

lips. An appropriate person to argue the case for employing the Horse would be Ulysses, who in most versions is the originator of the idea.²⁹ The *Equus Troianus* may have ended with the reflection 'sero sapiunt Phryges';³⁰ Troy was captured by superior intelligence rather than brute force.³¹

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been familiar with whatever Greek play(s) lay behind the *Equus Troianus*. Philostratus (*Heroicus* 4.3) shows that elsewhere in the tradition Sthenelus objected to the morality of the Horse as κλοπήν τῆς μάχης (p. 35.16, ed. L. De Lannoy [Leipzig, 1977]). One is reminded (with Malcolm Campbell in his edition of Q.S. 12, p. 25) of Idas' outburst (Ap. Rh. 3.558ff.) against the proposal to enlist Medea's help in order to win the Golden Fleece—it is the association with females (Aphrodite as well as Medea) which particularly riles him, ὦ πόποι, ἥ ῥα γυναιξὶν ὁμόςτολοι ἐνθάδ' ἔβημεν (558).

²⁹ See Austin on *Aen.* 2.264; cf. *Aen.* 2.44 'sic notus Ulixes?' (although Laocoon has no way of knowing that Ulysses masterminded the whole idea).

³⁰ See Shackleton Bailey on Cicero, *Ad Fam.* 7.16 = 32 S.-B.1 and n. 21 above.

³¹ I am grateful to Professor Nisbet for comments on a first draft of this article.

ON THE INTERPRETATION OF CICERO, *DE REPUBLICA*¹

1.39.2: eius autem prima causa coeundi est non tam imbecillitas quam naturalis quaedam hominum quasi congregatio; . . .

Apropos *congregatio* Zetzel remarks 'the metaphor is qualified by *quasi* . . ., as it more properly refers to animals rather than men'. It seems doubtful, however, that in general the *-grego* compounds were at this date felt as vividly metaphorical: *segrego* is used of human beings as early as Plautus and Terence (*Mil.* 1232; *Heau.* 386; other occurrences at *OLD* s.v., 1; Forcellini s.v., II); *aggrego* is commonly so used by Cicero (Zimmermann, *TLL* s.v., I). Moreover, our passage is the first attestation of *congregatio*. Cicero uses the word three times in *De Finibus* (2.109, 3.65, and 4.4), of which the latter two passages also refer to human beings but are without *quasi*. Hence the use of *quasi* in our passage is likely to be related above all to the newness of the term, albeit the etymology may be more strongly felt in a new coinage. Cf. *TLL* 4, 288.26ff.

1.53.1–2: nam aequabilitas quidem iuris, quam amplexantur liberi populi, neque servari potest—ipsi enim populi, quamvis soluti effrenatique sint, praecipue multis multa tribuunt, et est in ipsis magnus dilectus hominum et dignitatum—eaeque quae appellatur aequabilitas iniquissima est. cum enim habetur honos summis et infimis, qui sint in omni populo necesse est, ipsa aequitas iniquissima est; . . .

In this passage the usage of *aequitas* and *aequabilitas* has caused difficulty. Fantham sees this passage as 'claiming that political equality for high and low is not real *aequabilitas* but mere *aequitas*, falling short of a higher concept of fairness, for which the speaker reserves *aequabilitas*'.² Zetzel paraphrases (*ad loc.*): 'it is claimed that

¹ These notes are based upon the useful and stimulating volume by J. E. G. Zetzel: *Cicero, De Re Publica: Selections* (Cambridge, 1995). I should like to thank the Editors and the anonymous referee for helpful advice.

² E. Fantham, 'Aequabilitas in Cicero's political theory, and the Greek tradition of proportional justice', *CQ* 23 (1973), 285–90, at 287.

since even radical democrats apportion positions of honour unequally, therefore all equality is impossible. This criticism is sharpened by referring to “so-called equality” as inequitable, and then by making *aequitas* “fair apportionment” the object of attack.³

Though not coined by him, *aequitas* was a favourite word of Cicero, whereas *aequabilitas*, first attested in Cicero, may have been, as Fantham suggests (286), his coinage. Where it refers to *ius* or *iurisdictio* it evidently has the sense ‘even-handed’, ‘fair’, as the gloss δίκαιος and various passages suggest, e.g. *Her.* 3.4: *iustitiae partibus utemur . . . si dicemus in omnibus aequabile ius statui convenire* (where Caplan translates *in omnibus aequabile ius* as ‘the principle of dealing alike with all’); cf. *TLL* s.v., 1, 991.81ff. Also relevant here is Cicero’s reference to an *aequabilis praedae partitio* at *Off.* 2.40, a practice cited to show that the *opinio iustitiae* counts for something even among bandits. The *aequabilitas iuris* of our passage which, according to Scipio/Cicero, the democrats pay lip-service to but do not practice surely refers to an even-handed distribution of rights; and the reason they do not practice it is that *multis multum tribuunt*; this implies that they pass out honours promiscuously to worthy and unworthy alike. Hence the conclusion: *ea quae appellatur aequabilitas* (sc. *iuris*) *iniquissima est*; in other words, the designation of their policy by the democrats, *aequabilitas* (sc. *iuris*), is a misnomer and their system of governance itself unfair.

Lest his explanation be found too elliptical, Cicero illustrates further in the following sentence. Here he specifies the case *cum . . . par habetur honos summis et infimis*, which was not made clear in the previous discussion, where merely the number of honours had been mentioned and a concomitant degradation of honours implied rather than stated. The result is: *ipsa aequitas iniquissima est*, i.e. the equality (sc. of honours) itself is most unequal (sc. because it takes no account of the differences in worthiness [based on rank or merit] among the recipients). In other words, *aequabilitas iuris* is the democrats’ description, rejected by Scipio/Cicero, of their principle of governance. When we come down to the narrative of a concrete case the situation entailed is *aequitas*, i.e. an equality (sc. of honour).³

The difference between *aequabilitas* and *aequitas* in this passage, then, is not so much that between a higher and a lower concept of fairness (cf. Fantham) as between a principle of governance (*aequabilitas iuris*) and the description of a specific situation (*aequitas* [sc. *honorum*]); and not *aequitas* but *aequabilitas* should be rendered as ‘fair apportionment’ and not *aequabilitas* but *aequitas* as ‘equality’ (cf. Zetzel).

1.68.7: Following the lengthy passage compressed from Pl. *R.* 8.562cff., Cicero describes the rise of the tyrant in a democratic polity:

cui quia privato sunt oppositi timores, dantur imperia et ea continuantur . . .

These words are commonly referred to Pompey,⁴ who received a special five-year *cura annonae* in 57 to free him from the embarrassment of being virtually under siege in

³ 1.43 contains a similar argument in more pointed form: . . . *ipsa aequabilitas est iniqua, cum habeat nullos gradus dignitatis*. Here *aequabilitas* evidently again means ‘even-handedness’ and, as the context suggests, refers to the distribution of honours; but there is still some difference between the ‘evenness’ (*aequitas*) of the honours distributed in the situation described in our passage and ‘evenhandedness’ (*aequabilitas*) in the distribution of honours in 1.43.

⁴ Zetzel *ad loc.* referring to R. Meister, ‘Der Staatslenker in Ciceros *De re publica*’, *WS* 57 (1939), 57–112, at 70, who in turn refers to Eduard Meyer, *Caesars Monarchie und das Prinzipat des Pompejus*² (Stuttgart and Berlin, 1919), pp. 105 and 115ff., with full references to primary sources.

his home by Clodius' partisans. Perhaps even more on Cicero's mind as he wrote *De Republica* would have been the case of Julius Caesar, whose position in early 56 had become critical, though he was able to repair it brilliantly at the council of Luca in April and then in June to obtain, with some assistance from Cicero (*De provinciis consularibus*), the continuation of his *imperium* in Gaul for five more years.⁵ The phrase *et ea continuantur* surely suggests Caesar rather than Pompey, whereas the *timores* would fit either man.

2.47.1: Videtisne igitur ut de rege dominus exstiterit, uniusque vitio genus rei publicae ex bono in deterrimum conversum sit?

Zetzel comments *ad loc.*: 'The same theme at 59.1 *propter unius libidinem*; the "one bad apple" theme may be a defence of the upper classes against plebeian criticism'. In both passages there is an implicit *locus a comparatione* contrasting the altered whole with the one member that served as a catalyst for change.⁶ A defence along lines suggested by Zetzel might apply to the crime of the *faenerator* L. Papirius (cf. Liv. 8.28), alluded to obliquely at 2.59.1. But in our passage the reference is to the *iniustus dominus atque acerbus* Tarquinius Superbus (2.44.1), so that the upper class in general is scarcely implicated.

2.53–4: idemque, in quo fuit Publicola maxime, legem ad populum tulit eam quae centuriatis comitiis prima lata est, ne quis magistratus civem Romanum adversus provocationem necaret neve verberaret. provocationem autem etiam a regibus fuisse declarant pontificii libri, significant nostri etiam augurales; itemque ab omni iudicio poenaeque provocari licere indicant XII tabulae compluribus legibus; et quod proditum memoriae est decemviro qui leges scripserint sine provocatione creatos, satis ostendit reliquos sine provocatione magistratus non fuisse; . . .

Cicero's famous account of *provocatio* raises various difficulties. He is clearly following a narrative source or sources in which this institution is credited to P. Valerius Publicola. This construction, though common coin among annalists of the late Republic, cannot be historical, as modern historians are agreed; it rests rather upon the desire to connect this bulwark of the liberty of the plebs with a great name from early Republican history.⁷ Cicero is not uncritical of this version of events either, but his criticism points in a different direction from that of modern historians: he believes not that this account retrojects *provocatio* to an earlier period, but rather that it dates *provocatio* too late; in his view there was already a right of appeal (*provocatio*) from the decisions of the kings. In Livy's narrative Horatius after being convicted of treason interposes the appeal *provoco*, whereupon the case is referred to the people (1.26.8). This suggests that Cicero may have found regnal *provocatio* in another annalist tradition.⁸ Perhaps to avoid anachronism he appeals, however, to

⁵ Cf. M. Gelzer, *Caesar. Der Politiker und Staatsmann*⁶ (Wiesbaden, 1960), pp. 108ff. = *Caesar. Politician and Statesman*, trans. Peter Needham (Cambridge, MA, 1968), pp. 119ff.

⁶ Cf. Heinrich Lausberg, *Handbuch der literarischen Rhetorik*³ (Stuttgart, 1990), §395.

⁷ Cf. Volkmann, *RE* 8A1 (1955), 183.22ff.; J. Bleicken, *ibid.* 23.2 (1959), 2446.11ff., citing earlier literature; R. M. Ogilvie, *A Commentary on Livy Books 1–5* (Oxford, 1965), *ad* 2.8; Andrew W. Lintott, 'Provocatio. From the struggle of the orders to the principate,' *ANRW* 2 (1972), 226–67, at 231 ('a probably anachronistic and invented first *provocatio* law'); similar to Bleicken is A. Drummond in *CAH* 7².2, 219–21 (the Lex Valeria of 300 alone authentic); somewhat differently T. J. Cornell, *ibid.*, 400, accepts that the *ius provocationis* was enshrined in the Twelve Tables but admits that 'the history of the institution of appeal . . . in the Roman Republic is very obscure' and refers the reader back to Drummond.

⁸ For Cicero's probable use of the annalists in the *archaeologia* of *Rep.* 2 cf. Elizabeth Rawson, *Roman Culture and Society: Collected Papers* (Oxford, 1991), 64 and n. 1.

the *pontificii libri* and the *libri augurales*. The historicity of the assertion that *provocatio* existed under the kings need not detain us. Its function is clear: Cicero/Scipio wants to take the wind out of the sails of Publicola, constructed as a *popularis*-style leader, just as, for instance, Cicero repeatedly impugns the originality of Epicurus;⁹ the presence of regnal *provocatio* in annalist historical narrative will likewise have served such political ends.

That the *decemviri* were, according to tradition, *sine provocatione creati* does not, *pace* Cicero, necessarily show that *provocatio* was normal at that period. Cicero knows the tradition as written by annalists for whom *provocatio* was the expected condition. Their statement that the *decemviri* were *sine provocatione creati* might be merely a clarification offered for readers who would otherwise expect *provocatio* to apply, rather than an indicator of the prevalence of *provocatio* in the fifth century B.C.

Of greater interest is the remaining Ciceronian assertion about early *provocatio*, namely its comprehensiveness as indicated in the Twelve Tables *compluribus legibus*. Cicero and his brother Quintus had learned the Twelve Tables by heart in their boyhood (*Leg.* 2.9 and 59), so that his testimony carries some weight.¹⁰ The statement is thus not easily explained away as based not on the Twelve Tables but rather on annalist accounts or some later redaction of the Twelve Tables.¹¹ Nevertheless his previous statement about the regnal period indicates caution and the assertion itself seems overstated, a possibility that even one who is inclined to view Cicero's position here as essentially correct allows:¹² so inclusive a right of *provocatio* never existed.¹³ Sometimes cited in this connexion is *Lex XII 9.2: de capite civis nisi per maximum comitiatum . . . ne ferunt*.¹⁴ This should perhaps be seen as a first step toward the fully developed *provocatio* of the *lex Valeria* of 300.¹⁵

While a commentator facing restrictions of space may not be able to broach every problem in detail, Zetzel's comment *ad Rep.* 2.54 (following a good analysis of the forms of Ciceronian argument but without criticism of the substance of that argument¹⁶) that 'the whole passage is an excellent illustration of C(icero)'s abilities as an antiquarian', with a following reference to Rawson,¹⁷ who points out Cicero's scepticism of tradition here, is seriously misleading. It should have been made clear that Cicero's handling of *provocatio* is partly dictated by political *parti pris* and that he is likely to be more dependent on the annalists than the text indicates; and

⁹ Democritus is played off against him at *N.D.* 1.73 (see Pease *ad loc.*); similar use is made of Aristippus at *Fin.* 1.23 and *Off.* 3.116.

¹⁰ Cf. K. Büchner, *M. Tullius Cicero, De Re Publica. Kommentar* (Heidelberg, 1954), *ad* 2.54.

¹¹ *Pace* Bleicken (n. 7 above), 2447.36–9 and 50–2.

¹² Cf. Lintott (n. 7 above), 235 ('may be an exaggerated deduction from his evidence'). Lintott accepts, however (too readily, I think), based only on *Rep.* 2.54, that 'the XII tables would have had to recognise *provocatio* as a fact of life'.

¹³ Cf. Bleicken (n. 7 above), 2447.48–50.

¹⁴ Cf. P. R. Coleman-Norton, 'Cicero's contribution to the text of the Twelve Tables', *CJ* 46 (1950), 51–60 and 127–34, at 131; cf. also Bleicken (n. 7 above), 2447.15ff.

¹⁵ So E. S. Staveland, 'Provocatio during the fifth and fourth centuries B.C.', *Historia* 3 (1955), 412–28, at 412–15, followed by Ogilvie, *loc. cit.*, n. 7, and in turn by Zetzel *ad Rep.* 2.54.1. It is difficult to see how the *maximus comitatus* should refer to the *comitia conturiata*, presided over by the consuls, rather than the *concilium plebis*, as Bleicken (n. 7 above), 2447.39ff., supposes; cf. also M. H. Crawford (ed.), *Roman Statutes* (London, 1996), 2.699.

¹⁶ He does, however, later (*ad* 2.54.1) remark that the statement about the Twelve Tables can hardly stand at face value (see previous note).

¹⁷ Rawson (n. 8 above), 64.

the one historically useful piece of information, that on the Twelve Tables, seems overstated.

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PROPERTIUS AND LIVY

Towards the start of the elegy which prefaces his third book, Propertius rejects lengthy, martial epic in favour of slender poetry (3.1.7–8): it is on account of the latter that fame (*fama*) elevates him above the earth, his Muse triumphant (9–10); accompanying him in the triumphal chariot are his *Amores* (11), and following the wheels is a crowd of writers (12 ‘scriptorumque meas turba secuta rotas’). The latter, in the race for glory, rival the poet to no purpose (13–14). Many writers will praise Rome (15 ‘multi, Roma, tuas laudes annalibus addent’) and sing of future conquests (16), but Propertius’ pages, a special delivery from the Muses’ mount, are the perfect peace-time reading (17–18).

Scholars have detected in this passage considerable evidence of Propertius’ wide reading. In addition to Callimachus, Lucretius, and Virgil, for example, there is the possibility that line 8 (‘exactus tenui pumice uersus eat’) derives from a lost Greek poem which lies also behind Catullus 1.2.¹ Although it would be attractive to imagine that this lost poem was one of Callimachus’ own, there is of course no proof; but Callimachus has indeed been suggested as a source for the reference to the crowd two couplets later (11–12).² Be that as it may, we can be almost certain that in these lines Propertius is alluding to Livy. Towards the start of his preface, Livy reflects upon his future as an author and dwells on the probability that his fame will be obscure amidst the large crowd of other writers (3 ‘si in tanta scriptorum turba mea fama in obscuro sit’). It seems that nowhere else in the whole of Latin literature is the expression *scriptorum turba* to be found;³ Propertius must have been reading Livy.

When Propertius later refers to annals (15), scholars naturally associate the reference with Ennian epic; but, although the poet is talking primarily about poetry (cf. 16 *canent*), he is perhaps also glancing at Livy’s annalistic history (cf. Liv. 43.13.2 ‘meos annales’). And, when Propertius proceeds to announce that his name will be greater after his death (24 ‘maius ab exsequiis nomen in ora uenit’), he is perhaps upstaging Livy’s gloomy prediction that his name will be overshadowed by the greatness of others (*praef.* 3 ‘nobilitate ac magnitudine eorum . . . qui nomini officient meo’). These similarities may be nothing more than coincidental; but is it simply coincidence when Propertius, in the last of his prologue poems to Book 3, describes

¹ F. Cairns argued that both poets were drawing on ‘traditional Alexandrian material’ (‘Catullus I’, *Mnemosyne* 22 [1969], 153–8, at 155); T. P. Wiseman defended the reading *arida* . . . *pumice* in Catullus’ poem by maintaining that the poet was drawing attention to a Greek model (*Clio’s Cosmetics* [Leicester, 1969], pp. 167–8). On the latter point see now R. Renehan, ‘On gender switching as a literary device in Latin poetry’, in P. Knox and C. Foss (edd.), *Style and Tradition: Studies in Honor of Wendell Clausen* (Stuttgart and Leipzig, 1998), pp. 212–29, at pp. 224–7. An alternative scenario is that Propertius alludes directly to Catullus (cf. P. Fedeli, *Properzio: Il Libro Terzo delle Elegie* [Bari, 1985], *ad loc.*).

² S. J. Heyworth, ‘Some allusions to Callimachus in Latin poetry’, *MD* 33 (1994), 51–79, at 71.

³ The Livy parallel is mentioned neither by the commentators nor by D. R. Shackleton Bailey, *Propertiana* (Cambridge, 1956), p. 295 or G. B. A. Fletcher, ‘Propertiana’, *Latomus* 20 (1961), 85–92, at 85, ‘Further Propertiana’, *Latomus* 48 (1989), 354–9, at 357. An electronic search reveals no other parallel.