it (note the consul Cicero's complaint that the tribunes of 63 had *not* sought his advice). After promulgating his proposal, the lawmaker sought the approval of the senate, the repository of *auctoritas* and traditionally also the main source of advice and affirmation. The publicly expressed approval of the senate as a body could be critical in the progress of a proposal of law, even in the late Republic.

A lawmaker also regularly sought the public support of powerful men, inviting magistrates and senators to contribute to the public discussion precisely because they were powerful. Cassius Dio's description of the public meeting convened by Caesar as consul, in 59 B.C., to promulgate his land law illustrates the point especially well, because when Dio failed to comprehend the political behavior of aristocrats in the late Republic he looked for explanations. In any event, in his meeting Caesar solicited the comments of other magistrates on his proposal, beginning with his colleague, M. Bibulus, who refused. Then Caesar asked the senators Pompey and Crassus. Dio notes that Caesar extended the invitation even though both men were *privati,* holding no office in that year, and he explains Caesar's choice of interlocutors in terms of the hierarchy of influence linking aristocrats and people (38. 4. 5–6).[24] Livy, a more reliable commentator on republican political practices, places a different emphasis on *privati.* In connection with the incident involving the praetor M'. Iuventius Thalna in 167 B.C., to which I have already referred, Livy comments that *privati* were customarily asked to speak about a law before a veto was interposed so that they could point out faults in the law (*vitia legis*), if any, or prevent a veto by their *auctoritas* (45. 21. 6–7). The *privati* Livy refers to would have been ex-praetors and ex-consuls, as Pompey and Crassus were in 59. Nonetheless, Dio's explanation emphasizes the political reality in the late Republic, that the influence of a Roman aristocrat in a private capacity matched and even exceeded the collective *auctoritas* of the senate or the official *auctoritas* of a magistrate in matters of law-making. Of course, Caesar's meeting in 59 B.C. was in one very important respect exceptional: it was convened despite the senate's refusal to affirm Caesar's proposal or even to discuss it. Caesar promulgated the proposal without the senate's approval (Cass. Dio 38. 3. 3). But then he sought the affirmation of individual, high-ranking senators and pointedly replaced the opinions of the senate, of his colleague in the consulate, and of other magistrates, with those of two *privati.* Power usually prevails. Yet in this incident there is no

23. On the influence to be had from speaking, cf. Cic. *Mur.* 29.
24. Cf. Cass. Dio 39. 35. 1–2.

question of the abuse of power, or indeed of the subversion of convention. Caesar followed the rules. What made it exceptional in 59 is the fact that he was consul, not tribune.

In order to exercise his influence an aristocrat had to participate in the public debate. But participation was not always guaranteed. In fact, the opportunity of speaking, which by convention all magistrates and ex-magistrates had, was hotly contested and cunningly manipulated, especially among men who had not held the office of praetor. Consider, for example, what happened in the final meeting convened by the tribune Trebonius in 55 to discuss a proposal about consular provinces. The proposal was controversial and the meeting adversarial. The *privatus* Cato (ex-quaestor and ex-tribune), when allotted two hours to speak, devoted them to political matters peripheral to the proposal and did not address himself directly to the proposal, because (Dio writes) he wanted an excuse to charge that Trebonius had not allowed him to discuss the proposal (Cass. Dio 39. 34. 3). And so it happened that when his time was up and he was requested to step down, Cato would not; and when Trebonius had him pulled from the tribunal, Cato climbed back up. Finally, he was hauled off to prison. Still more incidents occurred on the following day, when the meeting was resumed. In one incident, Trebonius prevented a fellow tribune from speaking by locking the door of the senate house, where he had spent the night in order to avoid being kept forcibly from the forum in the morning. What was at stake was success or failure, measured in terms of the vote, in the short run, but also undoubtedly measured, over the long run, in terms of building a reputation through speaking.[25]

Typically, magistrates took great care to bring proposals of law to public attention, and in every case the communication of information was entirely in their hands and (in a formally different way) the hands of senators. Thus they brought their influence to bear. Yet there were other sources and other avenues of influence: the Roman people in particular exerted a pressure of their own on magistrates and senators. The vote, of course, was crucial. The voters themselves were even more important, in the late Republic, as is demonstrated amply by the efforts to bring in one group or exclude another from voting in Rome. But the vote was not the only way in which the people could express their opinion, or demonstrate their self-reliance, and thereby exert their influence. On other occasions the people made their wishes known.[26]

Thus, the absolute control by aristocrats of positive law-making has as its corollary the absolute dependency of aristocrats on the Roman people. The interaction between the Roman people and their magistrates was complementary, interdependent, publicly acknowledged on the oc-

25. On the importance of speaking, see Nicolet, *Métier du citoyen,* p. 387; Millar, "The Political Character of the Classical Roman Republic," p. 17, and "Politics, Persuasion and the People," pp. 1–11; and Brunt, "Fall of the Roman Republic," pp. 46–47.

26. E.g., at a show, an assembly, or a meeting: Cic. *Sest.* 106.

casions of law-making, and enshrined in the formula that headed each enactment and was engraved in large letters across the top of bronze tablets. A hypothetical example would read: "Publius Servilius Rullus (et al.) duly asked the plebs, and the plebs duly accepted. . . ." The public glory of having one's name displayed prominently in Rome's public spaces, alongside tablets or statues bearing the names of one's ancestors, in glistening, permanent bronze must have been a lure in itself.[27]

In summary, the paradoxical circumstances in which positive law was generated in both the middle and the late Republic reflect the necessary conditions for competition among aristocrats in the public arena provided by positive law-making. In the late Republic the political significance and uses of legislative assemblies by aristocratic law-makers, especially tribunes, increased significantly; and enactments aiming to control their legislative activity appear (int. al.) in the series of enactments between 133 and 50 B.C. regulating the law-making process.[28]

My argument has ramifications beyond the issue of the interaction of aristocrats and people in two much broader topics: the conditions in which positive law was drafted, and the engagement of magistrates and senators generally in the process. There was serious public argument about law in Rome; and a purpose of such argument, in addition to communication, was undoubtedly to amend law. *De lege agraria* 2 provides a case in point. We do not know what happened to the Rullan proposal, but it appears to have been withdrawn before a voting assembly was convened, despite the support of Cicero's colleague in the consulate and other senators (Cass. Dio 37. 26. 4). Cicero talks in another speech of a threatened veto by one of Rullus' colleagues (*Sull.* 65); but it never came to that. Instead, the proposal was withdrawn.[29] We know the kinds of objections Cicero raised to the proposal as drafted, and we know that in a meeting three years later, in 60 B.C., Cicero spoke in support of a land proposal that was purportedly similar to the Rullan proposal, suggesting amendments that should be made. In these cases the public argument clearly provided an opportunity for corrections, improvements, and changes in draft proposals. The constitutional niceties are another matter.

My conclusion is that magistrates and senators had to be actively engaged in the production of positive law. Moreover, they had to know what they were doing, as Cicero clearly intimates. Obviously, some would know better than others, but consultation of one's superiors in

27. On this, see Williamson, "Monuments of Bronze," pp. 160–83, and "Law-Making in the Comitia of Republican Rome," pp. 183–87. The links between ordinary Romans and aristocrats are discussed in M. Beard and M. Crawford, *Rome in the Late Republic* (Ithaca, 1985), pp. 62–65.

28. In particular, the *Lex Caecilia Didia* of 98 B.C., instituting a minimum interval of three market days between the promulgation of a proposal of law and the vote taken on it; the *Lex Iunia Licinia* of 62 B.C., regulating the manner of deposition of statutes approved by assemblies in the state archives; and laws concerned with voting procedure, with suitable days for convening assemblies, and with auspices and omens: note esp. *Lex Papiria tabellaria* (131 B.C.), *Lex Maria de suffragendis ferendis* (119 B.C.), and *Lex Clodia de iure et tempore legum rogandarum* (58 B.C.).

29. On the failure of the proposal, see Gruen, *Last Generation,* p. 394.

the hierarchy of experience and expertise was a typical practice. In positive law-making it was not jurists alone who provided the expertise, but also high-ranking senators generally, who had held the offices of praetor and consul. But this is an area requiring further investigation. What needs to be looked at especially is the manner of the interaction between magistrates and their clerical assistants.[30] The competitive character of the Roman aristocracy and its operation in the public arena of positive law-making should be taken as the starting point.

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30. See Williamson, "Law-Making in the Comitia of Republican Rome," pp. 81–102 and 123–31; and cf. the general comments of N. Purcell on the bureaucracy and administrative arts during the Principate, "The Arts of Government," in *The Oxford History of the Classical World,* ed. J. Boardman, J. Griffin, and O. Murray (Oxford, 1986), pp. 588–89. On *scribae,* see N. Purcell, "The *Apparitores:* A Study in Social Mobility," *PBSR* 51 (1983): 125–73 (mainly in the Principate), and B. Cohen, "Some Neglected Ordines: The Apparitorial Status-Groups," in *Des ordres à Rome,* ed. C. Nicolet (Paris, 1984), pp. 23–60.